

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
RIVER VIEW TOWNHOUSES  
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
RIVER VIEW TOWNHOUSES  
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

THIS DECLARATION is made and executed this \_\_\_\_\_ day of January, 2000, by RIVERVIEW PARTNERS, L.L.C., a Utah Limited Liability Company (the "Declarant").

**RECITALS:**

A. Declarant is the record owner of that certain tract of land (the "Property") in the City of Ogden, County of Weber, State of Utah, which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof. Declarant desires to create on said Property a residential development with Residential Lots and Common Areas.

B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and the Owners thereof, Declarant hereby subjects the Property to the covenants, restrictions, easements, charges and liens set forth in this Declaration, which shall be recorded in the official records of Weber County, State of Utah.

C. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, Declarant has caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the River View Townhouses Homeowners Association (the "Association").

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property shall be subject to this Declaration and that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**ARTICLE I - DEFINITIONS**

When used in this Declaration (including in that portion hereof headed "Recitals") the following terms shall have the meaning indicated:

1.01 Association shall mean the River View Townhouses Homeowners Association, a Utah nonprofit corporation.

1.02 Board shall mean the Board of Trustees of the Association.

1.03 Common Areas shall mean all property, including streets, roadways, highways, rights-of-way and utilities, owned or designated on the recorded plat as being intended ultimately

to be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto.

1.04 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of River View Townhouses, a Planned Residential Unit Development.

1.05 Design Committee shall mean the Design Committee established by and referred to in Article VIII of this Declaration.

1.06 Living Unit shall mean a structure or portion thereof which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the same Residential Lot and used in conjunction with such residence. If a boundary line between any two Living Units lies within a structure, the boundary line shall be deemed adjusted to run down the center of the wall between the Living Units.

1.07 Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.02(c) of Article IV of this Declaration.

1.08 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed; and mortgage shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.09 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.

1.10 Property shall mean the Property described in Exhibit "A" attached hereto, which includes all land covered by this Declaration, including Common Areas and Residential Lots.

1.11 Residential Lot shall mean and refer to any one of the forty-eight (48) plots of land and improvements thereon within the boundary of the Property as shown upon and designated on the Plat for private ownership. Each Residential Lot is individually numbered and is intended to be used and occupied by a single family.

1.12 Plat shall mean and refer to the Plat of River View Townhouses, a Planned Residential Unit Development, prepared and certified by Hansen & Associates, Inc., a registered land surveyor, executed and acknowledged by Declarant and recorded in the official records of Weber County, Utah, at Book 51, Page 33, Entry No. 1683752.



1.13 Member shall mean and refer to every person who holds membership in the Association.

1.14 Declarant shall mean S. M. Carter, Co., a Utah Corporation, and its successors and assigns.

1.15 Roadways shall mean that portion of the Common Area consisting of the streets and roads within the Property for the use and benefit of the Owners as such are identified and depicted on the Plat. Roadways not constructed to Ogden City standards for public roads cannot be dedicated in the future unless brought up to Ogden City standards of engineering and construction.

1.16 Structural Maintenance Areas shall mean, as the same may from time to time exist, the exterior surfaces of all attached row residential townhouse structures, the patio fences, the exterior roofing material of the townhouse structures, the exterior lighting fixtures, and the exterior sidewalks on the lots; structural maintenance areas shall specifically exclude all glass areas.

## ARTICLE II - SUBMISSION AND DIVISION OF PROJECT

2.01 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 Ogden City, Weber County, State of Utah, described in Exhibit "A" attached hereto and by this reference made a part hereof. The Property is being subdivided into Residential Lots 1 through 48, RIVER VIEW TOWNHOUSES, a Planned Residential Unit Development, as identified in the Plat.

2.02 Division into Residential Lots and Common Areas. The Property is hereby divided into forty-eight (48) Residential Lots, each consisting of a fee simple interest in a portion of the Property as set forth in the Plat. All portions of the Property not designated as Residential Lots shall constitute the Common Area which shall be owned by the Association for the benefits of all Owners in accordance with the provisions of this Declaration.

## ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 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.

3.02 Voting Rights. The Association shall have the following described two 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 five votes for each Residential Lot which he owns. 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 or exceeds the total number of votes held by the Class B Member.

(b) December 31, 2005.

3.03 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.

3.04 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Residential Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Residential Lots. Any Owner who mortgages his Residential Lot or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

#### ARTICLE IV - DUTIES AND POWERS OF THE ASSOCIATION

4.01 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 title to all Common Areas conveyed to it by the Declarant.
- (c) The Association shall maintain, repair, and replace, the Common Areas in all phases (including the maintenance and resurfacing of all roadways and snow removal and maintenance of drainage facilities), 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 IX of this Declaration.

