

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
AND  
RESERVATION OF EASEMENT

FOR

QUAIL PONDS SUBDIVISION

A PLANNED RESIDENTIAL UNIT DEVELOPMENT

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DUG CROFTS, WEBER COUNTY RECORDER  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENT  
FOR QUAIL PONDS SUBDIVISION**

THIS DECLARATION is made this 8 day of September, 1999 by the Declarant as follows:

**RECITALS**

WHEREAS, Blackburn Jones Real Estate, Inc., (the "Declarant") is the owner of certain real property (the "Property") located in Weber County, State of Utah as more particularly described in that certain plat map entitled Quail Ponds Subdivision, a planned residential unit development, recorded in the official records of the office of the County Recorder of Weber County, State of Utah as Entry 1432122 on April 30, 1999 (the "Plat Map"), a copy of which is attached hereto as Exhibit "A", which is incorporated herein by this reference ; and

WHEREAS, the Declarant is desirous of subjecting all of the Property to all of the covenants, conditions, restrictions, reservation of easements, liens and charges hereinafter provided for each and all of which is and are for the benefit of and shall pass with the Property, and each and every parcel or Lot thereof, and shall apply to and bind the successors in interest, and any Owner thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Property and any other real property which may be annexed hereto pursuant to the provisions of this Declaration, to create a corporation under Utah Non-Profit Corporation and Co-operative Association Act (Refer to Article I Section 7) to which should be delegated and assigned the powers of owning, maintaining and administering the common areas, private roadways and certain other improvement in the Property and administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessment and charges hereinafter created; and

WHEREAS, the Declarant has caused such corporation, the members of which are or shall be the respective Owners of the Lots in any real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant will develop and convey all of the Property pursuant to a general plan for all of the Property and subject to those certain protective covenants, conditions, restrictions, reservation of easements, equitable servitude, liens and charges, all running with the Property as hereinafter set forth; and

WHEREAS, said Supplemental Declaration shall not conflict with the provisions of the Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of the Property; and

WHEREAS, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements and equitable servitude, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of general plan for the protection, maintenance, subdivision, improvement and sale of the Property, or any portion thereof; and

WHEREAS, notwithstanding any of the foregoing recitals, no provisions of the Declaration shall be construed as to prevent or limit the Declarant's right to complete development of the Property and construction of improvements thereon, nor the Declarant's rights to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property owned by the Declarant or the Association, nor Declarant's right to post signs incidental to such construction, sales or leasing.

#### **PREFACE - Submission and Division of Project**

This Preface shall be binding upon the Owners and Declarant as defined below.

A. **Submission.** The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property situated in Weber County, State of Utah, described in Exhibit "A".

B. **Annexation by Declarant.** Declarant may from time to time and in its sole discretion expand the Property subject to this Declaration by the annexation of all or part of the lands initially constituting the Undeveloped Land. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Weber County, Utah, of (a) a subdivision plat or map covering the land to be annexed and (b) a supplemental declaration which (i) describes the land to be annexed or incorporated by reference to the description contained in the subdivision plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, (iv) states which portions of the annexed land are Common Areas and which portions are Residential Lots and which portions are within any new land classification, provided that the nature and incidents of any such new land classification shall be fully set forth in such supplemental declaration or in another supplemental declaration previously filed with respect to some portion of the Property, and (v) describes generally any improvements situated on the

annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property.

I. If the Declarant, its successors or assigns, shall develop, or cause to be developed, additional real property which is not now identified as Undeveloped Land ("Non-Identified Land"), the Declarant, or its successors or assigns, shall have the right from time to time to add the Non-Identified Land or any portion or portions thereof to the Property and to bring the Non-Identified Land within the general plan and scheme of the Declaration without the approval of the Association, its Board, or Members; provided that such right of the Declarant, its successors and assigns, shall terminate twenty (20) years from the date of recording this Declaration.

C. Annexation by the Association. The Association may annex land to the Property by satisfying the requirements set forth in Section B of this Preface and by obtaining approval of such annexation from (a) the owner or owners of the land to be annexed and (b) 2/3 of the Members of each class of the Association's voting membership. Nothing in this paragraph shall be construed to require any prior approval for, or to limit or prevent, any annexation performed by Declarant pursuant to Section B of this Preface.

D. Title to Common Area. Prior to the conveyance of any Lot within the Undeveloped Land or Non-Identified Land to any individual purchaser thereof, whether such annexation was accomplished by either method set forth in Sections B or C above, title to the Common Area, if any, within said Annexed Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

E. No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any additional land to the Property or to develop or preserve any portion of the Undeveloped Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Preface shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

F. Division into Lots and Common Areas. The Property is hereby initially divided into eleven (11) lots, each consisting of a fee simple interest in a portion of the Property as set forth in the Plats. All portions of the Property not designated as Lots shall constitute the Common Area which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration.

G. Notice of Addition of Property. The additions authorized under Sections B and C of this Preface shall be made by filing of record a Notice of Addition of Property, or other similar instrument (which Notice or instrument may contain the Supplemental Declaration, if any,



affecting each Subdivision), with respect to the Annexed Property which shall be executed by the Declarant or the owner thereof and shall extend the general plan and schemes of this Declaration of the Annexed Property. The filing of record of said Notice of Addition shall constitute and effectuate the annexation of the Annexed Property described therein, and thereupon the Annexed Property shall become and constitute a part of the Property, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restriction, reservations of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Lots in the Annexed Property shall automatically become Members of the Association. Such Notice of Addition may contain such additions and modifications of the covenants, conditions and restrictions, reservations of easements and equitable servitude contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property, or as the Declarant may deem appropriate in the development of the Annexed Property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Notice of Addition revoke, modify or add to the covenants, conditions restrictions, reservations of easements, or equitable servitude established by this Declaration as the same shall pertain to the Property. No addition of property shall substantially increase assessments or substantially increase the burden upon the Common Area.

#### ARTICLE I - Definition

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified:

**Section 1. "Design Committee"** shall mean the committee created pursuant to Article VIII hereof.

**Section 2. "Articles"** shall mean the Articles of Incorporation of the Associations which have been or forthwith shall be filed in the Division of Corporations of the Department of Commerce of the State of Utah, as such Articles may be amended from time to time.

**Section 3. "Common Assessment"** shall mean the charge against each Owner and his Lot, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing managing and operating the Property, which charge is to be paid uniformly and equally by each Owner to the Association, as provided herein.

**Section 4. "Special Assessments"** shall mean a charge against a particular Owner and his Lot, directly attribute to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon, as provided for in this Declaration.

**Section 5. "Reconstruction Assessment"** shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the improvements on the Common Area pursuant to the Provisions of this Declaration.

**Section 6. "Capital Improvement Assessment"** shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion of the Common Area or on any portion of the Lots or improvements thereon which the Association has the responsibility to maintain.

