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RECORDED FOR WESTGATE DEVELOPMENT

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

WESTGATE PARK

A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS DECLARATION (the "Declaration") is made this 28 day of February 1994, by **WESTGATE, INC.**, a Utah corporation ("Declarant"), in its capacity as the owner and developer of Westgate Park, an expandable Planned Unit Development, Provo, Utah.

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 Purpose. The purpose of this instrument is to provide for the preservation of the values of both Lots and improvements within Westgate Park, a Planned Unit Development in Provo, Utah (the "Development"), and indirectly to preserve the values of lots and common areas within The Villages of Westgate (as herein defined) of which the Development is an integral part.

1.02 Effectiveness. From and after the effective date hereof: (a) Each part of the Development and each Lot and improvement constructed thereon lying within the boundaries of the Development shall constitute but constituent parts of a single Planned Unit Development; (b) The Development shall consist of the Lots and improvements which are described and depicted on the Plat, together with such additional Lots and improvements as may come into existence pursuant to the provisions relating to annexation or expansion of the Development; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plat of the Development shall consist of the instrument which is identified as Plat "A", Westgate Park, A Planned Unit Development, Provo, Utah, and filed for record concurrently with this Declaration in the office of the Utah County Recorder, Provo, Utah, as the same may be amended, and any subsequent plats which may be filed for record pursuant to the provisions hereof relating to annexation or expansion of the Development.

ARTICLE II

DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

2.01 Additional Land shall, at any point in time, mean such part of the land in Provo City, Utah County, State of Utah, set forth and described in Exhibit A hereto, subject to the limitations set forth in Article III hereof.

2.02 Association shall mean WESTGATE PARK OWNERS ASSOCIATION, an unincorporated association, and its successors and assigns.

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

2.04 Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles IX, X, XI and XII.

2.05 Declarant shall mean WESTGATE, INC., a Utah corporation, and its successors and assigns, if any, as developers of the Development.

2.06 Declaration shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of Westgate Park, a Planned Unit Development (Expandable)" as the same may be supplemented or amended from time to time.

2.07 Development shall mean the Planned Unit Development known as Westgate Park as it exists at any given time.

2.08 Lot shall mean any of the separately numbered and individually described parcels of land within the Development as designated on the Plat intended for single family residential use.

2.09 Mortgage shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and Mortgagee shall mean any mortgagee or beneficiary under a Mortgage.

2.10 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

2.11 Plat shall mean and refer to the subdivision plat covering the Property entitled "Plat "A", Westgate Park Planned Unit Development, Provo City, Utah County, Utah," prepared and certified to by David V. Thomas (a duly registered Utah Land Surveyor holding Certificate No. 6167), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County, Utah concurrently with this Declaration. Such term shall also include any subdivision plat or plats pertaining to any portion of the Additional Land as and when the same is annexed and added to the Development pursuant to the annexation provisions of Article III of this Declaration.

2.12 Property shall mean all land covered by this Declaration, including Lots and other land annexed to the Development as provided in this Declaration. The initial Property shall consist of the land described in Section 3.01 of Article III hereof.

2.13 Reimbursement Assessment shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing The Villages of Westgate Owners Association for costs incurred in bringing the Owner or his Lot into compliance with the provisions of this Declaration, the Bylaws or rules and regulations of the Association or The Villages of Westgate Owners Association, or any other charge designated as a Reimbursement Assessment in this Declaration, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provisions of this Declaration.

2.14 The Villages of Westgate shall mean the approximate 44 acre residential complex in which the Development is a Village, distinguishable from four other Villages within such complex by its Lot sizes,

architectural style and location; and The Villages of Westgate Master Declaration shall mean the Master Declaration of Protective Covenants, Conditions, Easements, Reservations and Restrictions For The Villages of Westgate (An Expandable Planned Unit Residential Complex), recorded in the office of the Utah County Recorder on August 13, 1992, in Book 2982, at Page 706, as Entry No. 41376 (as said Declaration may have heretofore been amended or supplemented) to which all of the separate Villages within The Villages of Westgate, including the Development, are subject; and The Villages of Westgate Owners Association shall mean the Utah non-profit corporation to which all the residential property owners within The Villages of Westgate complex are members, including Owners in the Development.