4.02 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 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 VIII 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 the 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, or otherwise provide for:

(1) Maintenance, repair and replacement of all roadways and appurtenant improvements, including the removal of snow thereon, on such terms and conditions as the Board shall deem appropriate;

(2) Construction, maintenance, repair and landscaping of the Common Areas, including all surface run-off, drainage and detention facilities, on such terms and conditions as the Board shall deem appropriate;

(3) 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;

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

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

(6) 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

(7) 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 Areas.

(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 an

owner's Residential Lot should an Owner fail to do so. The cost to maintain a Residential Lot shall be charged to the Owner of the Residential Lot and may be included in the monthly assessment to the Owner.

4.03 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 roads or utility 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.

4.04 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 V - ASSESSMENTS

5.01 Personal Obligation and Lien. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Residential Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Residential Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Residential Lot at the time the assessment falls due. No Owner may exempt himself or his Residential Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Residential Lot. In a voluntary conveyance of a Residential Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Residential Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

5.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvements of the Common Areas; management and supervision of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance,

repairs and replacement of those elements of the Common Areas that must be maintained, repairs or replaced on a periodic basis.

5.03 Monthly Assessments. The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration and on the basis specified in Section 5.07 below.

5.04 Special Assessments. From and after the date set under Section 5.08 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.05 Quorum Requirements. The quorum at any meeting required for any action authorized by Section 5.04 above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 5.04) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

5.06 Special Assessment on Specific Residential Lots. In addition to the monthly assessment and any special assessment authorized pursuant to Section 5.04 above, the Board may levy at any time special assessments (a) on every Residential Lot especially benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Residential Lot to be charged, (b) on every Residential Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, and (c) on every Residential Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.02(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Residential Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Residential Lots benefitted.

5.07 Uniform Rate of Assessment. All monthly and special assessments authorized by Section 5.03 or 5.04 above shall be fixed at a uniform rate for all Residential Lots, regardless of ownership or whether or not the Residential Lots are improved with Living Units. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Residential Lots adversely affected.

5.08 Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Residential Lots as of the second monthly following conveyance to the Association of the Common Areas shown on the Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.

5.09 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Residential Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Residential Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

5.10 Effect of Nonpayment - Remedies. Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Residential Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Residential Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

5.11 Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Residential Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Residential Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Residential Lot from the lien of any assessment thereafter becoming due.

ARTICLE VI - PROPERTY RIGHTS AND CONVEYANCES

6.01 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Residential 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, 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.

6.02 Form of Conveyancing: Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Residential Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ of the RIVER VIEW TOWNHOUSES, A Planned Residential Unit Development, according to the Plat thereof recorded in Book \_\_\_\_\_, Page \_\_\_\_\_, of the Official Records of Weber County, which Residential Lot is contained within the RIVER VIEW TOWNHOUSES Planned Residential Unit Development identified in the "Declaration of Covenants, Conditions, and Restrictions of the RIVER VIEW TOWNHOUSES, a Planned Residential Unit Development" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_. SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Residential Lot. Any lease of a Residential Lot shall be in writing and shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and By-laws of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the Lease.

6.03 Transfer of Title to Common Areas. Declarant shall convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes, imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed.



6.04 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Residential Lots by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Residential Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Owner of the provisions of this Declaration or of any rule or regulation promulgated by the Board;

(c) The right of the City of Ogden 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; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to 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 or transfer, however, may take place without the Association first receiving approval from the City of Ogden pursuant to all applicable state and county laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

6.05 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 Association, the City of Ogden, 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.

6.06 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.

6.07 Easements for Construction, Development and Maintenance Activities. Declarant reserves for itself and for the Association 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 or 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) maintenance of the Property or any improvement thereon, if any.

#### ARTICLE VII - USE RESTRICTIONS

7.01 Single Family Residence. Each Residential Lot shall be used as a residence for a single family and for no other purpose.

7.02 Business or Commercial Activity. 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 purposes; except Declarant, its successors or assigns, may use any portion of the Property for a model home site, and display and sales office during the Class B voting rights period in accordance with Article III, Section 3.02, of this Declaration, and excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with Ogden City ordinances and are merely incidental to the use of the Living Unit as a residential home.

7.03 Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Residential Lot or the Common Area, nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board of Directors shall have the right to determine in accordance with the By-Laws if any noise, odor or activity producing such noise, 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 smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other 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.