**Section 7. "Association"** shall mean Quail Ponds Landowner's Association, Property Owners Association, a corporation formed under the Utah Non-Profit Corporation and Co-operative Association Act, its successors and assigns.

**Section 8. "Beneficiary"** shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

**Section 9. "Board"** shall mean the Governing Board of the Association, the members of which shall be elected in accordance with the By laws of the Association, The term "Members of the Governing Board" shall be synonymous with the term "Trustees and used in the Utah Non-Profit Corporation and Co-operative Association Act.

**Section 10. "By-Laws"** shall mean the By-laws of the Association, which have been or shall be adopted by the Board, as such By-laws may be amended from time to time.

**Section 11. "Common Area"** shall mean all the real property and improvements, including without limitation, any recreation facilities, landscaped area, private roadways and walkways, recreational vehicle parking, visitor parking, and drainage systems which are owned by the Association at the time of the conveyance of the first Lot shall also include the property described as Common Area on the Plat Map. Additional Common Area may be transferred to the Association in the future pursuant to the terms of Article XIV. The Common Area located within any future subdivision or portion thereof, shall be conveyed lien free, to the Association prior to the sale of the first Lot within any future subdivision, or portion thereof, to the public.

**Section 12. "Common Expenses"** shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; cost of management and administration of the Association including, but not limited to, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefiting the Common Area, and all recreational facilities thereon; the costs of fire, casualty and liability insurance covering the

Property; and the cost of bonding of the Trustees of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the cost of any other item or items designed by, or incurred by, the Association for any reason whatsoever in connection with the Property, for the benefit of all of the Owners.

Section 13. "Declarant" shall mean and refer to Quail Ponds Landowners Association, Inc., its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any such successor and assignee by an express written assignment.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to a "Single Family Detached House" as that term is defined herein, located on a Lot designed and intended for use of occupancy as a residence by a single family.

Section 17. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.

Section 18. "Improvement" shall mean all structures and appurtenances thereto of every type any kind, (and any alteration or addition thereto), including but not limited to buildings, out buildings, walkways, sidewalks, sprinkler pipes, garages, roads driveways, parking areas, recreational vehicle parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting trees and shrubs, poles, or signs.

Section 19. "Property" shall mean and refer to all of the real property described in the aforesaid Plat Map, together with such portion of the real property described in any additional exhibit to be attached thereto with respect to which a Notice of Addition of Property has been recorded subjecting it to this Declaration and to the jurisdiction of the Association as provided herein.

Section 20. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

Section 21. "Lot" or "Residential Lot" shall mean and refer to any residential Lot or parcel of land shown upon any recorded subdivision plat of the Property, with the exception of the Common Area.

Section 22. "Managing Agent" shall mean the person, firm, corporation or its agents retained or employed by the Association hereunder and delegated certain duties, powers and functions by the Association.

Section 23. "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 24. "Mortgage" shall mean any mortgage or Deed of Trust or Trust Deed or the act of encumbering any property by a mortgage Deed of Trust or Trust Deed, or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage".

Section 25. "Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust.

Section 26. "Mortgagor" shall mean a person or entity who mortgages his or its property to another i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term Mortgagor shall be synonymous with the term "Trustor"

Section 27. "First Mortgagee" shall mean any lender which hold a Mortgage or Trust Deed which constitutes a first and prior lien vis and vis any other Mortgage or Trust Deed on the same real property. The term First Mortgagee will also include any beneficiary name in any such first and prior Trust Deed.

Section 28. "Notice of Hearing" shall mean written notice of a hearing before a quorum of the Boar, at which the Owner concerned shall have an opportunity tot be hear in person or by counsel at the Owner's expense.

Section 29. "Owner" shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Weber County, Utah) of a fee or undivided fee interest in any Residential Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, no mortgagee shall be an Owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Residential Lot owned by it.

**Section 30. "Person"** shall mean a natural individual or any other entity with the legal right to hold title to real property.

**Section 31. "Record, Recorded, Filed and Recordation"** shall mean, with respect to any document, the recordation of such document in the Office of the Salt Lake County Recorder, State of Utah.

**Section 32. "Phase"** shall mean a parcel of real property which has been divided or sperate into Lots, shown on a recorded subdivision map.

**Section 33. "Single Family Detached House"** shall mean a building: (1) which is located on a privately owned Lot, (2) which in not attached to another building, (3) which is used as a dwelling for a single family, and (4) which has a private yard on all four sides with the following minimums: front yard - five feet; rear yard - ten feet; side yards - five feet and five feet; minimum distance between houses ten feet (with all measurements taken from the foundation wall).

**Section 34. "Supplemental Declaration"** shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XIV of the Declaration.

**Section 35. "Transfer Assessment"** shall mean a charge against a particular new Owner, and his Lot, to cover the cost to the Association of effectuating a transfer of membership upon the books of the Association, in an amount as set forth in Section 2 of Article III of the Declaration.

**Section 36. "Undeveloped Land"** shall, at any point in time, mean all of the land more particularly described in Exhibit "B" attached hereto and made a part hereof, excluding any portion or portions of such land comprising the Property and any other portion or portions of such land improved with the completed above-ground residential structures and related on-site and off-site improvements ordinarily in existence when a tract of land is considered to be fully developed. So long as it is not arbitrary, Declarant's determination as to when any of the land described in Exhibit "B" ceases to be Undeveloped Land shall be conclusive.

The foregoing definitions shall be applicable to this entire Declaration, including it's Preface, and also to any Notice of Addition of Property, Supplemental Declaration or Declaration of Amendment, unless otherwise expressly provided, recorded pursuant to the provisions of the Declaration.

## ARTICLE II - Owner's Property Rights

**Section 1. Owner's Easements of Enjoyment.** Each Owner shall have a nonexclusive right and easement of use ingress and egress and of enjoyment in, to and over the Common Area. Such right and easement shall be appurtenant to and shall pass with title to every Lot, and in no event shall be

separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such owner's Residential Lot. Notwithstanding the foregoing, and except as provided elsewhere herein, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others, notwithstanding the foregoing; the following provisions qualify the Owner's rights and easements:

(a) The right of Declarant to annex additional Common area thereto pursuant to the terms of the Preface.

(b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of this Article II and Section 1(ii) of Article IX.

(d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities and recreation vehicle parking spaces, if any, situated upon a portion of the Common area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Property shall be leased to the Owners or any other parties.

(e) The right of the Association in accordance with its Articles of Incorporation, by-laws and this Declaration, with the vote of or written assent of two-thirds (2/3) of its members (excluding therefrom the voting power of Declarant), to borrow money for the purpose of improving the Common Area and facilities, subject to the provisions of Article XIII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property provided that the rights of any Mortgagee shall be subordinated to the rights of the Owners.

(f) Except for the right of ingress and egress to an Owner's Lot, the Association shall have the right to suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or the right to use of the Common Area and Common Area facilities, shall be made by the Board, after Notice of Hearing, and an opportunity for a hearing before a quorum of the Board.

