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Amended Restrictive Covenants Page 1 of 91
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AMENDED AND RESTATED DECLARATION OF COVENANTS,

CONDITIONS, RESTRICTIONS, AND RESERVATION OF EASEMENTS

FOR

SHONTO POINT

TABLE OF CONTENTS
FOR
AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR SHONTO POINT

Note to Recorder:
Record against the real
property located in Washington,
County, Utah described in the
Preamble.

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
SHONTO POINT

PREAMBLE

This Restated and Amended Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Shonto Point and Kwavasa and Posovi restates, amends and supersedes the following: (i) Declaration of Covenants, Conditions, and Restrictions of Shonto Point, a Planned Residential Development, dated September 24, 1987, Recorded September 24, 1987, as Entry No. 321238, in Book 464, at Pages 764-792; (ii) Supplemental Declaration dated September 20, 1987, Recorded September 30, 1987, as Entry No. 321475, in Book 465, at Pages 335-336; (iii) Supplemental Declaration Shonto Point, Phase III, dated October 5, 1988, Recorded October 11, 1988, as Entry No. 338916, in Book 500, at Pages 363-369; (iv) Supplemental Declaration Shonto Point, Phase IV, dated October 5, 1988, Recorded October 6, 1988, as Entry No. 338766, in Book 500, Pages 105-111; (v) Supplemental Declaration Shonto Point, Phase V, dated March 17, 1989, Recorded March 17, 1989, as Entry No. 345455, in Book 515, at Pages 662-665; (vi) Supplemental Declaration Shonto Point, Phase VI-A Recorded October 26, 1989, as Entry No. 335932, in Book 539, at Page 242245; (vii) Shonto Point Supplementary Declaration, Shonto VII, Recorded November 26, 1990, as Entry No. 374699, in Book 581, at Page 284-289; (viii) Shonto Point Supplementary Declaration, Shonto IX Subdivision, dated November 4, 1991, Recorded November 6, 1991, as Entry No. 393968, in Book 627, at Pages 116-124; (ix) Shonto Point Supplementary Declaration, Tuweap-Shonto X Subdivision, dated November 4, 1991, Recorded November 6, 1991, as Entry No. 393971, in Book 627, at Pages 127-135; (x) Shonto Point Supplementary Declaration, Shonto Point VIII Subdivision, Tuweap-Shonto XI Subdivision, Tuweap-Shonto XII Subdivision, dated October 1, 1992, Recorded October 1, 1992, as Entry No. 416228, in Book 683, at Page 157; (xi) Shonto Point Supplementary Declaration, Shonto Point VI-B Subdivision, Shonto Point VIII-B Subdivision, Shonto Point X-B Subdivision, Shonto Point XIV Subdivision, Shonto Point XV

Subdivision, dated May 18, 1994, Recorded May 23, 1994, as Entry No. 468052, in Book 822, at Pages 244-255; (xii) Shonto Point Supplementary Declaration, Shonto Point XVI Subdivision, dated May 18, 1994, Recorded May 23, 1994, as Entry No. 468059, in Book 822, at Pages 244-255; (xiii) Shonto Point Supplementary Declaration, Shonto Point XVI Subdivision, dated February 28, 1995, Recorded March 2, 1995, as Entry No. 493663, in Book 890, at Pages 260-267; (xiv) Amendment to Declaration of Covenants, Conditions & Restrictions of Shonto Point, dated November 21, 1994, Recorded as Entry No. 486625, in Book 871, at Pages 658-659; (xv) Amendment to Declaration of Covenants, Conditions & Restrictions of Shonto Point, dated October 7, 1995, Recorded October 18, 1995, as Entry No. 512859, in Book 944, at Pages 38-40; (xvi) Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Shonto Point recorded in the records of the Washington County Recorder on December 5, 2007, as Document Number 20070057532; (xvii) the Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Shonto Point recorded in the records of the Washington County Recorder on August 11, 1997, as Entry No. 00573819, in Book 1124, beginning at Page 18; (xviii) Amendment to the Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements of Kwavasa, Phase I and Posovi, Phase I dated June 21, 2005 and recorded July 11, 2005 in the records of the Washington County Recorder as Entry No. 00956658, in Book 1764 beginning at Page 1919; and (xix) Amended and Restated Declaration of Covenants, Conditions, and Restrictions and Reservations of Easements for Kwavasa Phase I and Posovi Phase I dated June 27, 2001 and recorded July 11, 2001 in the records of the Washington County Recorder as Entry No. 00727555, in Book 1416, at Pages 2734-2776, and including all original Declarations any and all supplements or amendments to the foregoing prior to the date of this Amendment, whether or not such were recorded in the records of the Washington County Recorder.

This Restated and Amended Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Shonto Point has been adopted pursuant to a plan of merger between Shonto Point and the former Kwavasa and Posovi subdivisions. This merged development will be known hereafter as Shonto Point and affects the following real property, and such additional land from the Annexable Territory as may be annexed to the Properties hereafter, all located in Washington County, State of Utah:

Shonto Point - Amended

All of Lots 1 through 19, including any and all Common Area, easements and all Open, Open Area, Open Space, as

shown on Shonto Point - Amended plat map Recorded on December 12, 1994, as Entry No. 486628, in Book 871, at Page 665.

TAX ID NO: 1-SHO-1-A through 1-SHO-19

Shonto Point I-A

All of Lot 1, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point I-A plat map Recorded on December 12, 1994, as Entry No. 486630, in Book 871, at Page 669.

TAX ID NO: 1-SHO-1-A-1

Shonto Point II

All of Lots 1 through 8, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point II plat map Recorded on September 25, 1987, as Entry No. 321315, in Book 464, at Page 928.

TAX ID NO: 1-SHO-2-1 through 1-SHO-2-8

Shonto Point III

All of Lots 101 through 109, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point III plat map Recorded on October 11, 1988, as Entry No. 338915, in Book 500, at Page 362.

TAX ID NO: 1-SHO-3-101-A through 1-SHO-3-109

Shonto Point IV

All of Lots 9 through 48 and Lot 17A, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point IV plat maps Recorded on October 6, 1988, as Entry No. 338767, in Book 500, at Page 112.

TAX ID NO: 1-SHO-4-9 through 1-SHO-4-48

Shonto Point V

All of Lots 1 to 3, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point V plat map Recorded on March 17, 1989, as Entry No. 345454, in Book 515, at Page 661.

TAX ID NO: 1-SHO-5-1 through 1-SHO-5-3

Shonto Point VI-A

All of Lots 120 through 130, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point VI-A plat map Recorded on October 26, 1989, as Entry No. 355932, in Book 539, at Page 241.

TAX ID NO: 1-SHO-6-A-120 through 1-SHO-6-A-130

Shonto Point VI-B

All of Lots 133 through 138, including any and all Common Area, easements and all open, Open Area, Open Space, as shown on Shonto Point VI-B plat map Recorded on May 23, 1994, as Entry No. 468052, in Book 822, at Page 236.

TAX ID NO: 1-SHO-6-B-133 through 1-SHO-6-B-138

Shonto Point VII

All of Lots 209 through 222, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point VII plat map Recorded on November 26, 1990, as Entry No. 374699, at Book 581, at Page 283.

TAX ID NO: 1-SHO-7-209 through 1-SHO-7-222

Shonto Point VIII

All of Lots 231 through 233, including any and all Common Area, easements and all open, Open Area, Open Space, as shown on Shonto Point VIII plat map Recorded on October 1, 1992, as Entry No. 416228, in Book 683, at Page 157.

TAX ID NO: 1-SHO-8-231 through 1-SHO-8-233

Shonto Point VIII-B

All of Lots 234 through 237, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point VIII-B plat map Recorded on May 23, 1994, as Entry No. 468054, in Book 822, at Page 238.

TAX ID NO: 1-SHO-8-B-234 through 1-SHO-8-B-237

Shonto IX

All of Lots 49 and 50, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto IX plat map Recorded on November 6, 1991, as Entry No. 393967, in Book 627, at Page 115.

TAX ID NO: 1-SO-9-49 through 1-SO-9-50

Tuweap-Shonto X

All of Lots 301 through 313 and Lots 401 through 411, including any and all Common Area, easements and all open, Open Area, Open Space, as shown on Tuweap-Shonto X plat map as Recorded on November 6, 1991, as Entry No. 393970, in Book 627, at Page 126.

TAX ID NO: 1-SHO-10-301 through 1-SHO-10-313
and 1-SHO-10-401 through 1-SHO-10-411

Shonto Point X-B

All of Lots 417 and 418, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point X-B plat map as Recorded on May 23, 1994, as Entry No. 468055, in Book 822, at Page 239.

TAX ID NO: 1-SHO-10-B-417 through 1-SHO-10-B-418

Tuweap-Shonto XI

All of Lots 314 through 332 and Lots 412 through 415, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Tuweap-Shonto XI plat map as Recorded on October 1, 1991, as Entry No. 416224, in Book 683, at Page 152.

TAX ID NO: 1-SHO-11-314 through 1-SHO-11-332
and 1-SHO-11-412 through 1-SHO-11-415

Tuweap-Shonto XII

All of Lots 51 through 62, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Tuweap-Shonto XII plat map as Recorded on October 1, 1992, as Entry No. 416225, in Book 683, at Page 153.

TAX ID NO: 1-SHO-12-51 through 1-SHO-12-62

ACCORDING TO INFORMATION FROM THE WASHINGTON COUNTY RECORDER THERE IS NO PHASE XIII

Shonto Point XIV

All of Lots 420 through 437, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point XIV plat map as Recorded on May 23, 1994, as Entry No. 468047, in Book 822, at Page 228.

TAX ID NO: 1-SHO-14-420 through 1-SHO-14-437

Shonto Point XIV-B

All of Lots 438 through 441, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point XIV-B plat map as Recorded on June 19, 1996, as Entry No. 535826, in Book 1011, at Page 324.

TAX ID NO: 1-SHO-14-B-438 through 1-SHO-14-B-441

Shonto Point XV

All of Lots 333 through 343 and Lots 347 and 348, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point XV plat map as Recorded on May 23, 1994, as Entry No. 468057, in Book 822, at Page 241.

TAX ID NO: 1-SHO-15-333 through 1-SHO-15-348

Shonto Point XVI

All of Lots 442 through 453 and Lots 493 through 498, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point XVI plat map as Recorded on March 5, 1994, as Entry No. 493662, in Book 890, at Page 259.

TAX ID NO: 1-SHO-16-442 through 1-SHO-16-453
and 1-SHO-16-493 through 1-SHO-16-498

Shonto Point XVII

All of Lots 454 through 459 and Lots 483 through 492, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point

XVII plat map as Recorded on October 18, 1995, as Entry No. 512860, in Book 944, at Page 41.

TAX ID NO:	1-SHO-17-454	through	1-SHO-17-459
and	1-SHO-17-483	through	1-SHO-17-492

Shonto Point XVIII

All of Lots 460 through 482 and Lots 501 through 505, including any and all Common Area, easements and all Open, Open Area, Open Space, as shown on Shonto Point XVIII plat map as Recorded on June 19, 1996, as Entry No. 535827, in Book 1011, at Page 325.

TAX ID NO:	1-SHO-18-460	through	1-SHO-18-482
and	1-SHO-18-501	through	1-SHO-18-505

Posovi Phase I

All of Lots 506 through 534 of Posovi, Phase I, as shown on the official plat thereof, recorded on June 13, 2001, as Entry No. 724621, in Book 1413, at Page 440, in the Office of the County Recorder of Washington County, State of Utah.

TAX ID NO: 1-POSO-1-506 through 1-POSO-1-534

Kwavasa Phase I

All of Lots 601 through 639 of Kwavasa Phase I, as shown on the official plat thereof, recorded on July 2, 2001, as Entry No. 726792, in Book 1415, at Page 2565, in the Office of the County Recorder of Washington County, State of Utah.

TAX ID NO: 1-KWAV-1-601 through 1-KWAV-1-639

Terms contained in this Preamble and the Recitals below which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

RECITALS

A. Kayenta Homesites, Inc., as Declarant, has developed the real property described as Shonto above and Kayenta Homesites, Inc. as Declarant and Owner and Dixie Title Company as Trustee with the State of Utah acting through the School and Institutional Trust Lands Administration has developed the real property described as Kwavasa and Posovi above.

B. Declarant has established the Shonto Point Homeowners Association and has assigned to the Association powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Properties, promulgating Rules and Regulations through its Board and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant is the Owner of certain Lots within the Properties and is the owner of or has rights (including options, reservations, commitments, and development rights) to the Annexable Territory, all of which the Declarant and Members of the Association desire to be governed by this Declaration, as the same has been amended and restated herein.

D. The Association and Declarant intend that the Properties, and such portions of the Annexable Territory annexed into the Development, shall be maintained, developed and conveyed pursuant to a general plan for all of the Properties and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth. Declarant may execute, acknowledge and record a Supplemental Declaration affecting solely a Phase of Development of the Properties, so long as Declarant owns all of the real property to be affected by such Supplemental Declaration. Such Supplemental Declaration may impose further conditions, covenants and restrictions for the operation, protection and maintenance of that Phase of Development. Nothing herein shall be construed as forming a joint venture or partnership between Declarant and the Association.

E. The Association and Declarant hereby declare that all of the Properties shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Properties or any portion thereof. The covenants, conditions restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all persons having or acquiring any right, title, or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by, Declarant, the Association, as hereinafter defined, each Owner and their

respective heirs, executors and administrators, and successors and assigns.