ARTICLE III

PROPERTY DESCRIPTION AND ANNEXATION

3.01 Submission. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property in Provo City, Utah County, State of Utah:

Beginning at a point which is North 89° 27'54" East 964.55 feet and South 2166.20 feet from the North Quarter Corner of Section 3, Township 7 South, Range 2 East, Salt Lake Base and Meridian; thence East 252.12 feet; thence South 73° 00'32" East 110.85 feet; thence along the arc of a 206.00 foot radius curve to the right 136.14 feet (curve has a central angle of 37° 51'59", chord = 133.68 feet bearing North 43° 56'37" East); thence North 114.65 feet; thence East 50.00 feet; thence North 122.14 feet; thence South 89° 07'01" East 290.03 feet; thence South 109.67 feet; thence West 20.00 feet; thence South 156.00 feet; thence West 18.35 feet; thence South 100.00 feet; thence West 245.00 feet; thence South 16° 36'19" West 45.70 feet; thence North 73° 23'41" West 128.00 feet; thence South 16° 36'19" West 60.44 feet; thence along the arc of a 200.00 foot radius curve to the left 29.31 feet (curve has a central angle of 08° 23'43", chord = 29.28 feet bearing South 12° 24'27" West); thence North 73° 00'32" West 90.65 feet; thence along the arc of a 200.00 foot radius curve to the left 59.31 feet (curve has a central angle of 16° 59'28", chord = 59.09 feet bearing North 81° 30'16" West); thence West 203.13; thence North 128.00 feet to the point of beginning containing 3.93 acres.

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, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (other than buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete residence and other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property

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. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah; provided, however, that nothing herein shall be deemed to extinguish any Servient Use Easement affecting certain Lots as set forth on the Plat and as further described in Section 5.02 hereof, which easements shall exist in perpetuity.

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; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property 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, lines, cable, wires, utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION AND IN THE VILLAGES OF WESTGATE MASTER DECLARATION, INCORPORATED HEREIN AS FULLY AS IF SET FORTH HEREIN AT LENGTH.

3.02 Annexation by Declarant. Declarant may, from time to time, expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following Section 3.03, the annexation of any such land shall become effective upon the concurrent recordation in the office of the County Recorder of Utah County, Utah, of a Plat of such Additional Land signed by the owner thereof and of a supplemental declaration ("Supplemental Declaration") which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment or supplement thereto.

3.03 Limitation on Annexation. Declarant's right to annex land to the Development shall be subject to the following limitations:

- (a) The annexed land must be part of the Additional Land set forth and described herein;
- (b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots existing in the Development to exceed forty-three (43);
- (c) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Development must consent, through appropriate instruments recorded in Utah County, Utah, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Development must be subdivided into Lots designed to be used for purposes similar to those contemplated by this Declaration, with all residential improvements, Lots and uses being similar in concept to those in Plat "A"; provided, however, that in each succeeding phase of the Development the architectural style of the residential improvements within such phase must remain consistent throughout such succeeding phase and in harmony with that of prior phases;

(e) Declarant's right to annex land to the Development shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

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

3.05 Other Annexation. Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Development and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3.03 of this Article III shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordations and comply with all the other requirements referred to in Section 3.02 of this Article III.

ARTICLE IV

DUTIES AND OBLIGATIONS OF OWNERS

4.01 Maintenance and Repairs. Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good repair at all times and in conformity with the architectural control provisions set forth in Article VII hereof. In the event of the damage or destruction of any residential improvement, the Owner of the Lot on which such improvement is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. The painting or repainting, remodeling, rebuilding or modification of any residence exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.

4.02 Insurance. Notwithstanding such insurance coverage as may be provided herein by the Association, each Owner shall obtain and maintain in force such homeowner hazard and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances, Mortgagee requirements, etc.

4.03 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any assessments provided for in this Declaration as well as in The Villages of Westgate Master Declaration, and for the observance of the rules and regulations promulgated by the Association from time to time.

4.04 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration, following such transfer.