(g) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such transfer or dedication shall occur unless it first be assented in writing by (1) all holders of first mortgages secured by Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant). No such dedication, release, alienation or transfer shall be effective, unless pursuant to an instrument signed by two-thirds (2/3) of the Class A Members of the Association.

(h) The right of the Declarant (and its sales agents, customers and representatives) to the nonexclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right the Declarant hereby reserves; provided, however, that such use shall not be for a period of more than twenty (20) years after the date of recording this Declaration. Upon the request of the Declarant and upon the vote of fifty-one percent (51%) of the Class A Members of the Association, this term may be extended for an additional period of time.

(i) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such Improvement, or of the general improvements within the Property, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of seventy-five percent (75%) of the Class A Members of the Association.

(j) The right of the Association to replace destroyed trees, shrubs and ground cover upon any portion of the Property; and

(k) The right of the County of Weber and any other governmental or quasi governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service.

**Section 2. Assignment of Use.** Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such owner's Residential Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, drainage and sewer purposes for which such easements are intended for use in common with others.

**Section 3. Easements for Parking.** Temporary guests and recreational vehicle parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents, is hereby empowered to establish "parking," "recreational vehicle parking" and "no parking" areas within the Common area, as well as to enforce such parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those empowered. Provided, however, no curbside parking shall be allowed within fifty (50) feet of a fire hydrant and the portion of the curb within such restricted area shall be marked as a no-parking zone in red paint.

**Section 4. Easements for Vehicular Traffic.** In addition to the general easements or use of the Common Area reserved herein, there shall be and the Declarant hereby reserves and covenants for itself and all future Owners within the Property, that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private roads within the Property, subject to the parking provisions set forth in Section 3 of this Article II. The Declarant reserves the right to grant similar easements to Owners of property in subdivisions annexed hereto pursuant to the Preface.

**Section 5. Easements for City and County Public Service Use.** In addition to the foregoing easements over and across the property reserved herein, the Declarant reserves and covenants for itself and all future Owners within the Property, easements for city, county and federal public services, including, but not limited to , the right of the police to enter upon any part of the Common area for the purpose of enforcing the law.

**Section 6. Reservation of Access and Utility Easements.** Declarant reserves easements for access, electrical, gas, communications, cable television and other utility purposes and for sewer, drainage and water facilities, (whether servicing the Property or other premises or both) over, under, along, across and through the Property, together with the right to grant to the County of Weber, or any other appropriate governmental agency or to any public utility or other corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof.



**Section 7. Easements for Encroachments.** If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Residential Lot or if any structure constructed by Declarant on any Residential Lot now or hereafter encroaches upon any other Residential Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Residential Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Residential Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

**Section 8. Easements for Construction and Development Activities.** Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Living Units on Residential Lots, (b) improvement of the Common Areas and construction, installation, and maintenance thereon of roads, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways, and other facilities, planned for dedication to appropriate governmental authorities, and (d) development, improvement, use and occupancy of all or any portion of the Undeveloped Land, whether or not such land is intended to be made part of the Property. The reservations contained in this paragraph shall expire twenty (20) years after the date on which this Declaration was first filed for record in the Office of the County Recorder of Weber County, Utah.

**Section 9. Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him, from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of big Lot or any other property in the Property.

**Section 10. Taxes.** Each Owner shall execute such instrument and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

### ARTICLE III - Membership in Association

**Section 1. Membership.** Every Owner upon acquiring title to a Residential Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his/her ownership of such Residential Lot ceases for any reason, at which time his/her membership in the Association with respect to such Residential Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Residential Lot.

**Section 2. Transfer.** The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase such Membership, shall be entitled to assign to such contract purchaser his right of enjoyment of the Common area and facilities as provided in Article II, Section 2, and such Member's voting proxy rights in the Association, but as between the Association and such Member, the Member may not delegate his Membership obligations. Such assignment and /or proxy shall be in writing and shall be delivered to the Board before such contract purchaser may use the Common area and facilities or vote, as the case may be. The contract seller shall remain liable for all charges and assessments attributable in his Lot until fee simple charges and assessments attributable in his Lot until fee simple title to the Lot sold is conveyed. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee simple title thereto, the Board shall have the right to record the transfer upon the books of the Association. Upon any transfer pledge, or alienation of a Lot, the Board shall have the right to charge a Transfer Assessment against any new Owner, and his Lot equal in amount to two (2) times the current monthly Common Assessment, to cover the cost to the Association of effectuating any such transfer of Membership upon the books of the Association and to perpetuate the reserve funds of the Association.

### ARTICLE IV - Voting Rights

**Section 1. Classes of Voting Membership.** The Association shall have the following described two (2) classes of voting Membership.

**Class A.** Class A members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A members shall be entitled to one vote for each Residential Lot in which the interest required for membership in the Association is held.

**Class B.** Declarant shall be the sole Class B Member. The Class B Member shall be entitled to the following votes: (i) four (4) votes for each Residential Lot

which it owns; and (ii) four (4) votes for each acre of Undeveloped Land in which it holds an equitable or legal ownership interest. The Class B membership shall automatically cease and be converted to Class A Membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member, provided, however, that the Class B membership shall be restored upon the annexation of additional Residential Lots to the Property pursuant to Article II above if and so long as the number of Class B votes after such annexation exceeds the number of Class A votes.

(b) Twenty (20) years after the date on which the Declaration was first filed for record in the office of the County Recorder of Weber County, Utah.

**Section 2. Multiple Ownership Interests.** In the event there is more than one Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Residential Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Residential Lot concerned unless an objection is made at the meeting by another Owner of the same Residential Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.

## ARTICLE V - Duties and Powers of Association

**Section 1. Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all owners as Members of the Association.
- (b) The Association shall accept all title to all Common Areas conveyed to it by the Declarant.
- (c) The Association shall maintain, repair, and replace the Common Areas including easement areas appurtenant thereto used during construction and development when such is completed, and at the discretion of the Board, any property dedicated to any governmental authority and situated immediately adjacent to the Property if the Board determines that such dedicated property is not being maintained or landscaped in a condition comparable to the Common Areas.
- (d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (e) The Association shall obtain and maintain in force the policies of insurance required by Article XII of this Declaration.

**Section 2. Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- (a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Residential Lot for the purpose of maintaining and repairing such Residential Lot or any improvement thereon, including landscaping, if for any reason the Owner fails to maintain and repair such Residential Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Residential Lot in violation of Article X of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or

Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Residential Lots (to the extent necessitated by the failure of the Owners of such Residential Lots) or in exercising any of its rights to construct improvements or other work upon any of Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, when appropriate, or otherwise provide for, or make available:

(1) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Design Committee and the Owners;

(2) Such utility services, including (without limitation) culinary water, secondary water, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

(3) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(4) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

(5) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

(c) The Board may delegate to a Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Area.