F. This Declaration is undertaken pursuant to and in furtherance of a Plan of Merger approved by the board of directors and members of Shonto Point Homeowners Association and Kwavasa and Posovi Homeowners Association, and was approved by the written consent of at least seventy-five percent (75%) of all Class A membership votes entitled to be cast for Shonto Point Homeowners Association and seventy-six (76%) of all Class A membership votes entitled to be cast for Kwavasa and Posovi Homeowners Association, and was also approved by the written consent of at least seventy five percent (75%) of the first mortgagees of record of each Association.

G. These Recitals shall be deemed as covenants as well as recitals.

ARTICLE I
DEFINITIONS

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

1.1. ACC.
ACC shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

1.2. ACC Rules and Regulations.
ACC Rules and Regulations shall mean such rules and regulations as may be adopted and promulgated by the ACC pursuant to Sections 8.1 and 8.4 hereof as such rues and regulations may be amended from time to time.

1.3. Annexable Territory.
Annexable Territory shall mean the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article XV hereof.

1.4. Annual Assessment.
Annual Assessment shall mean the annual charge against each Owner and his Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.5. Articles.

Articles shall mean the Articles of Incorporation of the Association filed in the office of the Secretary of State of the State of Utah, as such Articles have been amended to accomplish the Plan of Merger and as such Articles may be amended from time to time.

1.6. Association.

Association shall mean SHONTO POINT HOMEOWNERS ASSOCIATION, a corporation formed under the Nonprofit Corporation Law of the State of Utah, its successors and assigns. Shonto Point Homeowners Association is the Surviving Association under the Plan of Merger and the Kwavasa and Posovi Homeowners Association merged into the Shonto Point Homeowners Association and no longer exists.

1.7. Basic ACC Standards.

Basic ACC Standards shall mean the standards set forth in Exhibit "F" and incorporated in this Declaration by reference.

1.8. Beneficiary.

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

1.9 Benefited Assessments.

Benefited Assessments are those provided for in Section 6.4.1.

1.10. Board.

Board shall mean the Board of Trustees of the Association, elected pursuant to the Bylaws of the Association.

1.11. Budget.

Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

1.12. Bylaws.

Bylaws shall mean the Bylaws of the Association, as adopted by the Board, as such Bylaws may be amended by the Board from time to time.

1.13. Corrective Assessments.

Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association for corrective action set forth in Sections 2.9, 8.8, and 9.1.

1.14. Common Area.

Common Area shall mean and refer to that portion of the Properties which is not included within the Lots, and which

constitute undedicated roads; areas adjacent to roads; community parking areas; information centers; clustered mailboxes including turn-arounds and access to such mailboxes; certain Trail Easements; all Open, Open Area, Open Space; and other Improvements (excluding utility lines now or hereafter constructed or located thereon), all as set forth on the Plat as it may hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XV in conjunction with annexations to the Properties as herein provided.

1.15. Common Expenses.

Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and improvement of the Common Area; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of-all utilities, certain landscaping and Improvements on or adjacent to public or Common Area, gardening, trash pickup and other services benefiting the Common Area; costs of maintaining clustered mailboxes including turn-arounds and access to such mailboxes; the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance; the costs of bonding the members of the Board and the ACC; taxes, if any, paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Properties, or portions thereof; and the costs of any other items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Owners.

1.16. Declarant.

Declarant shall mean KAYENTA HOMESITES, INC., a Utah corporation (including all partners or joint ventures, both past and present, associated with Kayenta Homesites, Inc., in relation to the Properties) its successors and any Person to which it shall have assigned any rights hereunder, except that a party acquiring all or substantially all of the right, title and interest of KAYENTA HOMESITES, INC. in the Properties by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of KAYENTA HOMESITES, INC. as Declarant under this Declaration.

1.17. Declaration.

Declaration shall mean this instrument as it may be amended or supplemented from time to time.

1.18. Deed of Trust.

Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

1.19. Development.

Development shall mean Shonto Point (and in some cases Tuweap-Shonto) according to the Plat, all as a planned residential development; Development shall also mean Kwavasa Phase I and Posovi Phase I according to the Plat, all as a planned residential development, and shall include any phases added hereafter, to be effective upon the filing of a supplemental Declaration and Plat for said additional phase(s).

1.20. Dwelling Unit.

Dwelling Unit shall mean a detached building located on a Lot designed and intended for use and occupancy as a residence by a single family, together with all Improvements located on the Lot: which are used in conjunction with such residence.

1.21. Excluded Property.

Excluded Property may be developed for other than single family, detached Dwelling Units and shall consist of that real property lying within the Annexable Territory but not included in any Phase of Development, including, (i) that area immediately Northeast of the South quarter corner of Section 25, T41S, R17W, SLB&M adjacent to and South of Shonto Point Phases VIB and VIIIB, shown in the hatched area of Exhibit "B" attached hereto and included herein; (ii) such land owned by the State of Utah abutting said South quarter corner of Section 25 and lying both Southeast and Northwest of said corner; and (iii) such land owned by R. T. Marten, et. al., abutting said South quarter corner of Section 25 and lying Southwest of said corner. Additional information on the Excluded Property is shown on the Kayenta Community General Plan on file with the Town of Ivins, Utah.

1.22. FHLMC.

FHLMC shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

1.23. Fiscal Year.

Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.24. FNMA.

FNMA shall mean the Federal National Mortgage Association, a government-sponsored private corporation established-pursuant to

Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

1.25. GNMA.

GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

1.26. Holidays.

Holidays shall mean Christmas, Thanksgiving and New Years' days, and such other holidays as the Board may designate from time to time.

1.27. Improvement.

Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to Dwelling Units and other buildings, walkways, sprinkler pipes, swimming pools, athletic fields or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.28. Lot.

Lot shall mean any residential lot or parcel of land for residential construction shown upon any Recorded subdivision map or Recorded parcel map of the Properties, including the Plat, with the exception of the Common Area.

1.29. Manager.

Manager shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

1.30. Member, Membership.

Member shall mean any Person holding a membership in the Association, as provided in this Declaration. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws and Rules and Regulations.

1.31. Mortgage, Mortgagee, Mortgagor.

Mortgage shall mean any Recorded first mortgage or first deed of trust. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage. The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall

include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.32. Notice of Board Adjudication.

Notice of Board Adjudication shall mean notice of the decision of the Board, delivered in person or in writing by mail or personal service, of its decision rendered at a hearing held pursuant to a Notice of Noncompliance by the Board and Right to Hearing.

1.33. Notice of Members Meetings.

Notice of meetings of the Members required or provided for in this Declaration shall be in writing and may be delivered either personally or by mail. Notice of Members Meetings shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members.

1.34. Notice of Noncompliance by the ACC; Notice of Noncompliance by the Board and Right to Hearing.

Notice of Noncompliance by the ACC shall mean a notice from the ACC directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with the Basic ACC Standards or ACC Rules and Regulations. Notice of Noncompliance by the Board and Right to Hearing shall mean a notice from the Board directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with any provisions of this Declaration and the opportunity for the Owner to have a hearing before the Board as provided for in the Rules and Regulations.

1.35. Open, Open Area, Open Space.

Open, Open Area and Open Space shall mean areas as shown on the Plat, or other Recorded instrument, upon which no Dwelling Unit or Improvement can be constructed (unless otherwise provided for herein, on the Plat or in some other Recorded instrument), and as the same have been dedicated to the Association for the benefit of all Members. Open, Open Area and Open Space shall not include such open parcels of real property shown on the Plat which, unless otherwise provided for herein, are to remain open and free from construction of Dwelling Units or Improvements, but which are to be conveyed to the Owner of a Lot adjacent to such open parcel and not to be owned as Common Area by the Association.

1.36. Owner.

Owner shall mean the Person or Persons, including Declarant, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple

interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.37. Person.

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

1.38. Phase 1.

Phase 1 shall mean all of the real property described in the Plat for "Shonto Point" Recorded on September 24, 1987 as Entry No. 321237, in Book 464, at Page 763; as the same has been amended and as "Shonto Point - Amended", Recorded as Entry No. 486628, in Book 871, at Page 665; Phase 1 shall also mean all of the real property described in the two plats for Posovi, Phase I, and Kwavasa, Phase I.

1.39. Phase of Development.

Phase of Development shall mean (a) Phase 1 or (b) all the real property covered by a Supplemental Declaration Recorded pursuant to Article XV of this Declaration.

1.40. Plans.

Plans shall mean such plans and specifications as may be required by this Declaration and by ACC Rules and Regulations.

1.41. Plat.

Plat shall mean "SHONTO POINT", a planned residential development plat, consisting of 1 page, executed and acknowledged by Declarant, prepared and certified by L. R. Pope, a registered Utah Land Surveyor (first Recorded on September 24, 1987 and amended and rerecorded on December 12, 1994 as "SHONTO POINT - AMENDED"), also as the same has been modified, amended, supplemented or expanded in accordance with the provision of Article XI concerning amendments or supplements to the Declaration in conjunction with annexations to the Properties as therein provided and also as the same may hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XV concerning amendments or supplements to this Declaration in conjunction with annexations to the Properties as herein provided. Plat shall also mean Kwavasa, Phase I and Posovi, Phase I, a planned residential development plat, each consisting of two pages, executed and acknowledged by Declarant, prepared and certified by L.R. Pope, a registered Utah Land Surveyor and Recorded on the same may be modified, amended, supplemented or expanded in accordance with the provision of Article XI concerning amendments or supplements to the Declaration in conjunction with annexations to the Properties as therein provided and also as the same may hereafter be modified, amended, supplemented or expanded in accordance with the provisions

of Article XV concerning amendments or supplements to this Declaration in conjunction with annexations to the Properties as herein provided.

1.42. Properties.

Properties shall mean (a) Phase 1, and (b) each Phase of Development described in a Supplemental Declaration and annexed to the Properties.

1.43. Record, Recorded, Filed or Recordation.

Record, Recorded, Filed or Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Washington County, Utah.

1.44. Rules and Regulations.

Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

1.45. Recreational Vehicles.

Recreational Vehicles shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, all-terrain-vehicles and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, or devices similar to any of the foregoing.

1.46. Special Assessments.

Special Assessments shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI.

1.47. Streets.

Streets shall mean both public and private streets and thoroughfares on the Properties except as they may be specifically identified otherwise.

1.48. Supplemental Declaration.

Supplemental Declaration shall mean any supplemental declaration of covenants, conditions and restrictions and reservation of easements, or similar instrument, which extends the provisions of this Declaration to all or any duly annexed portions

of the Annexable Territory and may contain such complementary or amended provisions for such additional land as are herein authorized by this Declaration.

1.49. Trail Easement.

Trail Easement shall mean such trail easements as are depicted on the Plat. The exact location of the trail, within the Trail Easement, is not known as of the date of this Declaration and will be subject to future definition by actually building the trail within said easement.

1.50. Vehicle.

Vehicle shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects -- or are designed to be transported on wheels, skids, skis or tracks--, including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, Recreational Vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

ARTICLE II
DESCRIPTION OF PROPERTY

The real property which is associated with the Development and which has been and shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of all Shonto Point - Amended; Shonto Point I-A; Shonto Point II, Shonto Point III; Shonto Point IV; Shonto Point V; Shonto Point VI-A; Shonto Point VI-B; Shonto Point VII; Shonto Point VIII; Shonto Point VIII-B; Shonto Point IX; Tuweap-Shonto X; Shonto Point X-B; Tuweap-Shonto XI; Tuweap-Shonto XII; Shonto Point XIV; Shonto Point XIV-B; Shonto Point XV; Shonto Point XVI; Shonto Point XVII; and Shonto Point XVIII, Kwavasa, Phase I and Posovi, Phase I, .as the same are more particularly described in the Preamble, and such additional portions of the Annexable Territory as are brought into the Development; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

With respect to Excluded Property, Declarant reserves full rights of ingress and egress for itself, its successors or assigns or for the benefit of any permitted user of such Excluded Property. Unless the Recordation of an instrument by Declarant expressly subjects all or any portion of such Excluded Property to all or certain portions of this Declaration, the Excluded Property shall not be governed by this Declaration, except (i) for the Basic ACC Standards governing exterior appearance of Improvements and (ii)

the height of Improvements, measured from the adjacent natural grade to the top of the roofline, shall be limited to twenty-six (26) feet, exclusive of chimney projections. With respect to use regulations governing the Excluded Property, such regulations, ordinances, statutes and rules and regulations imposed by any local, state, or federal governmental entity, including special service districts, shall be strictly adhered to by any owner of the Excluded Property.

Declarant further reserves the right to use any and all utilities, without further charge from the Association.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which effect the above-described land or any portion thereof, including without limitation, any Mortgage; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the Properties, Excluded Property and Annexable Territory, and any Improvements now or hereafter constructed thereon, as may be reasonably necessary for Declarant (in a manner which is reasonable and consistent with the provisions of this Declaration):

(i) To construct and complete the Improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;

(ii) To construct and complete, in additional Phases of Development, on the Annexable Territory or any portion thereof, such Improvements as Declarant shall determine to build in its sole discretion.

(iii) To improve portions of the Properties with such other or additional Improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Declarant or as such assignee or

successor may reasonably determine to be appropriate.

If, pursuant to the foregoing reservations, the Properties, Excluded Property, or Annexable Territory, or any Improvement thereon, is traversed or partially occupied by a permanent Improvement or utility line, a perpetual easement for such improvement or utility line shall exist. Such easement shall be in favor of such utility as is providing the service. All sewer, water, telephone and electric lines shall be owned by the respective utilities serving the Properties.