7.04 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 Residential Lot, without the prior written consent of the Design Committee, except one sign for each Living Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Property during construction and sales period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the Ogden City ordinances.

7.05 Parking and Vehicular Restrictions. No Owner of a Residential Lot shall park, store or keep any vehicle except wholly within the parking area designated therefor, and no inoperable vehicle shall be stored on the Property. No Owner shall park, store or keep on any part of the Property or street (public or private) within the Property any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board) or any recreational vehicle (camper unit, motor home, truck trailer, boat, mobile home or other similar vehicle)(except as otherwise provided by the Board). The above excludes camper trucks up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board of Directors. No Owner of a Residential Lot shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Residential Lot or upon the Common Area. No inoperable vehicle or junk or dilapidated vehicle or unregistered vehicle or uninsured vehicle shall be kept, stored or placed or left in any parking area, common area, limited common area, Residential Lot area or on any street within or surrounding any such area.

7.06 Animal Restriction, Garden Restriction. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Residential Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Residential Lots subject to rules and regulations adopted by the Association, provided that they

are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Design Committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept inside the residential structure (not on the patio) of that owner, or, if temporarily outside the structure, on a leash being held by a person capable of controlling the animal. Should any animal belonging to an Owner be found unattended out of the residential structure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Property) or a person designated by Declarant to do so, or by any person authorized by the Association, to a pound under the jurisdiction of the local municipality in which the Property are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely and strictly liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area. No garden shall be kept, raised, installed or maintained in any common area, limited common area or Residential Lot area.

7.07 Trash. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Residential Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Property as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property except within an enclosed structure or appropriately screened from view.

7.08 View Obstructions. No fence, hedge, wall or other dividing instrumentality over six feet (6') in height measured from the ground on which it stands shall be constructed or maintained on any Residential Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Owner by accepting a deed to a Residential Lot hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

7.9 Temporary Buildings. No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Property either temporarily or permanently. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence in the Property, either temporarily or permanently.

7.10 Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Association.

7.11 Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing Living Units and developing all of the Residential Lots included within the Property. The completion of that work and sale, rental and other disposal of Living Units is essential to the establishment and welfare of said 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 Residential Lots improved with completed Living 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 Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Residential Lot owned by them whatever they determine 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 Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any Residential Lot, or portion thereof, owned or controlled by 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 Residential Lots by sale, lease or otherwise; or

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

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

7.12 Outside Installations. No radio station or shortwave operators of any kind shall operate from any Residential Lot of Living Unit unless approved by the Board of Directors. Exterior radio antenna, television antenna, or other antenna may be erected or maintained in the Property, subject to the approval of the Design Committee.

7.13 Insurance Rates. Nothing shall be done or kept in 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 in 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.

7.14 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in any Residential Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Residential Lot or within five hundred feet (500') below the surface of the Property. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Residential Lot.

7.15 Further Subdivision. No Owner shall further partition or subdivide his Residential Lot; provided however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all of any portion of his Residential Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Residential Lot is not leased for transient or hotel purposes; (2) to sell his Residential Lot; or (3) to transfer or sell any Residential Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and Bylaws of the Association, and any failure by the Lessee of such Residential Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

7.16 Drainage. There shall be no interference with the established drainage pattern over any Subdivision within the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Design Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any Subdivision is completed by Declarant, or that which is shown on any plans approved by the Design Committee, which may include drainage from the Common Area over any Residential Lot or Residential Lots in the Property.

7.17 Water Supply Systems. No individual water supply, sewage disposal system, or water softener system shall be permitted on any Residential Lot in the Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Weber County Health Department, the Design Committee, and all other applicable governmental authorities.

## ARTICLE VIII - ARCHITECTURAL CONTROL

8.01 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.

8.02 Actions Requiring Approval. 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.

8.03 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 and location with surrounding structures and topography.

8.04 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

8.05 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.

8.06 Variance Procedure. If plans and specifications submitted to the Design Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Design Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Design Committee, such request shall be deemed to be approved.

8.07 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.

8.08 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.

8.09 Exemption of Declarant. The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Residential Lot or portions of the Common Areas at any time during the twenty-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Weber County, Utah.

8.10 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.

8.11 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.

#### ARTICLE IX - MAINTENANCE AND REPAIR OBLIGATIONS

9.01 Structural Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Residential Lot shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain, or provide for the maintenance in good order and repair of, and shall reconstruct, replace or refinish the improvements within the Structural Maintenance Areas.