(d) The association shall have the power and authority to hire a responsible corporation, partnership, firm, person or other entity to maintain the grounds of all Owners who voluntarily subscribe to such service, or to maintain the grounds of Owners who fail to properly maintain their Residential Lot, as required by this Declaration, for so long as said Owners fail to maintain the same. The cost to maintain a Lot for an Owner, whether the maintenance is voluntary or involuntary on the part of the Owner, shall be charged to the Owner and shall be included in the periodic assessment to the Owner.

(e) The Association shall have the power and authority to hire a responsible corporation, partnership, firm, person, or other entity, to maintain the parkways and/or the trees in the parkways throughout the Project.

(f) Grant easements, rights of way, or stripe of land, where necessary, for utilities and sewer facilities over the Common area to serve the Common Area and the Lots.

(g) Grant easements, rights of way, or stripe of land, where necessary, for utilities and sewer facilities over the Common area to serve the Common Area and the Lots.

(h) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the By-laws.

(i) Employ or contract with a professional manager or management company to perform all or any part of the duties and responsibilities of the Association, and to delegate its powers to agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee, upon ninety (90) days written notice. A non-professional managing agent may be designated only upon the affirmative vote of seventy-five percent (75%) of the Members.

(j) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means, the provisions of this Declaration, or for the purpose of maintaining or repairing any such area as required by this Declaration.

(k) Maintain all sidewalks located upon the Common Area, including cleaning, snow removal, and periodic repairs.

(l) Maintain and repair all fences within the Common Area.

(m) Maintain and repair all landscaping on all Lots.

(n) Maintain and repair all sprinkling systems, both within the Common Area and upon all Lots.

(o) Maintain and repair the exterior of the roofs of all Dwelling Units.

**Section 3. Association Rules.** The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals on the Property; and (e) other matters concerning the use and enjoyment of the Property and the conduct of residents.

**Section 4. Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the board, the Design Committee or the Managing Agent.

## Article VI - Covenant to Pay Maintenance Assessments

**Section 1. Creation of Lien and Personal Obligation to Pay Assessments.** Declarant, for each Lot owned by it, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association (1) annual Common Assessments for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, (4) Reconstruction Assessments, and (5) Transfer Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting first Mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Board shall establish at least two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association. At least one of the accounts (the "operating Fund") shall include funds for replacement, painting, repairs and operations which would reasonably be expected to occur on an annual or more frequent basis. At least one of the accounts (the "reserve Fund") shall include such funds as the Board determines shall constitute an adequate and reasonable reserve for replacement and repairs which would reasonably be expected to occur less frequently than on an annual basis. The Board shall not commingle any amounts deposited into any of the separate accounts.

**Section 2. Purpose of Common Assessments.** The Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Area as provided herein. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis. However, disbursements from the Reserve Fund shall be made by the Board only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Property. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds are allocated for specified purposes authorized by this Declaration.

**Section 3. Damage to Common Area by Owners.** Any maintenance, repairs or replacements completed by the Association arising out of or caused by the willful or negligent act



of the Owner, his family, guest, invites of lessees shall be done at said Owner's expense, or a Special Assessment therefore shall be made against his Lot.

**Section 4. Basis of Maximum Common Assessment.** Until January 1st of the year immediately following the conveyance of the First Lot in the Property to any Owner, the maximum Common Assessment under Article VI shall be Thirty Dollars (\$30.00) per Lot per month.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Common Assessment may be increased by the Board above the annual Common Assessment for the previous year, effective January 1st of each year, not more than the greater of: (1) fifty percent (50%); or (2) the percentage by which the national average Consumer Price Index for All Urban Consumers (CPI-U), or the U.S. Department of Labor, Bureau of Labor Statistics, has increased as of November 1st immediately preceding over the said index as of one year prior thereto.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual Common Assessment may be increased by the Members above the greater of ten percent (10%) or the percentage determined with respect to the Consumer Price Index referred to above, by the vote or written assent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessment.

(c) The Board may fix an annual Common Assessment at any amount not in excess of the maximum.

**Section 5. Capital improvement and Reconstruction Assessments.** In addition to any Common Assessments, the Board may levy, in any assessment year, a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost for any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Property, including fixtures and personal property related thereto; provided that the total of any such assessment which is in excess of Five Thousand Dollars (5,000.00) shall require the vote or written consent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessments.

**Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5.** Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 above shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of Proxies entitled to cast fifty-one (51%) of all votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting

may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

**Section 7. Equal Rate of Assessment.** Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against particular Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Common Assessments shall be collected on a regular monthly basis by the Boards.

**Section 8. Date of Commencement of Common Assessments; Due Date.** All assessments provided for herein shall be paid in regular installments after the assessment is made. The annual Common Assessment shall commence as to particular Lots within each Phase of development, as provided for herein, on the day of the closing of the sale or conveyance of any particular Lot by the Declarant to any contract purchaser of Owner with a proper proration on any monthly assessment if the closing takes place on a day other than the first day of the month. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal years as set forth in the By-laws. The Board shall fix the amount of the annual Common Assessment against each Lot as least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed Certificate of the Association as to the status of assessments against a Lot shall be binding upon the Association as of the date of its issuance.

The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board, in the manner provided in the By-laws of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the Members, a written, itemized estimate (budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Reserve Fund, less any expected income and accounting for any surplus from the prior year's maintenance Funds).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to provisions of Section 1 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot.

Each Annual Common Assessment may be paid by the Owner to the Association in one check or payment, or in separate checks, as payments attributable to deposits into specified Maintenance Funds. In the event that any installments of the Common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the Maintenance Fund or Funds into which it should be deposited, the receipt of the Association from the Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Association, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Articles or By-laws to the contrary, if prior to dissolution of the Association the Association has not obtained tax exempt status from both the Federal and State Governments, then upon such dissolution of the Association, any amounts remaining in the Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

**Section 9. Exempt Property.** The following property subject to this Declaration shall be exempt from liens resulting from assessments herein:

- (a) All Properties dedicated to and accepted by a local public authority, and
- (b) The Common Area.

**ARTICLE VII - Effect of Non-Payment of Assessments (Remedies of the Association)**

**Section 1. Effect of Non-Payment of Assessments: Remedies of the Association.** Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefore may be required further by the Board to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail and acceleration notice to the Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and the sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, and declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

**Section 2. Notice of Assessment.** No action shall be brought to enforce any assessment lien provided for herein, unless at least thirty (30) days have expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Property is located: said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association, and said lien shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

**Section 3. Foreclosure.** Any such sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953 as amended, applicable to the exercise of powers of foreclosure sale in Mortgages and powers of sale in Deeds of Trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

**Section 4. Curing of Default.** Upon the timely curing of any default with respect to which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed an amount equal to the last monthly common assessment fee, to cover the costs of preparing and recording such release. A certificate executed and acknowledged by any two (2) Members of the Board stating the indebtedness secured by the lien upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed fifteen percent (15%) of the last monthly common assessment fee.