ARTICLE II
OWNERS' PROPERTY RIGHTS

2.1. Owners' Easements of Enjoyment.

Each Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each such Lot and in no event shall be separated there from. Any Owner may grant the use and enjoyment described herein to any tenant, lessee, guest, or family member, and to a contract purchaser who resides on such Lot.

2.2. Form For Conveyancing.

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

> All of Lot _____ of SHONTO POINT, [Phase] according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder;

> All of Lot _____ of TUWEAP-SHONTO, [Phase] according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder;

or

_____ All of Lot of Kwavasa, Phase I (or Posovi, Phase I), according to the official plat thereof, subject to the Declaration of Conditions, Covenants, and Restrictions, all on file in the office of the Washington County Recorder.

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 Lot.

2.3. Transfer of Title.

Declarant represents that it has, on or prior to the first conveyance of a Lot, conveyed to the Association title to all Common Area, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and close of escrow of the last Lot in each Phase.

2.4. Limitations on Common Area Easement.

An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, upon Notice of Members Meeting be assented to by two-thirds (2/3) of the vote of the Membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. The quorum requirement for such meeting shall be as set forth in the Bylaws.

(b) The right of the Association, to be exercised by the Board, to reasonably limit the number of guests and tenants an Owner or his tenant may authorize to use the Common Area;

(c) The right of the Association, to be exercised by the Board, to establish uniform Rules and Regulations as set forth in Section 14.10;

(d) The right of Declarant and its sales agents, representatives and prospective purchasers, to the nonexclusive use of the Common Area and any facilities thereon, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and the Annexable Territory as provided herein, until the last Close of Escrow for the sale of a Lot in the Properties and the Annexable Territory; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein:

(e) The rights and reservations of Declarant as set forth in Article IA of this Declaration;

(f) The right of the Association, to be exercised by the Board, to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement;

(g) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area;

(h) The right of the Association, to be exercised by the Board, to reasonably restrict access to portions of the Common Area; and

(i) The easements reserved in Sections 2.6, 2.8, 2.1, 2.10, 2.11, 2.12, and 2.13; and the covenants and conditions set forth in Section 2.14; and

(j) The right of the Association, to be exercised by the Board, to suspend a Member's right to use the Common Areas and Improvements thereon, for violations of this Declaration, and.: for violation of the Rules and Regulations of this Association; and

(k) The unilateral right of the Declarant to, without consent of the Members of the Association, dedicate to the use of the general public (i) the entirety of Kayenta Drive, (ii) any portions of Cochise Way which

have not already been dedicated to the use of the general public, (iii) that westerly portion of Evening Star Drive which lies between Kayenta Parkway and Shonto Drive, (iv) Towab Way and that portion of Toumppian Court which lies between Lots 462, 463, 464, 465, 466, and approximately one-half (1/2) of 467, and (v) Wintook Drive from the point of its intersection with Evening Star Drive to the point of its intersection with Taviawk Drive, f/k/a Weecheech Drive.

2.5. Parking Restrictions.

In addition to the parking restrictions provided for in Section 10.7(a), the Association, through its Board, is hereby empowered to establish "parking," "guest parking" and "no parking" areas within the portions of the Common Area improved as Streets, driveways, turn-arounds or community parking areas. The Association, through its Board, is also empowered to include in the Rules and Regulations, the ability to enforce the parking restrictions imposed pursuant to this Section 2.5 and those set forth in Section 10.7(a) by all means lawful for such enforcement, including the removal of any violating Vehicles at the expense of the owner of the Vehicle.

2.6. Easements for Public Service Use.

In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for public services of the Town of Ivins in which the Properties are located, including but not limited to, the right of the police and fire, water and sewer departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.7. Waiver of Use.

No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any Improvements thereon or by abandonment of his Lot or any other property in the Properties.

2.8. Easements for Water and Utility Purposes.

In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for

public and private utility purposes, including but not limited to, the right of any public utility of ingress or egress over the Common Area for purposes of reading and maintaining meters, and using and maintaining fire hydrants located on the Common Area, and the use, installation and maintenance of sewer facilities, and constructing and maintaining cable, telephone and electric facilities. The Lots shall also be subject to such public utility easements as shown on the Plat and as required by the Town of Ivins.

2.9. Taxes.

Each Owner shall execute such instruments and take such action as may reasonably be specified by the Board to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Board, become a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense, and the Association may levy against the Lot as a Corrective Assessment any amounts paid by the Association to rectify the problem.

2.10. Declarant Easement; Indemnification.

For so long as (i) Declarant owns any Lot in the Properties or (ii) Declarant has the right to annex all or any portion of the Annexable Territory to the Properties, Declarant hereby expressly reserves for its benefit, for the benefit of its agents, employees and contractors, and for the benefit of its successors and assigns, a nonexclusive easement appurtenant to the Annexable Territory, in, to, and over the Common Area for access, ingress, egress, use and enjoyment, in order to show the Properties or Annexable Territory to its prospective purchasers, or to develop, market, sell, lease or otherwise dispose of the Properties or the Annexable Territory.

The Declarant, by this instrument and recording of the same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas, Open lands, Open Areas, and Open Spaces as a result of the activities of Declarant or his agents.

2.11. Establishment of Trail Easements.

Trail easements are established for the benefit of the Lot Owners through this Declaration and through the Plat. The Declarant reserves the right to construct such trails, but shall not be obligated to do so. Such trail access shall not be built upon or fenced, and shall be kept in its natural state, except for the path or trail and related amenities such as benches and signs as the Declarant may deem necessary. The reservation of the Trail

Easement does not guarantee to Lot Owners that Declarant will provide a trail within that Trail Easement. The determination of any

actual trail locations, within each such Trail Easement, shall be at the sole discretion of the Declarant. It is the intention of the Declarant that this access shall be part of an access network, and Declarant reserves the right to limit such access to pedestrians only. The Association is responsible for maintaining said Trail Easement and keeping it free of trash and debris, and said Trail Easement shall be subject to reasonable Rules and Regulations associated with its purpose and use. Declarant expressly prohibits the use of said access for motorized off-road vehicles.

2.12. Easement for Encroachments.

If any portion of a Dwelling Unit or other Improvement constructed by Declarant, or if any portion of a Dwelling Unit or other Improvement reconstructed so as to substantially duplicate the Dwelling Unit or other Improvement originally' constructed by Declarant, encroaches upon the Common Areas, Open lands, Open Area, Open Space or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

2.13. Easements for Access; and Other Easements.

Exhibit "C" attached hereto and incorporated herein, sets forth easements for ingress and egress and other easements which the Properties are subject to.

2.14. Restrictions of Particular Lots.

Exhibit "D" attached hereto and incorporated herein sets forth additional covenants, conditions and restrictions which shall apply to the Lots specified in Exhibit "D", in addition to all other covenants, conditions and restrictions provided for in this Declaration.

ARTICLE III
SHONTO POINT HOMEOWNERS ASSOCIATION

3.1. Organization of Association.

Declarant caused the Shonto Point Homeowners Association and Kwavasa and Posovi Homeowners Association to be organized and the Articles of each to be filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code. Kwavasa and Posovi Homeowners Association agreed with Shonto Point Homeowners Association to merge the two associations pursuant to a Plan of Merger executed ___, 2008 and the two associations caused Articles

of Merger to be filed with the State of Utah Department of Commerce on _____, 2008.

3.2. Duties and Powers.

The Association shall have such duties and powers as set forth in the Articles, Bylaws, and this Declaration (and such other powers and duties as properly delegated or assigned through the Rules and Regulations), as such documents are amended from time to time.

3.3. Membership.

Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.

3.4. Transfer.

Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

ARTICLE IV
VOTING RIGHTS

4.1. Vote Distribution.

The Association shall have the following two classes of voting membership:

(a) Class A. Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Lot, 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 Lot.

(b) Class B. Class B Membership formerly held in Shonto Point Homeowners Association including Class B Membership rights related thereto have expired and Declarant's Membership rights have reverted to that of a Class A member for each lot in Shonto. All lots held by Declarant in Kwavasa or Posovi or in any phases annexed after the date of recording of this Declaration shall be entitled to three votes for each lot. Upon conveyance of said lot, the membership status changes to Class A membership. The Declarant, or Declarants in the aggregate, hereby agrees to and shall only be able to exercise Class B votes of Declarant(s) on a maximum of fifty (50) lots which are owned by the Declarant(s) at

any time, notwithstanding the fact that the Declarant(s) may own more than fifty (50) lots at any given time.

4.2. Multiple Ownership.

In the event there is more than one Owner of a particular Lot, the vote relating to such 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 vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

ARTICLE V
JURISDICTION OF ASSOCIATION

The Association has been organized to provide for the operation, maintenance, preservation and architectural control of the Properties and Improvements and to administer the Common Areas of the Association. The Association shall have jurisdiction and authority over the Properties and the Members of the Association to the full extent provided for in this Declaration and in the Articles, Bylaws, and Rules and Regulations, as such documents may be modified from time to time.

ARTICLE VI
COVENANT FOR ASSESSMENTS

6.1. Creation of Assessment Obligation.

Declarant, for each Lot owned within the Properties, , but subject to the exception in 6.8 (c) below, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Corrective Assessments, and Benefited Assessments; such assessments to be established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Special Assessment, Corrective Assessment, or Benefited Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal

obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments liability shall not pass to any new Owner ("Purchaser") successors in title unless expressly assumed by such Purchaser.

The Association shall not have the right to assess for Improvements to the Common Areas for recreational amenities. Members of the Association may, however, voluntarily join the Kayenta Recreation Association, which owns and administers recreational amenities. This prohibition on assessments for Improvements to the Common Areas shall not, however, prohibit the Association from performing its obligations under Section 9.2 and establishing trails within the Trail Easements as may be desirable for the benefit of the health, welfare and safety of the Members of the Association and levying assessments for such trails and related features and appurtenances thereof but not limited to benches, landscape, picnic areas and trailheads.

6.2. Purpose of Annual and Special Assessments.

The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the Common Area 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.

6.3. Annual Assessments.

Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

6.4. Special Assessments.

In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

(a) Approved by Board. Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:

(i) An extraordinary expense required by an order of a court;

(ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment; and

(iii) Taxes payable to Washington County as described in Section 7.2 of this Declaration.

(b) Approved by Association. Special projects which must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called and held for such purpose pursuant to the Bylaws involve:

(i) the replacement or improvement of the Common Area or Improvement thereon; and

(ii) an extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible attributable to fire, flood or hazards of any kind.

6.4.1 Benefited Assessments.

The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by the Association to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the specific Lot or occupants thereof. Specifically, but without limitation, the Board may levy the following Benefited Assessments:

(a) Given the disparity between the condition of the roads in Kwavasa and Posovi and Shonto, the Board shall establish separate road maintenance funds to provide for the separate roadways of the two associations as they exist on the date of merger. See Exhibit H attached hereto for boundaries of Shonto and Kwavasa and Posovi as of the date of the merger. These separate road maintenance funds shall be maintained separately until at such time the Board deems the

conditions of the roads to be substantially similar such that a merger of the two funds is acceptable. Any new roads created or added to the Association, after the date of recordation of this Declaration, for any reason shall be common roadways and shall be maintained from a common fund established by the Board of Directors of the Association and not from the separate road maintenance funds. The Board shall appoint two committees, one from residents of the former Kwavasa and Posovi subdivisions and one from the former Shonto, to manage road issues for Kwavasa and Posovi and Shonto, respectively.

(b) The Board of the Association shall maintain a separate fund to be applied to any costs or fees incurred which arise from facts and circumstances associated with lot 501 in Kwavasa and Posovi prior to the effective date of this Plan of Merger. The following persons, being the Board of Kwavasa and Posovi existing prior to the execution of the Plan of Merger, shall constitute the legal committee to oversee the above-referenced litigation through to its conclusion: John Schwager, Dave Hanson, Gordon Geritz, Jim Craig, and Scott Lewis. If any outstanding litigation related to lot 501 in Kwavasa and Posovi is settled to the satisfaction of the foregoing committee and no additional costs or fees are to be incurred therein, the Board shall terminate this separate fund. In the event the Board terminates this fund, and because all monies in this fund have been received only from members of KP, then any excess funds remaining in the fund shall be returned to the members of Kwavasa and Posovi.

(c) The Board in the Board's discretion may appoint committees to specifically oversee certain funds allocated to either Kwavasa and Posovi or Shonto. The funds as identified in (a) and (b) herein shall be created and maintained through what will be identified as "Benefited Assessments." Said Benefited Assessments will only be assessed to the lots benefiting therefrom. For example, because Kwavasa and Posovi is engaged in outstanding litigation related to lot 501, only members of Kwavasa and Posovi, their successors, and assigns, at the time of the merger, will be assessed for said costs; likewise, only members of Shonto, their successors, and assigns, at the time of the merger, shall be assessed a benefited assessment for Shonto's road maintenance fund so long as it exists separate

from Kwavasa and Posovi's road maintenance fund to maintain Shonto's roads.

(c) The Board may establish Benefited Assessments for phases annexed into Shonto after the date of the recordation of this Declaration if the Board reasonably determines that certain expenses associated with a particular phase benefit that phase alone.

(d) The Board may establish such other Benefited Assessments as it deems just and prudent to address expenses that are not Common Expenses of the Association.

6.5. Uniform Rate of Assessment.

Annual Assessments and Special Assessments imposed pursuant to subsections 6.2(a) and (b) of this Declaration shall be assessed equally and uniformly against all Owners and their Lots. All installments of Annual Assessments shall be collected in advance on a semiannual basis by the Board.