9.02 Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in Article IX, Section 9.03, of this Declaration, 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 subject to his exclusive control, 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 interior and all glass portions of the Owner's Living Unit and the patio area on that individual Owner's Residential Lot. In the event that any Owner shall permit any improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained 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 written notice to the Owner of such Residential Lot, to correct such condition and to enter upon such Owner's Residential Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be 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 of Directors, to the amounts payable by each Owner as monthly assessments.

9.03 Maintenance Obligations of Association. Subject to the provisions of Section 9.02 of this Article, the Association shall maintain, or provide for the maintenance of all of the Common Area and all improvements thereon in good order and repair, and shall likewise provide for the painting and minor repair and replacement as necessary of the Structural Maintenance Areas, commonly metered utilities, and any and all utility laterals and buildings. In addition to building maintenance, 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 at the time that it is conveyed to the Association and on an Owner's Residential Lot up to the foundation lines of the residential dwelling and up to the fences surrounding the enclosed patio areas. 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 of Directors of the Association shall determine in their judgment to be appropriate.

The Association shall also maintain and keep in good state of repair, any fence located along the edge of any public street contiguous to the Property or on the perimeter of the Property.

The City of Ogden is granted the right to come on to the Common Areas for the purpose of repairing and maintaining the same and fence aforesaid. In the event the Association fails in its obligations as provided for herein, the Association agrees to reimburse the City for all expenses expended in connection therewith.

9.04 Damage and Destruction Affecting Residences -- Duty to Rebuild. If all or any portion of any Residential Lot or Living Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Residential Lot or Living Unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

9.05 Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Design Committee for reconstruction, rebuilding or repair of his residence 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 reconstructions and the end result thereof. The Design Committee shall grant such approval only if the design proposed by the Owner should result in a finished residence in harmony with exterior design of other residences 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. If the obligation for repair falls upon the Association, Design Committee approval will not be required prior to the commencement of such work.

9.06 Time Limitation. The Owner or Owners of any damaged residence, 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.

#### ARTICLE X - INSURANCE

10.01 Liability Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board and the Managing Agent and employees of the Association against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under

a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried by properties of comparable character and usage in the City of Ogden nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

10.02 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (b) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect can be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

10.03 Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Residential Lot and to the holder of any mortgage on any Residential Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

10.04 Residential Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Residential Lot and Acts and events thereon.

10.05 Insurance Obligations of Owners. Each Owner shall insure his entire Living Unit, including the structural portions of the Living 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 any Mortgagee of the residence. All such insurance shall be for the full replacement value of the Living Unit. Each non-participating Owner shall, within thirty (30) days after recordation of the conveyance of his Residential Lot from Declarant and thereafter at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof, showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. 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.

10.06 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area facilities, or other Improvements in 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 special assessment against all Residential Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other monthly assessments made against such Residential Lot Owners, in accordance with the provisions of Article V, Section 5.04, of this Declaration. In the event of total destruction of all of the Improvements in the Property, the proceeds of the insurance carried by the Association shall be divided proportionately among the Residential Lot Owners, such proportion based upon the original base sales price of each improved Residential Lot at the time it was initially sold by Declarant, 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 Residential Lot is so encumbered.

10.07 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 Manager 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.

10.08 Fidelity Coverage. The Association shall obtain fidelity coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Residential Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one half times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

10.09 Other Insurance and General. The Association may also obtain, through the Board, Workers Compensation Insurance and other liability insurance as it may deem desirable, insuring each Residential Lot Owner and the Association, Board of Directors and Manager, from liability in connection with the Common Area, the premiums for which are common expenses included in 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 a Residential Lot Owner because of the negligent acts of the Association or other dwelling unit owners.

All policies shall be reviewed at least annually by the Board of Directors and the limits increased at its discretion.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as there are any mortgages on any of the properties.

#### ARTICLE XI - CONDEMNATION

11.01 If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Residential Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Residential Lot in the Association and the Common Areas to such Owner and any first mortgagee of such Residential Lot, as their interests shall appear, after deducting the proportionate share of said Residential Lot in the cost of debris removal.

#### ARTICLE XII - RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

12.01 Preservation of Regulatory Structure and Insurance. Unless the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) and such Owners' first mortgagees, if any, shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property.

(b) to fail to maintain insurance as required by Article

This Section 11.01 may be amended as provided in Section 13.02 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

12.02 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) all first mortgagees of Residential Lots and (2) the Owners of at least seventy-five percent (75%) of the Residential Lots (not including Residential Lots owned by Declarant) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as reserved in Section 6.05 of Article XI hereof; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Residential Lot or the Owner thereof.