**Section 5. Cumulative Remedies.** The assessment liens and the rights to foreclosure and sale thereunder, shall be in addition to and not in substitution for, all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**Section 6. Subordination of the Lien to First Mortgage.** The lien of assessment provided for herein shall be subordinate to the lien of any first Mortgage (meaning any recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to the Mortgage foreclosure of

first mortgage or deed in lien thereof shall extinguish the lien of such assessments as to the installments which became due prior to such assessments as to the installments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner from personal liability for such assessment, nor such Lot from liability for any installments or assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VIII - Maintenance and Repair Obligation

**Section 1. Maintenance Obligations of Owners.** Subject to the duty of the Association to provide for maintenance as provided in Section 2, of this Article VIII, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Design Committee approval, to maintain, repair, replace and restore areas of the Property subject to his exclusive control, including any improvement thereon, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the structure of the Owner's Dwelling Unit and all exterior and interior portions of the Owner's Dwelling Unit. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or fail to so maintain such Improvement so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Design Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the costs thereof shall be charged to the Owner. Said costs shall constitute a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Owner as Common Assessments.

**Section 2. Maintenance Obligations of Association.** In addition to the provisions of Section 1 of this Article VIII, the Association shall maintain in good order and repair all of the Common Area and any Improvement thereon, and all perimeter fences, if any. In addition to the maintenance and repairs set forth above, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area and on the Lots. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

**Section 3. Damage and Destruction Affecting Dwelling Unit, Duty to Rebuild.** If all of or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said

Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

**Section 4. Variance in Exterior Appearance and Design.** Any Owner who has suffered damage may apply for approval to the Design Committee for permission to reconstruct, rebuild or repair his Dwelling Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstruction and the end result thereof. The Design Committee shall grant such approval only if the design proposed by the Owner shall result in a finished Dwelling Unit in harmony with the exterior design of other Dwelling Units on the Property. Failure of the Design Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

**Section 5. Time Limitation.** The Owner or Owners of any damaged Dwelling Unit, the Association and the Design Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

**Section 6. Design Committee.** The Design Committee shall other powers as described herein under Article X, to which all Owners are bound.

## ARTICLE IX - Use Restrictions

All real property within the Property shall be held, used and enjoyed pursuant to the following limitations and restrictions, subject to the exemption of the Declarant as provided in Section 6 of this Article IX:

### **Section 1. General Restrictions and Requirements.**

(a) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Residential Lot from its natural or improved state existing on the date such Residential Lot is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the provisions of this Article VIII and the provisions of Article X.

(b) Residential Lots shall be used only for single-family residential purposes, and no more than one house shall be constructed on any Residential Lot except that an additional guest house or servants quarters meeting the requirements of all applicable laws in effect from time to time may be constructed on a Residential Lot with the approval of the Design Committee. The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. The Common Areas shall be used only for their intended uses which do not injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Residential Lots and Living Units or the Common Areas.

(d) No noxious or offensive activity shall be carried on upon any Residential Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Residential Lots and Living Units or the Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Residential Lot and Living Unit thereon, shall be placed or used upon any Residential Lot without the prior written approval of the Design Committee.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Residential Lots, roads or Common Areas.



(f) Each Residential Lot and all improvements located thereon shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense. All walls and fences on common boundary lines or corners separating two or more Residential Lots shall be maintained jointly in equal shares by the owners of the Residential Lots abutting such fence or wall, provided that each Owner shall be responsible for painting the side of any party wall or fence facing his Residential Lot. All fences constructed on Residential Lots shall be constructed of materials suitable for the purposes for which the fence is constructed and shall be prior approved by the Design Committee pursuant to Article X. The Design Committee shall have the authority to create architectural standards for the construction of fences, including height limitations, setback requirements, and construction materials that can be used.

(g) Within one year of occupancy of each Living Unit in the Project, the front and side yards, and the back yards, shall be planted in lawn or other acceptable landscaping so as to enhance, and not detract, from the aesthetics of the Project. "Acceptable landscaping" shall be reasonably determined by the Design Committee which will reflect the majority view of the homeowners in the Project. Vegetation within any Residential Lot shall be planted and maintained in good condition at the Owner's expense in such a manner as to prevent or retard shifting or erosion. In order to protect the values of the Residential Lots, maintain uniformity and aesthetically enhance the Project, the Owners agree to water and generally care for the trees in front of each Residential Lot. Any Owner who neglects to properly water or care for such trees shall repair or replace such damaged tree(s) with the same size and variety of trees.

(h) All garbage, rubbish, and trash shall be kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring Residential Lots, roads or Common Areas. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

(j) No Residential Lot shall be re-subdivided.

(k) All improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(l) All structures constructed on any Residential Lot or the Common Areas shall be constructed with new materials unless otherwise permitted by the Design Committee; and no used structures shall be relocated or placed on any Residential Lot.

(m) No structure or improvement having a height of more than two and one-half (2 1/2) stories shall be constructed on any Residential Lot; provided, however, that the height of a structure or improvement may exceed two (2) stories if permitted by law and if the Design Committee determines that the proposed height is compatible with the physical site involved and adjoining properties.

(p) Each dwelling with a basement shall include a footing drain around the perimeter of the footings which connects into the storm drain system installed by Declarant. All downspouts shall tie into the footing drain.

(q) The Design Committee shall have the authority to establish architectural and design standards for the construction and installation of mailboxes to be installed by each Owner in the front of each dwelling and within the parkway area. Such standards may include height limitations, location, and construction materials to be used. Specifically, the Design Committee shall have the authority to select a uniform mailbox to be used throughout the entire project in order to create and maintain a uniform look throughout the Project. In the absence of such standards, each Owner shall provide a mailbox shall be constructed of the same brick or native stone used to construct the home, or as otherwise approved, in writing, by the Design Committee.

(u) Construction of a home upon a Residential Lot must commence within two (2) years from the date of sale of any such Residential Lot. No home shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays are approved by the Design Committee.

(v) All Owners shall have the option of placing an accessory building on their respective lots. Such accessory buildings, their size, style, color, exterior coverings, shingles, and construction shall be selected only from those plans provided by Declarant at rates which Declarant shall charge.

(x) No accessory structures shall be constructed, placed or maintained upon any Residential Lot prior to the construction of a Living Unit, except by Declarant or except by written permit of the Design Committee; provided that this restriction shall not prohibit (i) temporary construction shelters or facilities maintained during, and used

exclusively in connection with, and construction of a Living Unit, or (ii) any structure upon any Residential Lot to be used by Declarant as a sales office or otherwise in conjunction with the development of Residential Lots by Declarant.

(y) No Owner of any Residential Lot, except Declarant, shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the Design Committee.