ARTICLE V

CONVEYANCES AND PROPERTY RIGHTS

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

Lot No. _____ as identified in the Plat recorded in the office of the Utah County Recorder in Book _____, Page _____, as Entry No. _____, contained within Plat _____ of Westgate Landing, A Planned Unit Development, SUBJECT TO the "Declaration of Easements, Covenants, Conditions and Restrictions of Westgate Landing, A Planned Unit Development (Expandable)," recorded in the office of the Utah County Recorder in Book _____, at Page _____, as Entry No. _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

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.

5.02 Servient Use Easements. Certain Lots in the Development are subject to the reservation of a Servient Use Easement ("SUE") in favor of an adjacent Lot or Lots with which it shares common side or rear yard boundaries. All SUEs are set forth and described in the Plat and are shown on the Lots upon which they exist. To the extent a Lot is burdened by a SUE in favor of an adjacent Lot such burdened Lot may be referred to herein as a "servient estate". To the extent a Lot is benefitted by a SUE in its favor from an adjacent servient estate, such benefitted Lot may be referred to herein as a "dominant estate". A Lot may be both a servient and a dominant estate or it may be either one or the other. The following provisions shall apply with respect to SUEs and the Lots in the Development:

(a) The SUE serving each dominant estate shall be for the sole and exclusive use and benefit of such dominant estate for drainage or landscaping but not for permanent structures requiring a building permit.

(b) Each SUE shall be fenced and the wall of the residence structure located on the servient estate shall be constructed on the SUE line and shall comprise a part of said fence. Fences from either end of such wall shall not be constructed higher than allowed by the ordinances of Provo City.

(c) The owner of the servient estate shall have the right at all reasonable times to enter upon the SUE for purposes of maintenance and repair of the servient estate, including the fence; provided that such entry for such purposes shall not exceed a reasonable cumulative period of thirty (30) days per calendar year; and provided further that any landscaping, shrubbery or planting in the SUE which is removed or damaged by the owner of the servient estate shall be repaired or replaced at the expense of the owner of the servient estate causing the damage,

(d) The owner of the servient estate shall have the right of drainage over, across and upon the SUE for water drainage from any structure located upon the servient estate and the right to maintain eaves and appurtenances thereto, together with the portions of residence structures adjacent to or forming a part of the fence.

(e) The owner of the servient estate shall not alter the wall of the residence structure located along the SUE and forming a part of the fence by placing windows or other openings therein which shall be permanently prohibited. Change of surface texture, materials or color of such structure forming a part of the fence (or of the remainder of the fence) from that of original construction shall be subject to approval of the Architectural Control Committee.

(f) The owner of the dominant estate shall not attach any object to the fence or to any structure belonging to the servient estate or disturb the grade of the SUE or otherwise act with respect to the SUE in any manner which would damage the servient estate.

(g) Any damage caused by the owner of the dominant estate to the servient estate or to structures located thereon or forming part of the fence shall be repaired and restored to its or their former state by and at the expense of the owner of the dominant estate.

(h) All SUEs are perpetual in nature, are not conditional and shall not be extinguishable or alterable in any manner by unilateral or joint action of Owners of the servient or dominant estates.

ARTICLE VI

USE RESTRICTIONS

6.01 Residential Use. The Property is restricted to single family residential use pursuant to applicable provisions of Provo City Ordinances and each Lot and Owner are subject to the uses and restrictions imposed thereby. No Lot or residence constructed thereon shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

6.02 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, in addition to any restrictions set forth in Article VI of The Villages of Westgate Master Declaration, incorporated herein by reference as fully as if set forth herein at length, and to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 10.03 of this Declaration:

(a) No Lot or residential improvement thereon or any part thereof shall be used as a "Baching Apartment" or be occupied by "Baching Singles" as such terms are defined and intended in Title 14, Zoning, of the Provo City Ordinances as of the date hereof.

(b) No Lot or residential improvement or any part thereof shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in Title 14, Zoning, of the Provo City Ordinances as of the date hereof.

(c) No lease of any Lot or residence shall be for less than the whole thereof.

(d) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any residential improvement thereon except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including leash laws, adopted by the Board pursuant to Section 10.03 of this Declaration.

(e) No parking of vehicles of any kind on the streets or parking areas within the Development shall be permitted except as set forth in rules and regulations adopted by the Board pursuant to Section 10.03 of this Declaration.

(f) No outside television or radio aerial or antenna, or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any residential improvement thereon except pursuant to written approval of the Architectural Control Committee pursuant to rules and regulations adopted by it and/or as set forth in this Declaration.