This Section 12.02 may be amended as provided in Section 13.02 of Article XIII hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

12.03 Notice of Matters Affecting Security. The Board shall give written notice to any first mortgagee of a Residential Lot requesting such notice whenever:

(a) there is any default by the Owner of the Residential Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(c) there is any condemnation or taking by eminent domain of the Residential Lot subject to the first mortgage or of the Common Area;s or

(d) any of the following matters come up for consideration or effectuation by the Association;

(i) abandonment or termination of the Planned Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

12.04 Notice of Meetings. The Board shall give to any first mortgagee of a Residential Lot requesting the same, notice of all meetings of the Association; and such first mortgagees shall have the right to designate in writing a representative to attend all such meetings.

12.05 Right to Examine Association Records. Any first mortgagee shall have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Residential Lot securing the mortgage; provided, that the foregoing shall not be deemed to impose upon the Association any obligation to cause its financial statements to be audited.

12.06 Right to Pay Taxes and Charges. First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Area, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

12.07 Exemption from Any First Right of Refusal. Any first mortgagee who obtains title to the Residential Lot subject to the first mortgage pursuant to the remedies provided in the first mortgage, or by foreclosure of the first mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale shall be exempt from any "right of first refusal" which would otherwise affect the Residential Lot.

### ARTICLE XIII - MISCELLANEOUS

13.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the managing Agent or the President of the Association. Any notice required or permitted

to be given to the Design Committee may be given by delivering or mailing the same to the Managing Agent or any member of the Design Committee.

13.02 Amendment. Except as provided below in this Section 12.02 or in Section 11.01 and 11.02 of Article XI or in Section 12.08 of Article XII, this Declaration may be amended by:

- (a) the affirmative vote of a majority of the Owners, and
- (b) the written consent of Declarant, if such amendment is adopted by any time when Declarant holds Class B membership in the Association, and
- (c) the filing of an instrument for record in the office of the County recorder of Weber County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of a majority of the Owners and, if required, has the written consent of Declarant.

Additionally, any amendment to this Declaration or change to this Planned Residential Unit Development which may require either an amendment to the Final Development Plan or Conditional Use Permit previously issued by Ogden City in connection with the development of this Planned Residential Unit Development shall require the written approval of Ogden City.

13.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 12.03:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence any change in ownership of a Residential Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.



(d) Unless the consent of all Owners whose memberships are appurtenant to the same Residential Lot are secured, the consent of none of such Owners shall be effective.

13.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

13.05 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

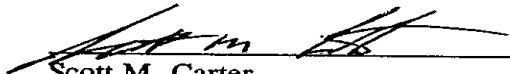
13.06 Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and all inure to the benefit of Declarant, the Owners, all parties who hereafter acquire any interest in a Residential Lot, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Residential Lot or Living Unit shall comply with, and all interests in all Residential Lots or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Residential Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

13.07 Duration. The covenants and restrictions of this Declaration shall remain in effect until twenty (20) years from the date this Declaration was first filed in the office of the County Recorder of Weber County, Utah, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument filed in the office of the County Recorder, approved and adopted by the Ogden City governing body and executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Residential Lots and their first mortgagees, if any, voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of William Clinton, the President of the United States at the time this Declaration was recorded.

13.08 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

"Declarant"  
S. M. Carter, Co., a Utah Corporation

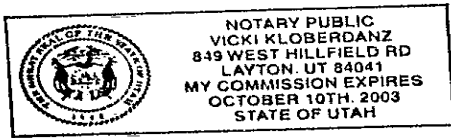
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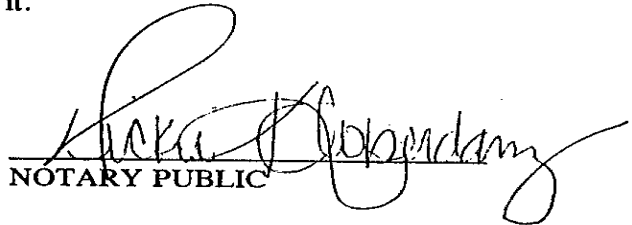
  
\_\_\_\_\_  
Scott M. Carter  
President

State of Utah            )  
                                  )ss.  
County of Weber )

On this 25<sup>th</sup> day of January, 2000, before me, the undersigned Notary Public, personally appeared Scott M. Carter, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument on behalf of said corporation, and acknowledged to me that the corporation executed it.

WITNESS my hand and official seal.