(z) No structure shall be occupied until (i) the same is substantially completed in accordance with plans and specifications previously approved by the Design Committee, and (ii) the City of North Ogden has properly issued a certificate of occupancy.

(aa) No improvement which suffers partial or total destruction shall be allowed to remain on any Residential Lot in such a state for more than three (3) months after the date of such destruction.

(bb) No outside toilet, other than self-contained portable toilet units used during construction, or a toilet installed in an enclosed structure in connection with a swimming pool, shall be placed or constructed on any Residential Lot or the Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system.

(cc) No fuel tanks or similar storage facilities shall be constructed only with the prior written approval of the Board and in a manner approved by the Design Committee and which shall comply with all city, county, state, and federal rules, ordinances, statutes, regulations or other applicable laws.

(dd) No exterior antenna or satellite dish of any sort shall be installed or maintained on any Residential Lot except of a height, size and type approved by the Design Committee. No activity shall be conducted within the Property which interferes with television or radio reception.

(ee) Outside clotheslines shall not be permitted in any manner or in any location outside of the Single Family Detached House.

(ff) No drilling (except for a water well expressly permitted), refining, quarrying or mining operations of any kind shall be permitted upon any Residential Lot or the Common Areas, and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Residential Lot or the Common Areas. There shall be no water well developed on any Residential Lot by the Owner thereof unless (i) a permit is first obtained from the Board and (ii) the Board first approves the location and facilities used in connection with such well.

(gg) There shall be no blasting or discharge of explosives upon any Residential Lot or the Common Areas except as permitted by the Board; provided that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the development and sale of Residential Lots.

(hh) No signs whatsoever shall be erected or maintained upon any Residential Lot, except:

(i) Such signs as may be required by legal proceedings,

(ii) Such signs as Declarant may erect or maintain on a Residential Lot prior to sale and conveyance,

(iii) One "For Sale" sign having a maximum face area of fifteen (15) square feet and referring only to the premises on which it is situated,

(iv) Other signs as prior approved by the Design Committee.

(ii) Except to the extent used by Declarant in connection with and during the development and sale of Residential Lots, no mobile home or similar facility, shall be placed upon any Residential Lot, the Common Areas or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained on any Residential Lot, the Common Areas or adjoining public streets. No large commercial vehicle shall be parked on any Residential Lot, public streets or the Common Areas except within an enclosed structure or a screened area which prevents view thereof from adjoining Residential Lots, roads and Common Areas unless such vehicle is temporarily parked for the purpose of serving such Residential Lot or Common Areas. No long-term parking (over 48 hours) of any vehicle shall be permitted on the Common Area or on any Lot, except in a garage. No recreational vehicle shall be parked for longer than thirty (30) minutes on the Common Area or on any Lot except, subject to rules and regulations promulgated by the Association, in a parking area within the Common Area designated as "recreational vehicle parking."

(ij) Maintenance of any animals on any Residential Lot shall be subject to the following restrictions and limitations:

(i) No bar, coop, shed, sty or building or any type shall be constructed, kept, maintained or permitted for the purposes of housing pigs, cows, sheep, goats, horses, poultry, or other livestock at any place within the limits of the Property.

(ii) No livestock of any kind, including, but not limited to, pigs, cows, goats, sheep, horses, etc. may be kept or maintained on any Residential Lot.

(iii) No dangerous or nuisance animals, as defined by the Board, may be maintained or kept on any Residential Lot.

(iv) No animals shall be permitted on the Common Areas except when accompanied by and under the control of the persons to whom they belong.

(v) The use and control of any animals shall be subject to further control by rules and regulations promulgated by the Board.

(kk) Subject to further control by rules and regulations promulgated by the Board, only two (2) common and generally recognized house pets shall be kept on any Residential Lot or in any living area. House pets shall be permitted on the Common Areas when accompanied by and under the control of the person to whom they belong. No animals of any kind shall be raised for commercial purposes unless prior written approval is obtained from the Board. No house pets shall be maintained outside the Dwelling Units. All house pets shall be maintained inside the Dwelling Units of each Lot.

(ll) There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles designed for such purposes. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(mm) There shall be no camping upon any Residential Lot or the Common Areas, except as permitted by the Board by written license. There shall be no hunting or discharge of firearms on any Residential Lot or the Common Areas.

**Section 2. Single Family Residences, Business or Commercial Activity.** Each Lot shall be used as residence for a single family. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose, other than a home office permitted under applicable zoning ordinances, without the vote of seventy-five percent (75%) of the votes eligible to be cast by Members of the Association or the approval of the Design Committee. Provided, further, however, the Association shall never be permitted to allow more than twenty-five percent (25%) of the lots to be used as a non-owner occupied residence. No outbuildings shall be constructed on any Lot and nothing shall be placed upon or attached to the roof of any home constructed on a Lot. Notwithstanding any provisions herein to the contrary, nothing herein shall be construed as prohibiting the Declarant, its successors and assigns, from using any portion of the Property for a model home site, and display and sales office during the

construction and sales period and for a period of two (2) years thereafter in accordance with the Recitals of this Declaration and Article IX, Section 1 (y), of this Declaration.

**Section 3. Nuisances.** No noxious or offensive activity (including but not limited to the major repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the Bylaws if any noise, odor or activity producing such noises, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, satellite dishes, radio or television antennas, evaporative coolers, permanent flag poles, or items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Design Committee.

**Section 4. Signs.** No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Lot, without the prior written consent of the Design Committee, except signs used by Declarant, their successors or assigns, to advertise the Property during the construction and sale period. All signs or billboards and the regulations promulgated for the regulation thereof shall conform to the requirements of the Weber County, State of Utah ordinances.

**Section 5. Common Area Facilities.** Nothing shall be altered or constructed on or removed from the Common Area except upon the written consent of the Association.

**Section 6. Declarant's Exemption.** The Declarant or its successors or assigns may undertake the work of constructing Dwelling Units and developing all of the Lots included within the Property and any annexation thereto. The completion of that work and sale, rental and other disposal of Dwelling units is essential to the establishment and welfare of the Property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Property be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- (a) Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by the Declarant, whatever it determines to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its

construction plans and designs as the Declarant deems advisable in the course of development; or

(b) Prevent the Declarant, its successor or assigns, or its or their representatives, from erecting, constructing, or maintaining on any Lot, or portion thereof, owned or controlled by the Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Property as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent the Declarant, its successors or assigns, or its contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by the Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Property as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

(d) Prevent the Declarant, its successors or assigns, or its contractors or subcontractors, from maintaining such sign or signs on any Lot owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Lots and Dwelling Units; or

(e) Prevent the Declarant, at any time prior to acquisition of title to a Lot by a purchaser from the Declarant, to establish on that Lot additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The Declarant shall repair at its own cost or expense any damage caused by the Declarant to the Common Area as well as such damages caused to Lots or property still under the Declarant's control.