6.6. Date of Commencement of Annual Assessments.

The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Lots in a Phase of Development on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in such Phase of Development. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the bylaws. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

6.7. Corrective Assessments.

In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Lot to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to

the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, including Sections 2.9, 8.8, and 9.1, plus interest and other charges on such Corrective Assessments.

The Board shall deliver a Notice of Noncompliance by the Board and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Board Adjudication and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

6.8. Exempt Property.

The following property subject to this Declaration shall be exempt from the assessments herein:

(a) All portions of the Properties dedicated to and accepted by a local public authority; and

(b) The Common Area owned by the Association in fee.

(c) All lots that have not been sold to the public by Declarant or Declarant's assigns.

6.9. Notice of Members Meeting; Quorum Requirements.

Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by Section 6.4(b) shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

6.10. Preparation of Budget.

The Board shall prepare a Budget to be presented to the Members at the annual meetings of the Members held as provided in the Bylaws.

6.11. Reserve Fund.

The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas. The

Board shall maintain a legal reserve fund in an amount deemed appropriate by the Board.

ARTICLE VII
NONPAYMENT OF ASSESSMENTS & REMEDIES

7.1. Nonpayment of Assessments; Remedies.

Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first position Mortgage on the Lot recorded prior to the date any such assessments become due. Assessments shall have priority over all liens or mortgages having a second position (or lower) priority, If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment service charge equal to five percent (5%) of each delinquent amount due, and the Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

7.2. Washington County Tax Collection.

It is recognized that under the Declaration the Association will own the Common Area and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

7.3. Foreclosure Sale.

The Board may elect to file a claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the

interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. The lien shall be prior to any other lien arising thereafter, except for liens which, by law, are deemed prior to liens of a nature similar to such assessment liens. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or deed of trust lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

7.4. Curing of Default.

Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Board shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

7.5. Cumulative Remedies.

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

7.6. Mortgage Protection.

Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.7. Priority of Assessment Lien.

The lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage, or conveyance of a deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. When the Beneficiary of a first Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage (or deed given in lieu of foreclosure), such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person.

ARTICLE VIII
ARCHITECTURAL CONTROL

8.1. Members of Committee.

The Architectural Control Committee ("ACC") shall consist of three (3) to seven (7) members. The Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board need not be Members of the Association, but must be residents of the lands described in the Preamble as provided herein. If the ACC is not appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members.

8.2. ACC General Powers.

The ACC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed Plans conform harmoniously to the exterior design and existing materials of the Improvements on the Properties. This power shall include the power to issue ACC Rules and Regulations which, among other

provisions, may set forth procedures for the submission of Plans for approval, require a fee payable to the Association to accompany each application for approval, and state additional factors which it will take into consideration in reviewing submissions. The ACC Rules and Regulations may also include provisions covering ongoing architectural and landscaping control consistent with the Basic ACC Standards contained in Section 8.4 (Exhibit "F").

8.3. Review of Plans and Specifications.

The ACC shall consider and act upon any and all Plans and specifications, including Declarant's, submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and specifications approved by the ACC. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, external decoration or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, in the Properties shall be commenced or maintained, until the Plans and specifications therefor showing the nature; kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC. Until changed by the Board, the address for submission of such Plans and specifications shall be the principal office of the Association located at 800 North Kayenta Parkway, Ivins, Utah 84738. The ACC shall approve Plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Lots and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

The ACC may condition its approval of any Improvement upon such changes, alterations or modifications of such Improvement as it deems appropriate and may require submission of additional Plans and specifications or other information prior to approving or disapproving material submitted. Such conditions may also include a requirement that the applicant complete the proposed Improvement within a stated period of time. The ACC may require such detail in Plans and specifications submitted for its review as it deems proper, including, without limitation, landscape plans, floor plans, as they relate to exterior appearance, site plans, exterior lighting plans and interior lighting plans as they relate to exterior illumination, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Decisions of the ACC shall be transmitted by the ACC to the applicant at the address set forth in the application for approval, after receipt by the ACC of all materials required by the ACC and within forty five (45) days after its next duly scheduled meeting at which there is a quorum in attendance and at which the ACC considers the request with all required submittals received from the applicant. Any application submitted pursuant to this Section 8.3 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ACC shall have been transmitted to the applicant within the time herein set forth. In addition to complying with the Basic ACC Standards and ACC Rules and Regulations, the Applicant shall meet any review or permit requirements of the Town of Ivins, Utah, prior to making any alterations or engaging in construction, reconstruction or remodeling permitted hereunder.

8.4. Basic ACC Standards.

In exercising its powers set forth in Section 8.1, the ACC shall insure that all Improvements on Lots in the Properties conform to and harmonize with existing surroundings and structures in the ACC's discretion all in accordance with the Basic ACC Standards set forth in Exhibit "F" and incorporated in this Declaration by reference. The ACC may formulate ACC Rules and Regulations for the purpose of interpreting such ACC Basic Standards and adding such other supplemental standards, not contrary to such ACC Basic Standards, as the ACC may deem appropriate. The adopted ACC Rules and Regulations shall be incorporated in the ACC Book of Rules, Regulations, and Resolutions; the ACC, or the Board, as the case may be, shall act in accordance with such ACC Rules and Regulations. The failure of any Owner to adhere to the ACC Rules and Regulations shall constitute and be deemed a failure to meet such Basic ACC Standards.

8.5. Meetings of the ACC.

The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC, shall be sufficient to enact resolutions or motions of the ACC. The attendance of three (3) members at any meeting shall constitute a quorum.

8.6. No Waiver of Future Approvals.

The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted for approval or consent.

8.7. Compensation of Members.

The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

8.8. Inspection of Work; Costs of Correction.

Inspection of work and correction of defects therein shall proceed as follows:

(a) The ACC or its duly authorized representative may inspect during reasonable daylight hours, any work for which approval of Plans is required under this Article VIII. However, the ACC's right of inspection of Improvements for which Plans have been submitted and approved shall terminate sixty (60) days after the Improvement has been completed, as evidenced in the case of a Dwelling Unit by a certificate of occupancy issued by the Town of Ivins, Utah, and the respective Owner has given written notice to the ACC of its completion. The ACC's rights of inspection shall not terminate pursuant to this paragraph if Plans for the Improvement have not previously been submitted to and approved by the ACC. If, as a result of such inspection, the ACC finds that the Improvement was constructed without obtaining approval of the Plans therefor or was not done in substantial compliance with the Plans approved by the ACC, it shall deliver to the Owner a Notice of Noncompliance by the ACC within five (5) days from the inspection. The ACC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If upon the expiration of thirty (30) days from the date of delivery of the Notice of noncompliance by the ACC as provided for above, the Owner has failed to remedy the noncompliance, the ACC shall notify the Board in writing of such failure. The Board shall then deliver to such Owner a Notice of Noncompliance by the Board and Right to Hearing. At hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from delivery of Notice of Board Adjudication to the Owner. If the Owner does not comply with the Board determination within that period, the Board may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance. In addition, the Board may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Corrective Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(c) If for any reason the ACC fails to notify the Owner of any noncompliance with previously submitted and approved Plans within thirty (30) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved Plans.

8.9. Scope of Review.

The ACC shall review and approve, conditionally approve or disapprove all Plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar architectural features, all as may be required by the

Basic ACC Standards and the ACC Rules and Regulations. The discretion of the ACC shall control the ACC's approval or disapproval shall be based solely on the considerations set forth in this Article VIII, and the ACC shall not be responsible for reviewing, nor shall its approval of any Plan or design be deemed approval of, any Plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all Town of Ivins, Utah, requirements with respect to the implementation of such. Plans.

8.10. Variance.

An Owner may apply for a variance to the Basic ACC Standards and the ACC Rules and Regulations as set forth below. All variances must be approved by the ACC, by the Board, and by the Declarant; failure to obtain approval from any one of the foregoing shall constitute denial of the variance request. The approval of a variance must be in writing and shall state the terms of the variance. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Dwelling Unit or Improvement.

(a) A variance may be granted only if one of the requirements of (i)- (iv) and the requirement in (v) are met:

(i) literal enforcement of the Basic ACC Standards and the ACC Rules and Regulations would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Basic ACC Standards and the ACC Rules and Regulations; or

(ii) there are special circumstances attached to the Lot that do not generally apply to the other Lots in the Properties; or

(iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other Lot Owners in the Properties; or

(iv) the variance will not substantially affect the Basic ACC Standards and the ACC Rules and

Regulations and will not be contrary to the interest of the Members of the Association; and

(v) the spirit of the Basic ACC Standards and the ACC Rules and Regulations is observed and substantial justice done.

(b) In determining whether or not enforcement of the Basic ACC Standards and ACC Rules and Regulations would cause unreasonable hardship under Section 8.10(a)(i) the ACC, the Board, and the Declarant may not find an unreasonable hardship unless the alleged hardship:

(i) is located on or associated with the Lot or Improvement for which the variance is sought; and

(ii) comes from circumstances peculiar to the Lot or Improvement, not from conditions that are general to the Properties.

(iii) the variance may be granted only after all other reasonable approaches to find a solution are exhausted and the request for the variance is not driven by self imposed requirements, convenience, or economic considerations.

(iv) In determining whether or not enforcement of the Basic ACC Standards and ACC Rules and Regulations would cause unreasonable hardship under Section 8.10(a) (i), the ACC, the Board, and the Declarant may not find an unreasonable hardship if the hardship is self imposed or economic.

(c) In determining whether or not there are special circumstances attached to a Lot or Improvement under Section 8.10(a)(ii), the ACC, the Board, and the Declarant may find that special circumstances exist only if the special circumstances:

(i) relate to the hardship complained of; and

(ii) deprive the Owner of the Lot or Improvement of privileges granted in relation to other Lots or Improvements in the Properties.

The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met. Variances run with

the land. In granting a variance, the ACC, the Board, and the Declarant may collectively impose additional requirements on the applicant that will:

(a) mitigate any harmful effects of the variance; or

(b) serve the purpose of the standard or requirement that is waived or modified.

8.11. Disclaimers of Liability.

Neither the ACC, the Board nor Declarant, 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 (i) the approval or rejection of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests (ii) the construction or performance of any work, whether or not pursuant to approved Plans, (iii) the development or manner of development of any of the Properties, or (iv) any engineering or other defect in approved Plans, drawings and specifications.

8.12. Declarant's Obligation.

That on or before seven years from the date on which the plat for each Phase of Development is Recorded, there shall be substantially completed and usable as part of the Common Area, all Common Area Improvements in the locations shown on the Plat.

ARTICLE IX
MAINTENANCE AND REPAIR OBLIGATIONS

9.1. Maintenance Obligations of Owners.

It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration requiring ACC approval, to maintain, repair, replace and restore all Improvements located on his Lot and the Lot itself in a neat, sanitary and attractive condition. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, to enter upon such Owner's Lot to perform such emergency and non-emergency repairs or maintenance as the Board deems appropriate and to charge the cost thereof to the Owner. Said cost shall be a Corrective Assessment enforceable as set forth in this Declaration. For non-emergency repairs or maintenance the Owner

shall be entitled to Notice of Noncompliance by the Board and a Right to Hearing.

9.2. Maintenance Obligations of Association.

No improvement, excavation or work which in any way alters the Common Area shall be made or done by any person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereon by Declarant. Subject to the provisions of Sections 6.3, 9.1 and 9.3 hereof, upon commencement of Annual Assessments on Lots in a Phase of Development, the Association shall provide for the maintenance, planting, as applicable, repair, and replacement of the Common Area and all Improvements thereon, in such Phase of Development, in a safe, sanitary and attractive condition, and in good order and repair, and shall likewise provide for the commonly metered utilities serving the Common Area, if any. The Association shall ensure that the landscaping on the Common Area is maintained free of weeds and disease. The Association shall be authorized, but shall not be required, to maintain any lands within the Properties which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

9.3. Damage to Dwelling Units - Reconstruction.

If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, the Owner of such Lot shall, at the Owner's election, either rebuild, repair or reconstruct the Lot and the Dwelling Unit on such Lot in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ACC or restore the Lot by removing from the Properties all damaged or destroyed building materials. The Owner of any damaged Lot or Dwelling Unit and the ACC shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Dwelling Unit shall commence and complete reconstruction of the Dwelling Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence nor complete such reconstruction of the Dwelling Unit or

restoration of the Lot in less than thirty (30) days from the date such transferee acquired title to the Lot.

9.4. Utilities.

The Association shall not pay for the monthly water charges assessable by the private water system or the Town of Ivins (or municipality if such use is charged) for each Lot. Water service is intended to be provided by a private mutual water company, KWU, Inc. Garbage pickup shall be paid by each Lot Owner. Each Lot Owner shall pay for all other utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

ARTICLE X
USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to such limitations and restrictions set forth in Exhibit "G" which is incorporated in this Declaration by reference.

ARTICLE XI
DAMAGE AND CONDEMNATION

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) If the Common Area is damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.

(b) If the cost of effecting total restoration of such Common Area exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for in Section 6.4(b), cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Lot and its respective Owner.

(c) To the extent of funds available for restoration, any restoration or repair of such Common Area shall be

performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Board.

(d) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. In the event of such damage to the Common Area or Improvement thereon the Board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Area or Improvement thereon with the proceeds from the Association's insurance and assign to the Association's insurance company, its claims against the Member who, by his own acts or the acts (both minor and adult) of his family member, guest, invitee, or assignee, damaged the Common Area or Improvement thereon. In the case of joint ownership of a Lot, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

(e) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

ARTICLE XII INSURANCE.