  
\_\_\_\_\_  
NOTARY PUBLIC

E# 1686133 BK2054 PG2409

EXHIBIT "A"

PROPERTY

The following real property located in Weber County, State of Utah, to-wit:

**BOUNDARY DESCRIPTION**

A PART OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 NORTH, RANGE 1 WEST OF THE SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT LOCATED SOUTH 89°57'00" WEST 36.37 FEET ALONG THE CENTERLINE OF 16TH STREET AND SOUTH 00°03'00" EAST 33.00 FEET AND SOUTH 05°15'00" WEST 530.20 FEET FROM THE OGDEN CITY MONUMENT IN THE CENTERLINE OF SAID 16TH STREET, SAID POINT DESCRIBED OF RECORD AS BEING LOCATED 841.5 FEET WEST AND NORTH 05°15' EAST 1017.02 FROM THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER; RUNNING THENCE SOUTH 89°57'00" WEST 482.16 FEET (480.80 FEET RECORD); THENCE NORTH 00°58'00" EAST 231.535 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF MONROE BOULEVARD; THENCE ALONG SAID RIGHT-OF-WAY LINE TO THE LEFT ALONG THE ARC OF A 842.45 FOOT RADIUS CURVE, A DISTANCE OF 153.58 FEET, CHORD BEARS NORTH 09°02'07" EAST 153.37 FEET; THENCE NORTH 89°57'00" EAST 143.47 FEET TO THE WEST LINE OF THE KIRK PRICE PROPERTY; THENCE SOUTH 00°58'00" WEST 109.00 FEET ALONG SAID WEST LINE; THENCE NORTH 89°57'00" EAST 42.50 FEET; THENCE NORTH 45°00'00" EAST 57.54 FEET; THENCE NORTH 00°58'00" EAST 108.34 FEET; THENCE NORTH 89°57'00" EAST 60.00 FEET; THENCE NORTH 00°58'00" EAST 105.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE SAID 16TH STREET; THENCE NORTH 89°57'00" EAST 110.50 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE SOUTH 00°58'00" WEST 160.00 FEET (150.00 FEET RECORD); THENCE NORTH 89°57'00" EAST 91.77' FEET (91.40 FEET RECORD) TO THE WEST LINE OF THE SOLITUDE CONDOMINIUMS PROPERTY; THENCE SOUTH 05°15'00" WEST 369.52 FEET ALONG SAID WEST LINE PROJECTED TO THE POINT OF BEGINNING. CONTAINING 4.506 ACRES.

13-218-001-0049

E# 1686133 BK2054 P62410

EXHIBIT "C"

ARTICLES OF INCORPORATION  
OF  
RIVER VIEW TOWNHOUSES  
HOMEOWNERS ASSOCIATION

Scott M. Carter, the undersigned natural person over the age of twenty-one years, acting as incorporator of a non-profit corporation pursuant to the Utah Nonprofit Corporation and Co-operative Association Act, hereby adopts the following Articles of Incorporation for said corporation:

ARTICLE I - NAME

1.01 The name of the nonprofit corporation is River View Townhouses Homeowners Association, Inc., hereinafter "the Association".

ARTICLE II - DURATION

2.01 The duration of the Association shall be perpetual unless earlier dissolved pursuant to law.

ARTICLE III - DEFINITIONS

When used in these Articles the following terms shall have the meaning indicated:

3.01 Articles shall mean and refer to these Articles of Incorporation of River View Townhouses Homeowners Association.

3.02 Association shall mean and refer to River View Townhouses Homeowners Association, the Utah nonprofit corporation which is created by the filing of these Articles.

3.03 Member shall mean and refer to every person who holds membership in the Association.

3.04 Declarant shall mean and refer to S. M. Carter Co., a Utah corporation, and to its successors and assigns.

3.05 Property shall mean and refer to the real property situated in Weber County, Utah, described in the Plat and in the Declaration.

3.06 Board shall mean the Board of Trustees of the Association.

3.07 Plat shall mean and refer to the subdivision plat covering the Property, entitled "RIVER VIEW TOWNHOUSES, a Planned Residential Unit Development" executed and acknowledged by Declarant and filed for record in the office of the County Recorder of Weber County, Utah, on January 11, 2000, in Book 51 of Plats, Page 33, as Entry No. 1683752, and other amended Plats which may be filed from time to time.

3.08 Declaration shall mean and refer to the instrument entitled "Declaration of Covenants, Conditions and Restrictions of RIVER VIEW TOWNHOUSES, a Planned Residential Unit Development" executed by the Declarant under date of January 25, 2000, and filed for record in the office of the County Recorder of Weber County, Utah, on January 25, 2000, together with any subsequent amendment of said Declaration of any supplemental Declarations which may be recorded from time to time.