**Section 7. Rubbish.** No rubbish shall be stored or allowed to accumulate anywhere on the Property, except in sanitary containers and at such locations as the Board shall determine from time to time.

**Section 8. Insurance Rates.** Nothing shall be done or kept on the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

## ARTICLE X - Architectural Control

**Section 1. Organization of the Design Committee.** There shall be a Design Committee consisting of not fewer than three (3) members. The members of the Design Committee need not be Owners. Declarant shall have the right to appoint, remove and increase the number of members of the Design Committee; provided that such right shall vest in the Board upon the expiration of any continuous period of eighteen (18) months during which Declarant at all times owns less than ten percent (10%) of the Residential Lots then covered by this Declaration. Declarant may voluntarily relinquish control of the Design Committee to the Board at any time. Whenever the Design Committee consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. Unless authorized by the Board, the members of the Design Committee shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any Design Committee function.

**Section 2. Actions Requiring Approval.** Subject to Article IX, no fence, wall, Living Unit, accessory or addition to a Living Unit visible from the Common Areas or public streets within the Property, or landscaping or other improvement of a Residential Lot visible from the Common Areas or public streets within the Property shall be constructed or performed, nor shall any alteration of any structure on any Residential Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Design Committee.

**Section 3. Standard of Design Review.** Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design, color and location with surrounding structures and topography.

**Section 4. Design Committee Rules and Architectural Standards.** The Board may, upon recommendation from the Design Committee, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.



**Section 5. Approval Procedure.** The Design Committee and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the Design Committee. The vote or written consent of a majority of the Design Committee or any authorized subcommittee shall constitute the act of the Design Committee. Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.

**Section 6. Variance Procedure.** The Board of Trustees of the Association, upon a favorable recommendation of the Design Committee, may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in a written document signed by at least two (2) officers or members of the Board of Trustees of the Association. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplement Declaration for any purpose except as to the particular portion of the Property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting misuse of the premises, including, but not limited to, zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority. Notwithstanding anything herein to the contrary, all Lot owners shall have the right to construct a reasonable privacy screen or fence which is attached to the home on the Lot, subject to obtaining approval through the process set forth above, which approval shall not be unreasonably withheld. In considering the request for a variance with respect to a privacy screen or fence, the Board shall consider the configuration, size and materials and make sure that the interests of the other Lot owners and the Association are protected.

**Section 7. Nonwaiver.** The approval by the Design Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications subsequently submitted.

**Section 8. Completion of Construction.** Once begun, any improvements, construction, landscaping or alterations approved by the Design Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Design Committee.

**Section 9. Estoppel Certificate.** Within thirty (30) days after written demand therefor is delivered to the Design Committee by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the Design Committee

shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Residential Lot of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Residential Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.

**Section 10. Disclaimer of Liability.** Neither the Design Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

**Section 11. Compensation for Members.** The members of the Design Committee shall receive reasonable compensation for services rendered, including reimbursement for expenses incurred by them in the performance of their duties hereunder, as determined by the Board from time to time.

**Section 12. Inspection of Improvement.** Inspection of any Improvement and the correction of defects therein shall proceed as follows:

(a) Upon the completion of any Improvement for which approved plans are required under this Article X, the Owner shall give written notice of completion to the Design Committee.

(b) Within sixty (60) days thereafter, the Design Committee or its duly authorized representative may inspect such Improvement. If the Design Committee finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such noncompliance within such sixty-day period, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Design Committee shall notify the Board in writing of such failure. Upon Notice and Hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated costs of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying

Improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement.

## ARTICLE XI - Damage or Destruction to Common Area

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

- (a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and any Improvement thereon to be reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such repair and reconstruction to be substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners in accordance with the provisions of Article VI, Section 5, of this Declaration.
- (c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, including minors and adults. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall also be a Special Assessment against the Lot owned by Owner.

## ARTICLE XII - Insurance

**Section 1. Common Area.** The Association shall keep any Improvement and all other insurable property on the Common Area insured against loss or damage by fire for the full insurance replacement costs thereof and including extended coverage for not less than 100% of the replacement cost of insurable property, and shall obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association or by members of the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association, for the benefit of the Owners. Insurance proceeds shall be used by the

Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association shall be expenses payable by including the same in the Common Assessments made by the Association.

**Section 2. Insurance Obligations of Owners.** Unless the Association elects to insure each Dwelling Unit (in which case the individual Owner shall be responsible for any co-insurance or deductible with respect to any losses), each Owner shall insure his entire Dwelling Unit, including the structural portions of the Dwelling Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a Mortgagee of the Dwelling Unit. All such insurance shall be for the full replacement value of the Dwelling Unit with automatic inflation coverage. All such policies shall contain a provision that the same shall not be cancelled or terminated except upon at least thirty (30) days written notice to the Association.

**Section 3. Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area, or any Improvement thereon or any other portion of the Property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessment made against such Lot Owners, in accordance with the provisions of Article VI, Section 5, of this Declaration. In the event of total destruction of all of the Improvements on the Property, the proceeds of the insurance carried by the Association shall be divided equally among the Lot Owners, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

**Section 4. Waiver of Subrogation.** As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Managing Agent, the Declarant, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 5. Liability Insurance.** The Association shall obtain comprehensive public liability insurance including medical payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to the Common Area including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other

Owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional Mortgage investors for projects similar in construction, location and use.

**Section 6. Miscellaneous.**

(a) **Minimum Financial Rating of Carrier.** Each hazard insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the State of Utah.

(b) **No Assessments.** Policies are unacceptable where: (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Association or any Owner or any First Mortgagee or its successors and assigns; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association or any Owner or any First Mortgagee, or its successor and assigns, from collecting insurance proceeds.

(c) **Other Requirements.** All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Property is located. The Mortgagee clause must provide that the insurance carrier shall notify the First Mortgagee named in such policies at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(d) Other Insurance and General. The Association may also obtain, through the Board, Worker's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, the Board, members of the Design Committee, and the managing agent from liability in connection with the Common area, the premiums for which shall be expenses payable by the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of an Owner because of the negligent act of the Association or other Owners. All policies shall be reviewed at least annually by the Board and the limits increased at its discretion.

#### ARTICLE XIII - Mortgage Protection Clause

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Lots and Dwelling Units within the Property, the following provisions are added hereto And to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control);

Section 1. Written Notification of Default. Each First Mortgagee of a Mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the By-laws, which default is not cured within sixty (60) days after the Association learns of such default.

Section 2. Right of First Refusal. Each First Mortgagee of a Mortgage encumbering a Lot which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal." Any right of first refusal contained in the constituent documents of the Property, or hereinafter added shall not impair the rights of a First Mortgagee to (i) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or (ii) accept a deed or an assignment in lieu of foreclosure in the event of default of a Mortgagor, or (iii) interfere with the subsequent sale or lease of a Lot so acquired by the First Mortgagee.