12.1. Casualty Insurance.

The Association shall secure and at all times maintain the following insurance coverages:

> A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all Improvements comprising a part of the Common Area. The name of the insured under each such policy shall be in form and substance similar to: "SHONTO POINT HOMEOWNERS ASSOCIATION" for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.

12.2. Liability Insurance.

A comprehensive policy or policies insuring the Owners, the Association, and its Board, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than $5,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for nonowned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. The Board may increase the amount of liability insurance to be maintained by the Association by way of Rule or Regulation if the Board, after considering factors including, but not limited to, growth of the Association, changes in laws or ordnances, known risks or apparent risks, or claims made against the Association. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claims of an Owner in the Development because of negligent acts of the Association or other Owners.

12.3. Fidelity Insurance.

A fidelity policy or policies to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent

(100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all Mortgagees of Lots.

12.4. Additional Insurance Requirements.

The following additional provisions shall apply with respect to the insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(b) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(c) The Association shall have the authority to adjust losses. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(d) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A Waiver of the insurer's subrogation rights with respect to the Association, the Owners' invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any Board, officer, Manager, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause herein shall not apply with respect to insurance held individually by the Owners.

(e) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a

mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(f) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(g) 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 Lot and to the holder of any mortgage on any 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 the Owner.

(h) Lots and Dwelling Units 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 Lot or Dwelling Unit on a Lot and acts and events occurring thereon.

12.5. Insurance Obligations of Owners.

Each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under

the mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan. However, the Board may elect to take advantage of discounts and/or improved coverage that may be afforded by a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Dwelling Units on the Lots with a coinsurance clause and each owner of such Lots shall be designated as additional insured. The cost of such insurance shall be part of the assessment for such Lot. In this event the insurance cost may be specifically charged to those Lots with Dwelling Units built upon them.

12.6. Unacceptable Policies.

Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessment may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's Designee from collecting insurance proceeds.

12.7. Flood Insurance.

The Development is not located in an area identified by the Department of Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Dwelling Units in the Development so affected by flood hazard, or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the FHLMC at any given time. The cost of such insurance shall be shared proportionately by the affected owner, in proportion to their allocated coverage.

ARTICLE XIII
MORTGAGEE PROTECTION CLAUSE

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

13.1. Preservation of Regulatory Structure and Insurance.

Unless the holders of seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the Lot Owners 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 of the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.2, or the upkeep of the Common Area;

(b) to fail to maintain fire and extended. coverage on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance values (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of improvements on the Common Area.

13.2. Preservation of Common Area; Change in Method of Assessment.

Unless the Association shall receive the prior written approval of (1) at least seventy-five percent (75%) of all first mortgagees (based on one (1) vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including 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 Area, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

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

Neither this Article XIII nor the insurance provisions contained in Article XII may be amended without the prior approval of all first Mortgagees.

13.3. Notice of Matters Affecting Security.

The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

(a) there is any, default by the Owner of the Lot subject to the first mortgage in performance of any obligation

under this Declaration, the Articles or the Bylaws which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area involving an amount in excess of, or reasonably estimated to be in excess of $15,000.00.Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area within ten (10) days after the Association learns of the same; or

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

(i) abandonment or termination of the planned unit development established by this Declaration;

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

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

13.4. Notice of Meetings.

The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association, and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

13.5. Right to Examine Association Records.

Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

13.6. 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 Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. The Declarant for the

Association, as owner of the Common Areas if any, 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.

13.7. Exemption from any First Right of Refusal.

Any first Mortgagee and any purchaser therefrom who obtains title to the Lot 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 or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

13.8. Rights Upon Foreclosure of Mortgage.

Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

13.9. Restrictions Without Approval of Mortgagees.

Except as to the Association's right to grant easements for utilities and similar or related purposes, the Common Area may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of seventy-five percent (75%) of first Mortgage liens on the Lots.

13.10. Mortgagees Rights Concerning Amendments.

Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XIV of the Declaration, no material amendment to the Declaration, or the Articles shall be accomplished or effective unless at least seventy-five percent (75%) of the Mortgagees (based on one (1) vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

ARTICLE XIV
GENERAL PROVISIONS

14.1. Enforcement.

This Declaration may be enforced by the Association, Declarant, and any Owner as follows:

(a) Breach of any of the provisions contained in the Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Declarant so long as Declarant owns a Lot in the Development, and by the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the provisions contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Declarant for so long as Declarant owns a Lot.

(c) The remedies herein provided for breach of the provisions contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(e) Any breach or amendment of the provisions contained in this Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Declaration, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

14.2. Severability.

Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

14.3. Term.

Unless earlier terminated pursuant to Section 14.5 below, the covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Declarant for so long as Declarant owns a Lot in the Development, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which the term shall be automatically extended for successive periods of ten (10) years unless a declaration of termination satisfying the requirements of an amendment to the Declaration as set forth in Section 14.5 is Recorded.

14.4. Interpretation.

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

14.5. Amendment.

Any amendment to this Declaration shall require the affirmation of at least two-thirds (2/3) of all Membership votes present in person or by proxy are entitled to cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. 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 any meeting, another meeting may be called by the Board causing to be delivered another Notice of Members Meeting, at which meeting 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. Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred.

14.6. 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 the Members represented in person or by proxy at a meeting of the Members, such requirement may be fully satisfied by obtaining, with or without a meeting, written consents from the same percentage of Members as is required to authorize the transaction if a meeting of the Members was held and votes taken. The following additional provisions shall govern any application of this Section 14.6:

(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) except as provided in Section 14.6(d) below, any change in ownership of a Lot which occurs after consent has been obtained for such Lot by the prior Owners thereof shall not be considered or taken into account for any purpose;

(c) for Phases of Development annexed to the Properties during the period that written consents of the Members are being sought, the Owners of Lots in such Phases of shall be entitled to give or withhold his consent; and

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

14.7. Notices.

Any notice, including, without limitation, Notice of Noncompliance by the ACC, Notice of Noncompliance by the Board and Right to Hearing, and Notice of Board Adjudication, permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or t" the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

14.8. Manager.

The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

14.9. Terms of Management Agreement.

Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

14.10. Rules and Regulations.

The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct, of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof.

ARTICLE XV
ANNEXABLE TERRITORY.

15.1. Annexation by Declarant.

Declarant may expand the real property subject to this Declaration by the annexation of all or part of the Annexable Territory. The annexation of such land shall become effective and extend this Declaration to such real property upon the Recordation of a Supplementary Declaration or similar instrument which:

(a) describes the real property to be annexed or incorporated by reference within the description contained in the Annexable Territory portion of the Plat;

(b) declares that the annexed real property is to be held, sold, conveyed, encumbered, leased, occupied and

improved as part of the Properties subject to the Declaration;

(c) shall address the following matters: massing, height, night sky, natural vegetation, color and coverage;

(d) shall require that the development of the annexed land shall be similar to that required by the Shonto Governing Documents(Declaration, Bylaws, ACC Rules and Regulations, and Association Rules and Regulations); and

(e) shall not require that the development of the land annexed into Shonto be developed substantially similar to the standards required by the Shonto Governing Documents, only that the development be similar.

When such annexation becomes effective, said real property shall be subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in the Properties shall automatically be members of the Association.

Such annexation may be accomplished in one or more annexations or Phases of Development without limitation as to size or location within the Annexable Territory.

The Declarant, upon proposing to annex additional properties into Shonto, shall, at least thirty (30) days prior to proposing to annex additional property, notify the Board of the Association in writing of the proposed annexation. The notice from Declarant shall include all terms to be included in any supplemental declaration, plat map, or related document or agreement. The Association shall then have a thirty (30) day period to comment on the proposed annexation. It is the intent of this provision to promote communication and nothing herein shall be construed to grant either Shonto or the Declarant a veto power. The right of either Shonto or the Declarant to make comments is waived if not made within the thirty (30) day period. Comments may be in writing, verbal, or discussed at a meeting called by either party within the thirty (30) day period.

15.2. Limitation on Annexation.

Declarant's right to annex said real property to the Properties shall be subject to the following limitations, conditions and rights granted to the Declarant:

(a) The annexed real property must be part of the Annexable Territory as of the date of this Declaration. However, Declarant reserves the right to expand the borders of Annexable Territory to contiguous real property within 1,000 feet of the exterior border of the Annexable Territory, but with no obligation to do so and no claim as to right, title or interest to said real property.

(b) Declarant shall not effectuate any annexation of real property which would cause the total number of Dwelling Units existing on, or planned for, the Property previously known as Shonto Point to exceed 300 total Lots, or for the Property previously known as Kwavasa and Posovi and all property annexed after the date of recording of this Declaration to exceed 1500 total lots.

(c) All Lots added to the Properties shall be for residential purposes, except as otherwise provided for in this Declaration.

(d) Declarant reserves unto itself and its assigns the right to create Common Area, and Improvements thereon, within any portion of the annexed real property. Declarant makes no assurances that such Common Areas or Improvements will be established.

(e) The configuration of annexed land as to Lot size, Common Areas and the type of Improvements is reserved to the Declarant.

15.3. Expansion of Definitions.

In the event the Properties are expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Properties as so expanded.

IN WITNESS WHEREOF, the President of the Association represents that this Declaration was approved at a meeting of the Members called for this purpose by at (75%) of all Class A membership votes entitled to be cast for Shonto Point Homeowners Association and seventy-six (76%) of all Class A membership votes entitled to be cast for Kwavasa and Posovi Homeowners Association, and was also approved by the written consent of at least seventy five percent (75%) of the first mortgagees of record of each Association.

SHONTO POINT HOMEOWNERS ASSOCIATION

By: _____
Marvin Johnson, President

STATE OF UTAH)
:SS
County of Washington)

On this 18th day of December, 2008, before me personally appeared Marvin Johnson, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (of affirmed), did say that he the President of Shonto Point Homeowners Association, a Utah nonprofit corporation, and that the foregoing document was signed by him on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he acknowledged before me that he executed the document on behalf of the Association and for its stated purpose.

JEANNE C SKELLAN
NOTARY PUBLIC • STATE of UTAH
1411 N SUNRIDGE CIR
WASHINGTON, UT 84780
COMM. EXPIRES 12-4-2010

_____
NOTARY PUBLIC

IN FURTHER WITNESS WHEREOF, R. T. Marten, the President of Kayenta Homesites, Inc. (Declarant herein) (i) executes this Declaration and consents to the terms hereof; (ii) witnesses that he has read this Declaration and understands its terms; and (iii) represents that he has full power to bind Kayenta Homesites, Inc. and any and all partners or joint ventures, both in the past and current, associated with Kayenta Homesites, Inc., in relation the Properties.

KAYENTA HOMESITES, INC.

_____
R.T. Marten, President

STATE OF UTAH,)
:ss
County of Washington.)

On this 12th day of January, 2009, before me personally appeared R. T. Marten, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (of affirmed), did say that he is the President of Kayenta Homesites, Inc., and that the foregoing document was signed by him on behalf of the Corporation by authority of its Bylaws, Articles, or resolution of the Board of Directors and he acknowledged before me that he executed the document on behalf of the Corporation and for its stated purpose.

JEANNE C SKELLAN
NOTARY PUBLIC • STATE of UTAH
1411 N SUNRIDGE CIR
WASHINGTON, UT 84780
COMM. EXPIRES 12-4-2010

NOTARY PUBLIC

EXHIBIT "A"
LEGAL DESCRIPTION OF ANNEXABLE TERRITORY

Real property located in Washington County, Utah:

Section 24, 25, and 36 of Township 41 South, Range 17 West, Salt Lake Base and Meridian; Section 30, 31, and the West ½ of Section 19 of Township 41 South, Range 16 West, Salt Lake Base and Meridian; Section 1 of Township 42, Range 17 West, Salt Lake Base and Meridian; and the Northwest ¼ of Section 6 of Township 42, Range 16 West, Salt Lake Base and Meridian.