3.09 Residential Lot shall mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat designed and intended for improvements with a Living Unit.

3.10 Common Areas shall mean all property owned or intended to eventually be owned by the Association for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto. The initial Common Areas shall consist of all Property described in Exhibit "B" of the Declaration.

3.11 Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Weber County, Utah) of a fee or an 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 a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee, or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure on any arrangement or proceeding in lieu thereof.

3.12 Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Residential Lot concerned which are used in conjunction with such residence.

#### ARTICLE IV - POWERS AND PURPOSES

4.01 Purpose. The Association is organized and shall be operated as a nonprofit corporation for the sole purpose of maintaining and administering the Common Areas, collecting and disbursing the assessments and charges provided for in the Declaration, otherwise administering, enforcing, and carrying out the terms of the Declaration, and generally providing for and promoting the recreation, health, safety, and welfare of residents of the Property.

4.02 Powers. The Association shall have all of the powers conferred upon it by the Declaration and all powers allowed by law necessary or convenient for accomplishment of any of its purposes, including all powers referred to or described in Section 16-6-22, Utah Code Annotated (1953), as amended.

4.03 Limitation. The Association is not organized for pecuniary profit. notwithstanding the breadth of the foregoing portion of this Article II no dividend shall be paid to, no part of the Association's funds shall be distributed to, and no part of the net income of the Association shall inure to the benefit of, any of its Members, Trustees, or Officers or any other person, except in payment of the costs contemplated by Section 5.02 of Article V of the Declaration.

#### ARTICLE V - MEMBERSHIP AND VOTING RIGHTS

5.01 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Residential Lot in which the Owner has the necessary interest, and shall not be separated from the Residential Lot to which it appertains. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.

5.02 Voting Rights. The Association shall have the following described two 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 (1) vote for each Residential Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Residential Lot.

Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to five votes for each Residential Lot which he owns. 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.

(b) December 31, 2005.

5.03 Multiple Ownership Interests. In the event there is more than one (1) Owner of a particular Residential Lot, the vote relating to such Residential Lot shall be exercised as such Owners may determine among themselves. 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.

5.04 Membership List. The Association shall maintain up-to-date records showing the name of each person who is a Member, the add such person, and the Residential Lot to which the membership of such person is appurtenant. In the event of any transfer of fee or undivided interest in a Residential Lot either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Weber County, Utah. The Association may for all purposes act and rely on the information concerning Members and Residential Lot ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Residential Lot or Residential Lots which is obtained from the office of the County Recorder of Weber County, Utah. The address of a Member shall be deemed to be the address of the Living Unit situated on such Member's Residential Lot unless the Association is otherwise advised in writing.

#### ARTICLE VI - ASSESSMENTS

6.01 Members of the Association shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration and shall be liable to the Association for payment of such assessments. Members shall not be individually or personally liable for the debts or obligations of the Association.

#### ARTICLE VII - PRINCIPAL OFFICE AND REGISTERED AGENT

7.01 The address of the initial principal office of the Association is 4862 South Kiwana Dr., South Ogden, Utah 84403, and the name of the initial registered agent of the Association at such address is Scott M. Carter, who accepts such appointment by signing immediately below:

\_\_\_\_\_  
Scott M. Carter

#### ARTICLE VIII - APPOINTMENT OF BOARD OF TRUSTEES BY DECLARANT

8.01 Until the Class B membership ceases and is automatically converted to a Class A membership pursuant to the terms of the Declaration, the Declarant, or its successors in interest as Declarant under the Declaration, shall have the right and option to appoint, remove and replace all of the members of the Board of the Association. In the event the Declarant fails to exercise this option or in the event the Declarant by written notice to the Association voluntarily turns over

to the Members the responsibility for electing the Board before the termination of said Class B membership, the Board shall be elected by the Members of the Association in accordance with the Declaration, these Articles of Incorporation and the Bylaws of the Association.

8.02 Until the Class B membership ceases and is automatically converted to Class A membership pursuant to the terms of the Declaration, the initial Board members appointed by Declarant need not be composed of Members. After the Class B membership ceases and is automatically converted to Class A membership pursuant to the terms of the Declaration, the Trustee selected by the Association must be Members unless or until there are insufficient Members who desire to serve on the Board, in which case Trustees need not be Members of the Association.