Section 3. Non-Liability for Prior Unpaid Dues or Charges. Any First Mortgagee, or a purchaser who purchases a Lot from any First Mortgagee who obtains title to a Lot pursuant to a deed (or assignment) in lieu of foreclosure, or pursuant to the remedies provided in the Mortgage

or foreclosure of the Mortgage, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the First Mortgagee.

**Section 4. First Mortgagee Approval.** Unless at least one hundred percent (100%) of the First Mortgagees (based upon one (1) vote for each Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Lots (the granting of an easement of public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause);

(b) Change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural control of the Lots or Dwelling Units, the maintenance of the Lots or Dwelling Units, or the maintenance of the Common Area;

(d) Fail to maintain fire and extended coverage on any insurable Improvement or property on the Common Area on a current replacement costs basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and

(e) Use hazard insurance proceeds for losses to any Improvement or property on the Common Area for other than the repair, replacement or reconstruction of such Improvement or property.

**Section 5. Taxes and Charges in Default.** First Mortgagees may, jointly and severally, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such portion of the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**Section 6. First Mortgagee Priority.** No provision of the Declaration, Articles or By-Laws shall give an Owner, or any other party, priority over any rights of any First Mortgagee pursuant to its Mortgage in the case of a distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Area.



**Section 7. Examination of Books and Records.** First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

**Section 8. First Mortgagees Written Notice of Amendments and Damage.** Upon written request, all First Mortgagees shall be given (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to the Declaration, the Articles or By-laws, and prior to the effective date of any termination of an agreement for professional management of the Property following a decision of the Owners to assume self-management of the Property; and (ii) immediate notice following any damage to the Common Area whenever the cost of the reconstruction exceeds Ten Thousand Dollars (\$10,000.00) and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Property.

**Section 9. Reserve Fund for Common Area.** Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis and are payable in regular installments rather than by Special Assessments.

**Section 10. First Mortgagee Written Notice of Default by Owner.** A First Mortgagee, upon request, is entitled to written notification from the Association of any default by an Owner with respect to any obligation under the constituent documents of the Property which is not cured within sixty (60) days.

**Section 11. Agreement for Professional Management.** Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause, and without payment of a termination fee, on ninety (90) days written notice.

**Section 12. Satisfaction of Guidelines.** In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHIA, the FHLMC the FNMA or the GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty as the case may be, by such entities of the First Mortgages encumbering Lots and/or Dwelling Units. Each Owner hereby agrees that it will benefit the Association and the Members of the Association, as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

**Section 13. Non-Owner Occupied Dwelling Units.** No Owner may sell any Dwelling Unit constructed upon a Lot to a third party on a non-owner occupied basis without the prior written approval of the Board, which approval shall not be unreasonably withheld (provided that such approval shall not be given if granting such approval would result in more than twenty-five percent of the Dwelling Units being classified as non-owner occupied).

**Section 14. Amendment to Article.** Neither this Article XIII nor Section 6 of Article VII of this Declaration shall be amended without the approval of one hundred percent (100%) of the First Mortgagees.

#### ARTICLE XIV - General Provisions

**Section 1. Enforcement.** This Declaration, the Articles, and the By-laws may be enforced by the Association as follows:

(a) Breach of any of the covenants contained in this Declaration, the Articles or the By-laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association, or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles or By-laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interests.

(c) The remedies herein provided for breach of the covenants contained in this Declaration, the Articles or in the By-laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the covenants contained in this Declaration, the Articles or in the By-laws shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the covenants, condition or restrictions contained in this Declaration, the Articles or in the By-laws shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value on any Lot or Dwelling Unit, provided, however, that any subsequent Owner of such Lot or Dwelling Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale, or otherwise.

**Section 2. Invalidity.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

**Section 4. Amendments.** This Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than fifty-one percent (51%) of the voting power of the Members, except with respect to matters dealt with herein which require a higher percentage for approval thereof; provided, however, that the prior written approval of at least one hundred percent (100%) of all First Mortgagees must be obtained as provided in Section 12 of Article XIII above.

**Section 5. No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or part of the Property to the public, or for any public use.

**Section 6. Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

**Section 7. Reservation of Easements.** Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners and Weber County for the control, maintenance and repair of the utilities and storm drains of adjoining Lot Owners. The Declarant expressly reserves for the benefit of all of the real property in the Property, and Owners, reciprocal easements of access, ingress and egress over all Lots, and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, and for maintenance and repair of any Dwelling Unit or landscaping located on any Lot. Such easements may be used by the Declarant, its successors, purchasers and all Owners, their guests, tenants, lessees and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere

with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provision for drainage with the approval of Weber County in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage conveyed to a purchaser from the Declarant. The Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, cable television facilities, and telephone lines, in accordance with the provisions of this Declaration, and as otherwise provided by law. The Declarant, as well as Owners of Lots, and all others who shall come in contact with the Property, shall use reasonable restraints with regard to the Property when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and maintenance of all of the Property, and the use and enjoyment by an Owner of his Lot.

**Section 8. Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

**Section 9. No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents or employees in connection with the Property or any portion of the Property, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof as a cluster development, except as specifically and expressly set forth in this Declaration and except as may be hereafter filed by the Declarant from time to time.

**Section 10. Reservation of Certain Side Yard Use Easements.** Easements for the benefit of certain Lots, as the same may be set forth in the plat map or in deeds conveying title to the said Lots shall be reserved for the benefit of the adjoining Lot Owner for maintenance and repair of the adjoining Lot Owner's Dwelling Unit or landscaping. In addition, such easements may be used by the adjoining Lot Owner, its successors and purchasers and all their guests, tenants, lessees and invitees, residing in or temporarily visiting the adjoining Lot, for pedestrian access and such other purposes reasonably necessary for the use and enjoyment of the adjoining Lot.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Quail Ponds Subdivision, A Planned Residential Unit Development, has been executed as of the day and year first above written.

DECLARANT:

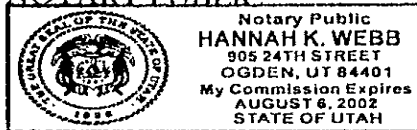
BLACKBURN JONES REAL ESTATE, INC.

By: Bruce H. Jones  
Its: President

STATE OF UTAH            )  
                                  :SS  
COUNTY OF WEBER        )

On this 8 day of September, 1999, personally appeared before me Bruce H. Jones being by me duly sworn and the said individual did say that he is the President of BLACKBURN JONES REAL ESTATE, INC., a Utah Corporation, and that the within and foregoing Declaration was signed in behalf of the said corporation.

Hannah K. Webb  
NOTARY PUBLIC



ALL OF LOT 1-11 INCLUSIVE, QUAIL PONDS SUBDIVISION-PHASE  
1, NORTH OGDEN CITY, WEBER COUNTY, UTAH, ACCORDING TO  
THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE  
WEBER COUNTY RECORDER'S OFFICE.

17-231-0001-0013