EXHIBIT "B"

EXCLUDED PROPERTY

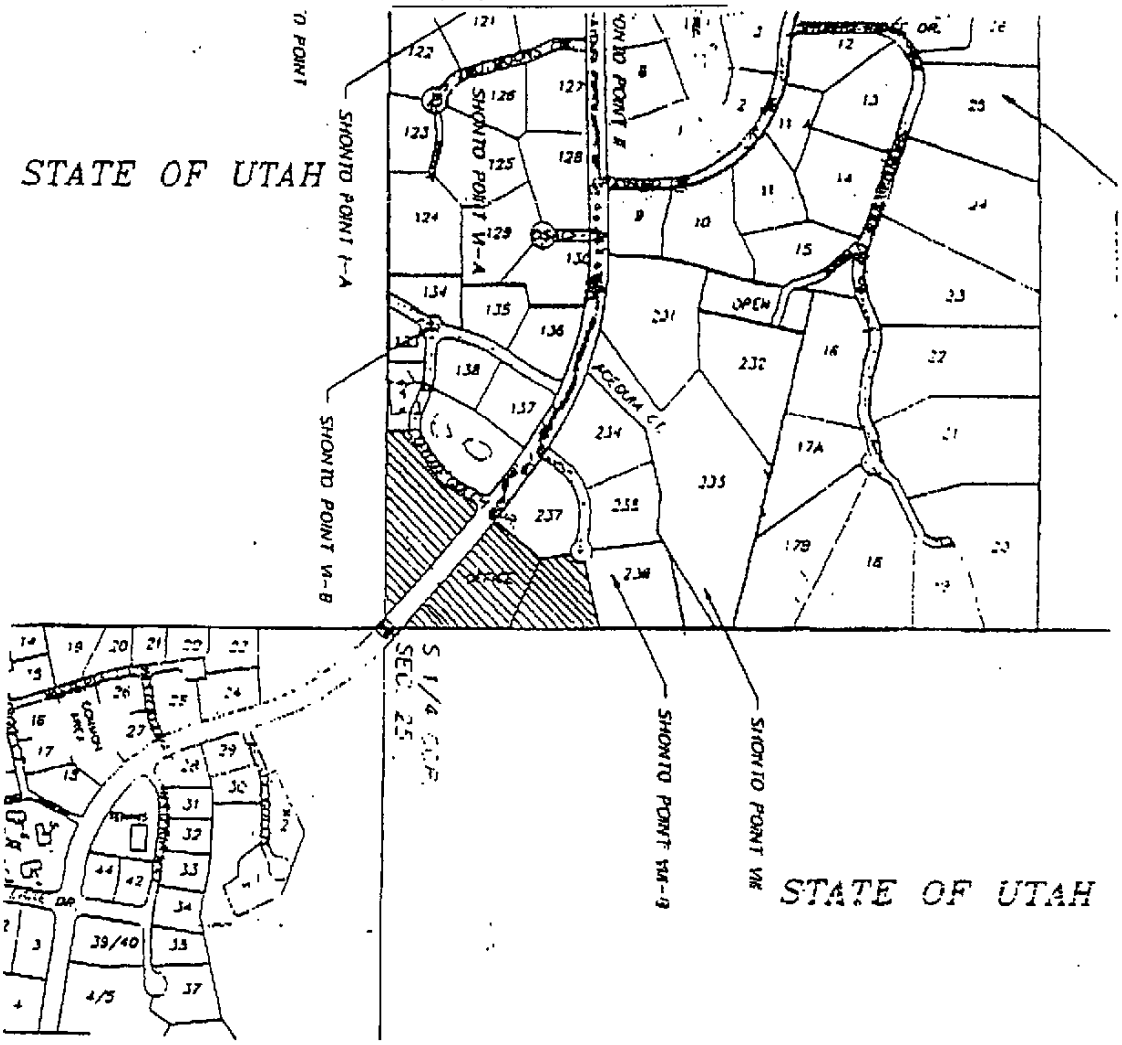

EXHIBIT "C"

EASEMENTS FOR ACCESS; AND OTHER EASEMENTS

The Properties are subject to the following easements for ingress and egress and other easements:

2.13.(a) An easement for ingress and egress common to Lots 8 and 9 and an easement for ingress and egress common to Lots 17 and 18, all as shown on the Plat for Shonto Point - Amended.

2.13.(b) A twenty-five (25) foot wide waterline and access easement as shown on the Plat for Shonto Point I-A .

2.13.(c) A landscape easement as shown on the Plat for. Shonto Point III.

2.13.(d) A fifteen (15) foot wide irrigation and maintenance easement and an easement for Lots 1 and 3, all as shown on the Plat for Shonto Point V.

2.13.(e) A fifteen (15) foot wide easement for an irrigation line as shown on the Plat for Shonto Point VI-A.

2.13.(f) A private access easement for Lot 232, and an access easement to Lot 231, all as shown on the Plat for Shonto Point VIII.

2.13.(g) A non-exclusive ingress and egress easement for Lot 432 as shown on the Plat for Shonto Point XIV-B.

2.13.(h) Access to an additional Lot in Shonto Point XV, reserved by Declarant solely unto itself for the right to establish access to one additional building Lot immediately east of Lots 333 and 334 of Shonto Point XV, said access to follow the boundary line between said Lots, and to allow for an access road up to 35 feet in width. This road establishment shall be carried out by Declarant at its option by an amendment to the Shonto Point XV Plat which Declarant reserves the right to do without requirement of obtaining permission from the Association or Lot Owners, except for the Lots on which access falls. (This reservation of access was originally set forth in the Supplemental Declaration, "Shonto Point Supplementary Declaration, Shonto Point VI-B Subdivision, Shonto Point VIII-B Subdivision, Shonto Point X-B Subdivision, Shonto Point XIV Subdivision, Shonto Point XV Subdivision," recorded on the Records of the Washington County Recorder as Entry No. 468059, in Book 822, at Pages 244-255).

2.13.(i) The cul-de-sac access to Lots 234-237 and other private roads in the Development leading thereto, provide access to a commercial site adjacent to Lot 236. All rights of access for ingress and egress and for utilities shall be reserved to the Kayenta Recreation Association, a Utah nonprofit corporation, its

successors and assigns. At such commercial site is presently located the swimming pool of the Kayenta Recreation Association. Said commercial site is intended for use as a community recreational property that may be made available through a private organization by membership. Although Declarant intends to make available this recreational facility, such use is not guaranteed, and construction of such recreational facilities is dependent upon economic factors, including the level of support for the facility shown by Owners in the Development.

2.13.(j) The Plat for Shonto Point XVI shows an area between Lots 495 and 496 which has been reserved for a future road. The Declarant reserves the right, but shall not have the obligation, to place a future road (which may be public or private) to obtain access to other real property to the east of Shonto Point XVI, as generally shown on the Plat for Shonto Point XVI. Said future road is not a part of either Lot 495 or 496, but shall be deemed, until the area is used for a road, as open space, owned by Declarant or Declarant's assigns.

2.13.(k) With respect to the Shonto Point XV Plat, Declarant reserves the right to realign the Tonto Drive access connecting Tuweap Drive to Evening Star and Kayenta Parkway. The street would be reestablished approximately two hundred (200) feet south of the present Tuweap intersection location. The new realignment would proceed east, then northeasterly to returning to its current map alignment approximately one hundred fifty (150) feet east of the southwest corner of Lot 348. The proposed future alignment would preclude Lot 337 from taking access off Tonto Drive and, therefore, is established in this covenant that access to Lot 337, Shonto Point XV, shall be limited to Tuweap Drive. If elected by Declarant, this realignment to Tonto Drive shall be accomplished by amending the Shonto Point XV Plat, which Declarant reserves the right to do without requirement of obtaining permission from the Association or Lot Owners, except for the Owners of Lot 347, who are directly affected (if different than Declarant or Declarant's assigns).

EXHIBIT "D"
RESTRICTIONS ON PARTICULAR LOTS

The following additional covenants, conditions and restrictions which shall apply to the Lots specified herein, in addition to all other covenants, conditions and restrictions provided for in this Declaration:

2.14.(a) Lots 46A, 47A, and 48A are designated by Declarant as historical sites and no construction shall be allowed upon, or Improvement erected upon Lot 46A, 47A or 48A, unless Declarant deeds a particular Lot to an adjoining Lot Owner, as provided below, and then subject to the terms and conditions as provided for in the deed for such Lot. Declarant reserves the right to convey any one or all of Lots 46A, 47A or 48A to an adjoining Lot Owner, or deed it to the Association as Common Area subject to such restrictions that Declarant may place upon it in connection with the deed. If Declarant shall deed to an adjoining Lot Owner either Lot 46A, 47A or 48A, it shall be deemed a part of the Lot to which such parcel is deeded for all purposes, and shall not be subject to any restriction, unless such restriction, if any, is placed upon such Lot in a deed restriction when conveyed by Declarant to the adjoining Lot Owner.

2.14.(b) Lot 34A, located between Lots 34 and 35, is reserved by Declarant for use as a road for subsequent phases of Shonto Point. No Improvement, other than a road constructed by Declarant shall be erected on Lot4A. Lot 34A shall remain in the ownership of Declarant until such time as it is declared to be Common Area used as a road in the expansion of Shonto Point.

2.14.(c) The Irrigation Waterline Easement for the "North Line" as set forth on the Plat for Shonto Point V is an easement reserved for the Ivins Irrigation Company. Two irrigation lines exist as approximately shown on the Plat for Shonto Pont V. The Ivins Irrigation Company has the right to enter the Properties to maintain, repair or replace the North line. On Lots 1 and 3, no construction or building of any kind shall be allowed within seven and one-half (7) feet of either pipeline. The Lot Owner and Declarant reserve unto themselves the right to make any claim against the Ivins Irrigation Company its assigns for installation of the South line, which line was not supported by a grant of easement. However, any transferee of the Owner shall not interfere with the South line or its maintenance without the express permission in writing of the Owner and Declarant, who further reserves the right to enter and remove the South line and/or to grant up to a fifteen (15) foot easement centered on the South line, if Declarant and the Lot Owner may elect to do so.

2.14.(d) The private road which belongs to Lot 2 of Shonto Point V is subject to an easement for ingress and egress for the benefit of Lots 1 and 3. The Owners of said Lots will be liable to pay their share of ongoing maintenance costs of a gravel road based on a majority vote of the three (3) Lot Owners (1 vote per Lot). Each share shall be determined by dividing said cost by the number of Lots regularly benefiting from the use of the road. The Owner of Lot 1 may elect not to use said road by ceasing to use such road, and filing an appropriate conveyance by Quitclaim Deed of all rights to use said road, to the Owners of Lots 2 and 3. In this event the cost of maintenance shall be mutually agreed upon between the Owners of Lots 2 and 3.

2.14.(e) The fifteen (15) foot irrigation waterline easement along the north subdivision boundary as shown on the Plat for Shonto Point Phase VI-A that is an easement reserved for the Declarant. One irrigation line exists within the fifteen (15) foot easement as shown on the Plat. The Ivins Irrigation Company is hereby granted a revocable license to enter the easement to maintain, repair or replace the said irrigation line. One Lots 120, 121, and 122, no construction or building of any kind shall be allowed within the said fifteen (15) foot easement. The Declarant reserves unto itself the right to make any claim against the Ivins Irrigation Company or its assigns for installation of said line, which line was not supported by a grant of easement. However, any transferee of the Owner shall not interfere with the irrigation line or its maintenance without the express permission in writing of the Declarant, who further reserves the right to enter and remove said line and/or grant to the Ivins Irrigation Company a permanent easement, if Declarant may elect to do so.

2.14.(f) The road which leads to Lot 124 is Common Area and is subject to maintenance by the Association and all utility easements.

2.14.(g) Immediately south of Lot 432, Shonto Point XIV, Declarant has provided for 0.21 acres of Open Area as shown of the Plat for Shonto Point XIV. This Open Area has access off of Evening Star Drive at its termination as shown on the Plat for Shonto Point XIV, and is established to provide for future parking for hikers who wish to access Three-Mile Wash from the trail head in this location. The Declarant may also build a portion of the trail on this Open Area.

2.14.(h) The northwesterly portions of Lots 422 and 423, Shonto Point XIV (as shown on the Plat for Shonto Point XIV) are designated Trail Easements. The area has been set aside specifically to provide for a narrow trail approximately three feet in width. The exact location of the trail, within each such Trail Easement, will be determined and constructed at the discretion of

the Declarant. The double-dotted lines on the Plat for Shonto Point XIV delineate the easterly boundary of the Trail Easement area.

2.14.(i) Lot 103A is not a buildable Lot.

2.14.(j) Open Area, 0.73 acres, as shown on the Plat for Tuweap - Shonto XII, is to be deeded as a part of Lot 303 of Shonto Point X, but shall remain as and is more appropriately described as an open parcel.

2.14.(k) As shown on the Plat for Shonto Point XIV, there is an open parcel to perpetually be utilized as a Trail Easement, which is to be conveyed by Declarant to the Owner of Lot 43 as part of Lot 43.

2.14.(l) Lots 9A and 10A of Shonto Point - Amended shall be treated as Open Space upon which no Dwelling or Improvement can be constructed upon, except as allowed for septic leach fields pursuant to Section 10.17.

2.14 (m) Lots 506, 507, and 508 of Posovi, Phase I contain "No Build Zones" as shown on plat. These areas are permanently restricted from building any improvements due to the delicate nature of these portions of the property due to their slope and visual effect.

2.14 (n) A "no build zone" is established along Cactus Gulch Wash and effects portions of lots 625 - 634 of Kwavasa, Phase I. The intent is to create a natural buffer for the wash by preventing construction near the sloping land which establishes the wash boundary. No structure shall be constructed within the no build zone boundary except the construction of a primitive trail.

2.14 (o) A no build zone has been established on lot 630 of Kwavasa, Phase I. The north boundary of which is approximately 15 feet north of an existing irrigation line. With the exception of courtyard space and a driveway, the construction of the residence shall remain clear of said no build zone. Courtyard construction, driveway access, and landscape improvements shall be designed, constructed, and used in such a way as to not adversely affect the integrity of the transmission pipe and/or the operation of the irrigation system. If the irrigation transmission pipes are relocated to the south of what currently exists, the no build zone shall be relaxed to within 15 feet of the new pipe location. If the irrigation transmission pipes associated with the irrigation transmission pipe easement are abandoned on lot 630, the no build zone shall be removed.

EXHIBIT "E" ACC TERRITORY

The ACC Territory shall be composed of the following:

(i) that part of Section 25 and the South 3/4 of Section 24, T41S, R17W, SLB&M, comprising the Properties and all that additional land in Section 25 and the South 3/4 of Section 24 not included in the Properties; (ii) all of Section 36, T41S, R17W, SLB&M, which is known as the Willow Springs Area, including its adjacent and expandable area; al (I (iii) all of the West 3/4 of Section 30, the West'/2 of Section 31, the NW 1/4 of the NE 1/4 of Section 31, all in T41S, R16W, SLB&M and the NW 1/4 of Section 6, T42S, R16W, SLB&M generally know as the Taviawk area, all of which is generally identified on the Kayenta Community General Plan on file with the Town of Ivins.