#### ARTICLE IX - BOARD OF TRUSTEES

9.01 Number, Tenure and Qualifications. Except for the initial Board selected by Declarant which consists of one member who (and his successor) may hold office so long as Class B membership specified in the Declaration exists, the affairs of the Association shall be managed by a Board of Trustees composed of three (3) individuals. At the first meeting of the Members at which election of Trustees will take place, the candidate who receives the most votes shall serve as a Trustee for three (3) years. The candidate that receives the third highest number of votes shall serve as a Trustee for two (2) years, and the third candidate which receives the third highest number of votes shall serve as Trustee for one (1) year. At each annual election, the Successor to the Trustee whose term shall expire in that year shall be elected to hold office for the term of three (3) years. Any change in the number of Trustees may be made only by amendment of these Articles. Each Trustee shall hold office until his term expires and until his successor has been duly elected and qualified.

9.02 Initial Board. The persons who are to serve as the initial Board selected by the Declarant are as follows:

<u>Name</u>	<u>Address</u>
Scott M. Carter	4862 S. Kiwana Drive, South Ogden, Utah 84405

#### ARTICLE X - DESIGN COMMITTEE

10.01 Number, Composition and Function. The Board shall appoint a three-member Design Committee the function of which shall be to enforce and administer the provisions of Article VIII of the Declaration (relating to control of improvements and landscaping within the Property). The Design Committee need not be composed of Members. Members of the Design Committee shall hold office at the pleasure of the Board. If such a Design Committee is not appointed the Board itself shall perform the duties required of the Design Committee.



ARTICLE XI - INCORPORATOR

11.01 The name and address of the incorporator of the Association is as follows:

<u>Name</u>	<u>Address</u>
Scott M. Carter	4862 S. Kiwana Drive, South Ogden, Utah 84405

ARTICLE XII - MISCELLANEOUS

12.01 Transfer of Common Areas and Dissolution. The Board may, in connection with dissolution of the Association or otherwise, dedicate or transfer any part of the Common Area to any public agency or authority for such purpose and subject to such conditions as may be agreed to by the Board. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the votes of the membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. No such dedication or transfer, however, may take place without the Association first receiving approval from the City of Ogden pursuant to all applicable state and county laws, rules and ordinances in effect at the time of such proposed dedication or transfer. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

The Association may be dissolved by the affirmative vote of two-thirds (2/3) of the votes of the membership which Members present in person or by proxy are entitled to cast at a meeting duly called (as provided in the preceding Paragraph) for the purpose. Upon dissolution of the Association all of its assets (including the Common Areas) shall be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in these Articles and the Declaration. In the event such dedication or transfer is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purpose.

12.02 Manager. The Association may carry out through a Managing Agent any of its functions which are properly the independent contractor and not an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Members and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. It is anticipated that the Association and the Declarant will enter into a Management Agreement to begin on or about the date these Articles are filed with the office of the Secretary of State of Utah.

12.03 Amendment. Any amendment to these articles shall require: (i) The affirmative vote of at least two-thirds (2/3) of the membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and, so long as the Class B membership exists, (ii) The written consent of the Declarant. Written notice setting

forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows:

At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 12.03) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the filing with the office of the Secretary of State of Utah, of appropriate articles of amendment executed by the President or Vice-President of the Association (and by the Declarant if the Class B membership then exists). In such articles of amendment the President or Vice President shall certify that the vote required by this Section for amendment has occurred.

12.04 Consent in Lieu of Vote. In any case in which these Articles, the Declaration or the Bylaws of the Association require for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transactions from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned. The following additional provisions shall govern any application of this Section 12.04:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 12.04 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Residential Lot which occurs after consent has been obtained from the Member having an interest therein shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Member to give or withhold his consent.

(d) Unless the consent of all members whose memberships are appurtenant to the same Residential Lot are secured, the consent of none of such Members shall be effective.

12.05 By-laws and Resolutions. The Board may adopt, amend and repeal By-laws or resolutions for regulation and management of the affairs of the Association not inconsistent with these Articles, the Declaration, or law.

12.06 Interpretation. The captions which precede the various portions of these Articles are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any provision contained in these Articles shall not affect the validity or enforceability of the remainder hereof. These Articles have been prepared in conjunction with the Declaration and should be read and construed in light of that fact and liberally so as to effect all of the purposes of both instruments. These Articles may not be amended in any manner inconsistent with the Declaration, and in the event of conflict between these Articles and the Declaration, the Declaration shall control. To the extent the provisions of the Utah Nonprofit Corporation and Cooperative Association Act and any modifications, amendments, and additions thereto are consistent with these Articles and the Declaration, such legislation shall supplement the terms hereof.

DATED this \_\_\_\_\_ day of January, 2000.

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Scott M. Carter

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