EXHIBIT "F"
BASIC ACC STANDARDS

8.4(a) Garage and Parking Area. All Dwelling Units shall have, as a minimum, a two-car enclosed garage of the dimensions of at least 10 feet x 20 feet per car together with an off-street parking area of at least the same dimensions with a capacity of at least two (2) cars without blocking access to the garage.

8.4(b) Height. The maximum height of any Improvement, or any portion of an Improvement, on a Lot shall be determined on a lot-by-lot basis by the ACC according to the ACC Rules and Regulations; provided that no portion of any Improvement on a Lot may extend more than 13 feet above the natural grade adjacent to that portion of the Improvement after massing the Improvement into the site, except for certain projections specifically provided for in the ACC Rules and Regulations such as chimneys. This covenant does not limit the ability of the ACC to require all, or any portion, of an Improvement on a Lot to be lower than 13 feet above the adjacent post-excavation natural grade. Rather, this covenant is meant to ensure that no portion of an Improvement on a Lot extends more than 13 feet above the post-excavation natural grade adjacent to that portion of the Improvement. At the sole discretion of Declarant, height limitations may be adjusted in future phases. Any such adjustment shall be expressed in the supplementary declaration for the affected phase

8.4(c) Exterior Surfaces. (i) Composition/Material: All major exterior wall surfaces of Dwelling Units, including dwelling wall surfaces, courtyard and retaining wall surfaces, shall be smooth or sandfinished plaster. Architectural features using other surface finishes may be used for accent provided owner obtains approval of ACC.

(i) (ii) Color: The Colors of all such plaster wall surfaces shall be consistent with and conform harmoniously with the existing exterior colors on the Properties. The composition, surface architectural features, and colors of all such exterior wall surfaces shall be subject to the prior written approval of the ACC. Material samples, texture samples and color samples shall be prepared by Declarant and made available to Owners to more clearly define surface finishes and treatments which are allowed on the Properties. Wall color, texture and finish materials may be further expanded and or restricted at the sole discretion of the Declarant.

8.4(d) Driveways. All driveways shall be paved or graveled. The color and material thereof shall be subject to the prior written approval of the ACC.

8.4(e) Courtyard and Patio Deck Surfaces, Walls and Fences. All walls shall have a plaster surface of a texture to match the Dwelling Unit or shall be made of red sandstone (mortarless joint), other indigenous rock (mortarless joint) or formed concrete. Surface architectural features made of other materials may be used. The erection, maintenance, alteration, location, composition, material, and color of all courtyard and patio surfaces (not shielded from view), walls, including surface architectural features, and fences on any Lot on the Properties shall be subject to the prior written approval of the ACC.

8.4(f) Roofs. For all lots identified in one of the Shonto plats, all roofs shall be horizontal, of minimal pitch, and have parapets at least three (3) inches higher than the adjoining roofs and shall be constructed to shield, substantially, the roof from view. The texture and color of the roof shall be subject to the prior written approval of the ACC. For all lots identified in either the Kwavasa or Posovi plats, roofs shall be either flat (1/4" per foot pitch) with parapet, or of low pitch hip and/or gable configuration with pitch not to exceed a 2 1/2 " :12 pitch ratio. The detailing of the roof including parapets, overhang projections and fascia treatments shall be established in architectural guidelines which shall be provided and supplemented by Declarant from time to time.

The Declarant shall establish roof color restrictions for Kwavasa and Posovi lots. The purpose of a roof color restriction is to render the roof as unobtrusive in appearance as possible when viewed from elevated vantage points of neighboring properties or common areas.

Pitched roofs for the Kwavasa and Posovi lots shall be finished with a limited selection of tile or other materials which shall be deemed acceptable as to texture, color and finish by Declarant.

8.4(g) Landscaping. A landscaping plan shall be submitted for ACC written approval prior to substantial completion of any Dwelling Unit. Landscaping shall emphasize and reflect the existing natural vegetation of the area and insure that existing natural vegetation remains preserved and undisturbed. Accordingly, the natural vegetation shall be preserved by removing it only where required to do so for the building site. Lawn areas shall be shielded from view and shall be limited to use areas defined by walls, structures or elevation changes. Landscaping shall be accomplished in accordance with such requirements as may be promulgated from time to time by the ACC including landscape guidelines established for that purpose.

8.4(h) Dwelling Unit Location. All of the dwelling unit, garage, driveway, courtyard areas, and off street parking areas shall be contained within the improved area of each lot. This improved area

(expressed in square footage) can occupy no more than an established percentage of the entire area of the lot and is referred to as the lot coverage. All vegetation and rock formations found outside of the improved area of each lot shall be protected and preserved in its natural state, unaltered by any construction or removal of its indigenous vegetation (except for the addition of vegetation as allowed by Declarant and the ACC).

(A) For the following Phases of Development, Shonto Point - Amended, Shonto Point I-A, Shonto Point II, Shonto Point III, and Shonto Point IV, and except as provided below for Lots of one (1 acre and larger, approximately sixty-seven percent (67%) of the Lot shall be preserved in its natural state and shall not be altered by the construction of the Dwelling Unit or other Improvement. The improved area comprising no more than thirty--three percent (33%) of the Lot shall include the Dwelling Unit and all other Improvements. The amount of the improved area may be reduced depending on the size and topography of the Lot.

For Posovi, Phase I and Kwavasa, Phase I, lots 625-639, the maximum lot coverage is established at twenty-five percent (25%). This provides for at least seventy-five percent(75%) of these lots to remain in their natural unaltered state. For Kwavasa, Phase I lots 601- 624, the maximum lot coverage is thirty percent (30%). This provides for at least seventy percent (70%) of these lots to remain in their natural unaltered state.

(B) For all other Phases of Development, and except as provided below for Lots of one (1) acre and larger, approximately seventy-five percent (75%) of the Lot shall be preserved in its natural state and shall not be altered by the construction of the Dwelling Unit or other Improvement. The improved area comprising no more than twenty-five percent (25%) of the Lot shall include the Dwelling Unit and all other Improvements. The amount of the improved area may be reduced depending on the size and topography of the Lot.

(C) Septic system leach fields may extend into the protected areas of each lot providing minimal disturbance of the natural vegetation is accomplished by carefully planning and executing the excavation and construction of same, with prior written approval of the ACC.

(D) Except as provided in this subparagraph (E) and in (F) below, R. T. Marten, individually as the Declarant's representative, shall (1) establish the site parameters on each Lot, within which the Owner, with approval of the ACC, may locate the Dwelling Unit and other Improvements, and (2) may reduce the

amount of improved area set forth in (A), (B), and (C) above for any Lot, when, in his judgment, the size or topography of the Lot so requires. Further, if R. T. Marten has not reduced the improved area of the Lot, the. ACC, when in its judgment the size and topography of the Lot requires, may direct, with the concurrence of R. T. Marten (or if R. T. Marten is deceased, incapacitated, or no longer affiliated with the Declarant, then with the concurrence of the Declarant), a reduction in the amount of improved area. Site parameters, Dwelling Unit and Improvement locations, and any reduction in the improved area of the Lot shall be submitted concurrently with the Owner's initial application to the ACC. Variations in site parameters not in excess of five (5) feet may be approved by the ACC upon an Owner's application in writing. Variations to site parameters in excess of five (5) feet may be approved by R. T. Marten, individually as the Declarant's representative.

(F) If R. T. Marten for any reason, including, without limitation, neglect, delay, death, incapacity, or termination of his interest in Declarant (1) fails to establish site parameters and/or provide such information concurrently with the Owner's application to the ACC, or (2) fails to consider an Owner's request for a variation in Dwelling Unit or Improvement placement in excess of five feet during the ACC Plan review process, then for each such separate failure of R. T. Marten, the determination shall be made by the Declarant, with the approval of the ACC.

(G) If for any reason without limitation, Declarant fails to perform the duties of its authority as given in 8.4 above within 30 days after being requested to so in writing, said determination(s) established in 8.4 shall be made by the ACC for the lot or lots which said determinations were requested.

8.4(i) Outside Installations. No exterior radio antenna, shortwave or "C.B." antenna, television antenna, satellite dish ' or other antenna of any type shall be erected. or maintained on the Properties, unless shielded from view to the extent practicable and approved in advance and in writing by the Board. No other projections of any type shall be placed or permitted to remain above the roof of any Dwelling Unit of Improvement on the Properties, except pipes, vents, ventilators, chimneys or other similar devices commonly located on rooftops. No patio cover, wiring, or air conditioning fixture, water cooler, water softeners, or other devices shall be installed on the exterior of a Dwelling Unit or Improvement or be allowed to protrude through the walls or roof of the Dwelling Unit or Improvement (with the exception of those items installed during the original construction of the

Dwelling Unit and approved by the Board), unless the prior written approval of the Board is obtained.

8.4(j) View Obstructions. No other Improvement or obstruction. shall be constructed, planted or maintained upon any Lot in such location or of such height as to unreasonably obstruct the view from any other. Lot in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Lot, the dispute shall be submitted to the ACC, whose decision in such matters shall be conclusive and binding. Any item or vegetation maintained upon any Lot which item or vegetation is exposed to the view of any Owner, shall be removed or otherwise altered to the satisfaction of the ACC, if it determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The ACC shall ensure that the vegetation on the Common Area, to the extent such is maintained by the Association, is pruned at such intervals so that the view of any Owner is not unreasonably obstructed.

8.4(k) Solar Energy Systems. Each Owner may install a solar energy system on his Lot which serves his Dwelling Unit so long as the design and location thereof receives the prior written approval of the ACC.

8.4(l) Lighting. No exterior lights of a high intensity nature, including, without limitation, mercury vapor, sodium vapor, metal halide, and florescent, shall be used on the Properties. All exterior lighting sources shall be shielded from direct view tc provide indirect or reflected light. All exterior lighting shall be approved in advance by the ACC. The direct point source of all interior lighting shall be shielded from view from the exterior of the Dwelling Unit or Improvement and from surrounding lots and common areas such as streets.

EXHIBIT "G"
USE RESTRICTIONS

10.1. Single Family Residence.

Subject to the provisions of Section 10.2, each Lot shall be used as a residence for a single family, except as may be authorized below.

10.2. Accountability of Members.

As more fully provided in Article XI(d), each Member shall be liable to the Association for any damage to the Common Area sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult.

10.3. Business or Commercial Activity.

Subject to the following exceptions, no part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes without the prior written approval of the Board; provided, however, that the Declarant, its successors and assigns, may use any portion of the Properties for a model home site, display and sales office in connection with the sale of Lots on the Properties by Declarant. Occupations without external evidence thereof, including, without limitation, traffic generation, which are merely incidental to the use of the Dwelling Unit as a residential home and for so long as such occupations are conducted in conformance with all applicable governmental ordinances shall be permitted.

10.4. Signs.

The Owners and the Declarant (i) desire to preserve the natural beauty and scenic vistas of the Properties, (ii) find that signs detract from the overall beauty and scenic quality of the Properties, and (iii) recognize that a minimal amount of signage, regulated as to time, place, location and manner of display, is beneficial to the Owners and the Declarant. Therefore, to maintain and preserve the scenic qualities of the Properties no sign, poster, display, banner, ribbon, streamer, billboard or other advertising device, or accessory, of any kind shall be displayed to the view of the public or Owners on any portions of the Properties, except for the four (4) types of signs specifically provided for below:

(a) Construction Sign.

One (1) construction sign supplied by the contractor, or Owner/builder, for each Lot during primary construction or reconstruction of a Dwelling Unit. Such sign (i) shall be located on the Lot facing its access Street adjacent to the construction entrance; (ii) shall contain the Lot number and street address, the contractor's name and telephone number, and the Lot Owner's name; (iii) shall extend no more than twenty-eight (28) inches above grade; (iv) shall not be larger than eighteen (18) inches by twenty-four (24) inches, (v) shall be of ivy greens as established more specifically in writing by rule of the ACC; and (vi) shall conform with exactness to the sample construction sign bearing the Board's stamp of approval and available at the Kayenta Office. All construction signs shall be removed upon the completion of construction of the Dwelling Unit.

(b) Dwelling Unit For Rent/Sale Sign.

One (1) for rent or for sale sign supplied by the Owner or the Owner's agent. Such sign (i) shall be located on the Lot facing its access Street adjacent to the driveway; (ii) may have affixed vertically to the back of the sign a sage green colored tube of not more than 3.5 inches in diameter and 11.5 inches in length for dissemination of additional information on that particular Dwelling Unit only; (iii) shall extend no more than twenty-eight (28) inches above grade; (iv) shall not be larger than eighteen (18) inches by twenty-four (24) inches, (v) shall be of sage green color; and (vi) shall conform with exactness to the sample for rent/sale sign bearing the Board's stamp of approval and available at the Kayenta Office. All for rent or for sale signs shall be removed not later than five (5) days after the rental agreement or for sale contract (as distinguished from closing papers) has been signed.

(c) Lot for Sale Sign.

One (1) Lot for sale sign supplied by the Owner or the Owner's agent. Unless otherwise approved by the Board, such sign shall be located at the midpoint of the Lot line facing the Lot's access Street. Such sign shall be no larger than the area of the top of the wood post upon which the sign shall be placed. The sign shall be covered by a plastic shield fastened to the post, and shall conform with exactness to the sample Lot.

sign bearing the Board's stamp of approval and available at. the Kayenta Office. The wood post shall be eight (8) inches square (according to standard lumber yard measurements), shall not extend more than twenty-four (24) inches above ground,

with the top of the post sloped not more than forty-five (45) degrees, and of a sage green color. The wood post may have affixed to the front a wood plaque containing the Lot number of the Lot being offered for sale The plaque must conform with exactness, including color, to the sample plaque bearing the Board's stamp of approval and available at the Kayenta Office.

(d) Special Event Signs.

The Board may approve other signs on the Properties for special events, including, without limitation, weddings and wedding receptions. The Board shall approve the size, color, and location(s) of the signs, as well as the length of time the signs are permitted to stand.

Signs not complying with these regulations may be removed by the Board without notice. The Board shall not be liable for any loss of any type associated with the removal of such offending signs.

10.5. Nuisances.

Equipment and Activities. The use or placement at any time on the Properties, or visible from the Properties, of the equipment or activities described in subsections 10.5(a) through 10.5(d) hereof shall, in the absence of prior written authorization by the Board, be deemed a violation of this Declaration and an action in law and/or equity may be brought for damages and/or injunctive relief;

(a) Tools and Equipment. Subject to the following exceptions during certain times and/or: for certain construction described in Section 10.5(a) (ii) and (iii) below, the operation of all noise or smoke-producing tools and equipment, including motorized lawn mowers, hand tools, trimmers and blowers, is prohibited;

(i) Noise or smoke-producing tools and equipment may be operated during the period between 8:00 a.m. and 6:00 p.m. on weekdays and Saturdays except Holidays;

(ii) Noise or smoke-producing tools and equipment used in the construction of Dwelling Units may be operated during the periods from 6:30 a.m. to 5:00 p.m. (May through September) and from 7:30 a.m. to 5:00 p.m. (October through April) on weekdays and Saturdays except Holidays;

(iii) Concrete pours as part of the construction of Dwelling Units may occur during the periods from 5:30 a.m. to 5:00

p.m. (May through September) and from 7:00 a.m. to 5:00 p.m. (October through April) on weekdays and Saturdays except Holidays;

(b) Sound Devices. Except as provided below, the operation of sound devices (including, without limitation, horns, whistles, bells, and audio speakers) outside the exterior walls of any Dwelling Unit, except security devices used exclusively to protect the security of a Dwelling Unit or its contents (including, without limitation, alarms and entryway intercoms), is prohibited.

The Board, in its sole discretion, may approve the reasonable use of sound devices outside a Dwelling Unit for special occasions, including, without limitation, weddings, wedding receptions, parties, and similar events. The Board shall determine the length of time the sound devices may be operated during each such special occasion.

Sound devices which have been permanently installed on or outside of the exterior walls of the Dwelling Unit in accordance with the Plans approved by the ACC as of the date this Declaration is Recorded or which have been included in the preliminary plans for a new residence, such plans being the initial plans required by the ACC Rules and Regulations, and submitted to the ACC prior to the date this Declaration is Recorded and conforming in all respects with the 1987 CC&Rs and existing ACC Rules and Regulations, shall be considered legally existing nonconforming uses, the operation of which is permitted at a conversational level or a level not audible to Persons at a neighboring Dwelling Unit, whichever is more restrictive;

(c) Other Items. The operation of the following is prohibited: (1) smoke-producing objects, items, Vehicles or Recreation Vehicles which produce unreasonable amounts of smoke so as to interfere with any Owner's enjoyment of his Lot; (2) items which may unreasonably interfere with television or radio reception of any Owner on the Properties; or (3) objects which create or emit noxious odors on any portion of the Properties. This shall not apply to smoke or odor producing objects or vehicles used in the ordinary course of construction or necessary maintenance.

(d) Such other activities, noises or odors as the Board, in its discretion, shall determine to be nuisances.

(e) Prohibition on the use of tools and equipment shall not apply to use for emergency purposes.

10.6. Other Nuisances.

(a) Trash. No rubbish, trash, plant waste, garbage or other waste material shall be kept or permitted upon any Lot, the Common Area or any Street visible from the Properties, except in sanitary containers or enclosed structures located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of neighboring Lots only when set out for a reasonable period of time not to exceed twenty-four (24) hours before and after scheduled garbage collection hours.

(b) Fires. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in enclosed areas

and designed in such a manner that they do not create a fire hazard. Contractor's "keep warm" fires are permitted during construction but must be contained within a suitable receptacle.

(c) Laundry. No clothing or household fabrics shall be hung, dried or aired on or over any Lot in such a way as to be visible from any place on the Properties.

(d) Plants. No plants or seeds infected with any insects or plant diseases shall be brought upon, grown or maintained upon the Properties.

(e) Sports Apparatus. No basketball backboard or other fixed or portable sports or recreational apparatus, without limitation, such as, swings, trampolines, slides and other play apparatus, shall be constructed or maintained on the Properties without the prior written approval of the Board, and then only if such apparatus is located on the Owner's Lot, is collapsible and/or shielded from view. Collapsible apparatus must be collapsed and shielded from view when not in use.

(f) Sports Courts. No sports court of any kind, including, without limitation, basketball, tennis or baseball courts, shall be permitted on the Properties, except as may be constructed and maintained by the Kayenta Recreation Association.

10.7. Parking and Vehicular Restrictions.

(A) Parking.

(i) General. It is the intent of the Association to restrict on-street driveway, and side parking as described in Section 8.4(a)(hereafter "court" or "court parking") as much as possible. It is a purpose of the Association and the Development to preserve and maintain, to the extent reasonably possible the natural vistas within the Development. It is the finding of the Association, that Vehicles parked outside of garages adversely impact the natural vistas. Thus, Vehicles of all Owners Residents and Occupants are to be kept in the garages of Lot Owners. By way of illustration each Owner must maintain his garage such that it is capable of parking the number of Vehicles for which it is designed and if a garage stall is vacant it must be utilized before parking in the driveway, court, or street under the limited times and purposes set forth in this subsection (i) and subsection (ii) - (iv) below. With the exceptions noted in (iii) and (iv) below no Vehicle may be parked or stored on the Properties outside a garage when not in use for more than six hours. Except for visitors' cars, motorcycles, pickup trucks or minivans which may be kept in the Dwelling Unit's parking area required under section 8.4(a), not to exceed fourteen (14) days during any thirty (30) day period for the 68 lots of the former KP, and not to exceed five (5) days during any thirty (30) day period for all of the lots of the former Shonto and all annexations to either KP or Shonto. This specific provision allowing visitors to park for a time period not to exceed fourteen (14) days only in the 68 lots of what is formerly known as KP shall only be amended at a meeting wherein a quorum of sixty percent (60%) of the 68 KP lot owners are present with a vote of sixty seven percent (67%) of said quorum. Recreational Vehicles may be parked in the Dwelling Unit's driveway or parking area to accommodate occasional guests or in preparation for or return from a trip, in each such case, for a period not to exceed

three (3) days during any thirty (30) day period, unless approved by the Board. Vehicles violating the restrictions of this Section 10.7 may be towed at the expense of the Owner of the Lot where the violating Vehicle is parked. Owners seeking a temporary variance from these parking restrictions must apply to the Board and must obtain written approval from the Board prior to making any parking variance arrangements.

(ii) Garages. Each Owner shall maintain his garage in a manner which ensures that it is capable of accommodating the number of Vehicles for which it is designed. Dwelling Units must have at a minimum a two-car garage. All garage doors must remain closed, except when necessary for ingress or egress, or temporary construction purposes. Without limiting the provisions of subsection (ii)(a) above, all Vehicles of residents and permanent occupants of a Dwelling Unit must be parked inside a garage and shall not be parked in the driveway or court parking area, except for the limited times and limited exceptions set forth in this Section 10.7. For purposes of this section 10 7, "permanent occupant" shall mean a person residing at the Dwelling Unit for more than 30 days in any consecutive 45-day period.

(iii) Street Parking. Contractors' vehicles may be parked on Streets on the Properties for a period of time not exceeding twelve (12) hours during a construction day. Street parking on the Properties for private social events and home and garden tours shall be permitted for a period of time not to exceed eight (8) hours.

(iv) Community Parking Areas. The community parking areas on the Properties shall be used only for temporary parking during daylight hours or in connection with nighttime community activities.

(v) Grandfathering.

(a) The provisions of this Section 10.7 (ii)

(b) Shall not apply to Owner, residents, and permanent occupants of a Dwelling Unit who occupied the Dwelling Unit prior to adoption of this Amendment where there currently are not sufficient garage parking stalls on the Owner's Lot to accommodate all vehicles of the residents and permanent occupants of the Dwelling Unit, and approval from the Board has been obtained. However, this grandfathered status will be lost and forever waived if as to that particular resident or permanent occupant if (i) the resident or permanent occupant does not reside in the Dwelling Unit on a regular basis for more than one year or (ii) the Dwelling Unit is sold to a third party purchaser. Within forty-five (45) calendar days of the date this Amendment is recorded in the records of the Washington County Recorder each Owner who claims grandfathered status must complete and execute a "Notice of Parking Rights" on a form provided by the Board. An Owner who fails to timely deliver the Notice of Parking Rights to the Board shall lose the right to park Vehicles of residents and permanent occupants outside of an enclosed garage, which loss of the right shall be effective at the end of the 45-day period.

(c) The Board reserves the right to verify any information submitted in relation to seeking grandfathered status.

(B) Vehicle Repairs. No Person shall conduct repairs or restorations of any Vehicle or Recreational Vehicle upon any portion of the Properties or visible from the Properties. However, such repair and restoration shall be permitted within an Owner's garage when the garage door is closed, provided that such activity may be prohibited entirely if the Board determines in its discretion that such activity constitutes a nuisance.

10.8. Animal Restrictions.

(a) Restrictions on Type and Number. No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on the Properties, except that the usual and ordinary domestic dogs, cats, fish, birds and other household pets (excluding, without limitation, horses, cattle, sheep, swine (including "pot-belly" pigs), goats and other such farm animals) may be kept on Lots, provided that they are not kept in unreasonable quantities, or bred or maintained for commercial purposes. As used in this Declaration, "unreasonable quantities", with respect to dogs and cats, shall ordinarily mean more than two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. In any case, the Board may not approve an aggregate of more than four (4) dogs and/or cats to be kept per household, subject, in all cases, to local ordinances and regulations.

(b) Animal Nuisances and Liability. The Board shall have the right to prohibit the 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 Properties must be either kept within an enclosure or on a leash being held by a person capable of controlling the animal. It shall be the duty and responsibility of each such Owner to clean up after such animals. Furthermore, any Owner shall be 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 Properties by such Owner or by members of his family, his tenants or his guests.

Upon Notice of Noncompliance by the Board and Right to Hearing, the Board shall determine whether there is in fact a noncompliance, and, if so, the nature thereof and the estimated cost to correct the problem, or make provisions for removal of the problem animal.

10.9. Insurance and Governmental Requirements.

No Owner shall permit or cause anything to be done or kept on the Properties, or on any Street visible from the Properties, which may increase the rate of insurance on the Properties, or result in the cancellation of such insurance, or which will obstruct or

interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit.

10.10. Construction.

Construction of Dwelling Units shall be diligently pursued to substantial completion which generally shall occur within fifteen months of commencement, subject to extensions by the ACC in its sole discretion. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or his contractor. The Owner shall post with the Association, in advance of the commencement of construction, a refundable cash security deposit in the amount of one thousand dollars ($1,000) or in another amount as established by the Board of Trustees by rule or regulation, for the purpose of repairing, among other things, streets and landscape damaged during construction together with construction clean-up expenses.

10.11. Temporary Buildings.

No outbuilding, tent, shack, shed or other temporary building or Improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Properties either temporarily or permanently.

10.12. Drilling.

Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Properties, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth-coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted on the Properties. The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot (the improved area of a Lot being established as provided for in Section 8.4(h)).

10.13. Further Subdivision; Lease Provisions.

No Owner shall further partition or subdivide his Lot, including without limitation any division of his Lot into time-share estates or time-share uses; provided, however, that this

provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot; or (3) to transfer or sell any 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. Any owner may use two or more lots for one residence, provided that the owner file a document with the Association declaring this intent. In this event the owner shall pay Association dues for only one lot of ownership. This right shall only be in effect after the issuance of a Certificate of Occupancy on the residence by the City of Ivins. In this event, all utilities easements on lot lines common to the merging lots shall be deemed automatically abandoned where not reasonably needed. The terms of any lease or rental agreement shall be made expressly subject to this Declaration and the Bylaws of the Association. Any failure by the lessee of such Lot to comply with the terms of this Declaration, the Bylaws of the Association or the Rules and Regulations shall constitute a default under the lease or rental agreement.

10.14. Drainage.

There shall be no interference with or alteration of the established drainage pattern over any Lot on the Properties, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, and shall include drainage from the Lots on the Properties onto the Common Area.

10.15. Water Supply and Sewage Disposal Systems.

No individual water supply or sewage disposal system shall be permitted on any Lot on the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations, if any, of the ACC and of any public agency having jurisdiction over the Properties, the Washington County, Utah, Health Department, and all other applicable governmental authorities.

10.16. Exception for Declarant.

Notwithstanding the restrictions contained in this Section 10, Declarant shall have the right to use any Lot or Dwelling Unit owned or leased by it in furtherance of any reasonably necessary or appropriate construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate the sale of Lots and/or Dwelling Units owned by Declarant. This exception shall not extend to the ordinary

brokerage activities of Declarant as to which the Declarant shall be subject to the same rules and regulations as are other real estate brokerages.

10.17. Waste Water Leach System Parcels.

The following Lots shall be limited to subsurface leach field purposes and no construction will be permitted thereon; 3A, 6A, 7A, 9A, 10A, 16A, and 103A. When leach fields have been installed, the Owner is required to provide landscaping in the manner which will supplement natural vegetation as approved by the ACC. No fencing or structures are permitted in these areas.

EXHIBIT H

Kayenta Planned Future Development