(g) No residential improvement constructed on any Lot within the Development shall (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a basement.

ARTICLE VII

ARCHITECTURAL CONTROL

7.01 Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

7.02 Submission to Committee. No residential improvement, accessory of, or addition thereto shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any such improvements, accessories or additions shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

7.03 Standard. No minimum standards for construction shall be set forth herein although the Committee may adopt basic guidelines for the benefit and aid of Owners to prepare plans and specifications. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee, in its sole discretion and best judgment, shall ensure that all improvements, materials, construction, landscaping, and alterations on Lots within the Development are in keeping with a definite, though undefined standard, and that once established, future construction shall conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location materials, and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefor meet such criteria, the Committee must approve the same.

7.04 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

7.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas, if any, in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

7.06 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article VII.

7.07 Declarant's Obligation. Declarant hereby covenants in favor of each Owner (a) that all residential improvements to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, all Lots and Common Areas of the Development will be located approximately in the locations shown on the Plat.

ARTICLE VIII

LANDSCAPING

8.01 Front Yard. As part of the construction of residential improvements in the Development, Declarant shall improve each Lot with front yard landscaping pursuant to standards agreed to between Declarant and Provo City.

8.02 Rear Yard and Side Yards. Each Owner shall, on or before the expiration of one (1) year from the taking of possession of his or her Lot and residence, complete the landscaping and planting of such Lot not theretofore completed by Declarant pursuant to Section 8.01, including any SUE.

8.03 Maintenance. Each Owner shall maintain the landscaping, shrubbery and plants on his Lot and within any SUE benefitting his Lot in an attractive and well-kept condition at all times.

8.04 Violation of Covenants. Failure to comply with the covenants and provisions of this Article VIII shall subject the Owner to action by the Association and a potential Reimbursement Assessment pursuant to Section 12.02 of this Declaration.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES IX, X, XI AND XII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE IX

BYLAWS

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

9.02 Voting Rights. The Association shall initially have two (2) classes of voting memberships, votes of both classes being of equal value as to all matters:

(a) Class A. Each Owner, including Declarant, shall be a Class A member entitled to one (1) vote for each Lot in which such member holds the interest required for such Class A membership.

(b) Class B. Declarant shall be the only Class B member and shall be entitled to one (1) vote for each Association Class A membership outstanding at such time (in addition to any votes to which it is entitled as a Class A member); provided, however, that such Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) ninety (90) days following the date upon which the total outstanding Class A memberships, other than those held by Declarant, equal the total number of Class B votes to which Declarant is entitled pursuant to the provisions of Section 9.02(b); or

(ii) on December 31, 1998; or

(iii) upon surrender of said Class B membership by Declarant in writing to the Association.

Upon the lapse or surrender of the Class B membership, as provided in this Section 9.02(b)(i) and (ii), Developer shall be and thereafter remain a Class A member as to each and every Lot in which Declarant holds the interest otherwise required for Class A membership.

9.03 Multiple Ownership Interests. 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 between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting or in writing by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

9.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owners of Lots.

9.05 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

9.06 Annual Meetings. Annual meetings of the membership of the Association shall be held in the month of September of each year beginning in the year 1995 on such day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than September may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected Trustees of the Board, as needed, pursuant to the provisions of this Declaration and such other business of the Association properly placed before each meeting.

9.07 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at

a special meeting except as stated in the notice therefor unless consented to by seventy-five percent (75%) or more of the Owners present, either in person or by proxy.

9.08 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

9.09 Quorum. Owners present at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least thirty percent (30%) of the total Association votes eligible to vote.

9.10 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 9.09.

9.11 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which the new Board has been elected.

9.12 Initial Composition of Board. Declarant alone shall have the right to select the initial Board of Trustees which may be composed of less than five (5) Trustees but not less than three (3), none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the expiration of three (3) years after the first conveyance of title to any Lot Owner or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws set forth in Section 9.13, whichever event shall first occur.

9.13 Board of Trustees: Composition, Election, Vacancies. The Association, through its Board of Trustees, is responsible for the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 9.12, the Board shall be composed of five (5) Trustees, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The Owners may increase the maximum number of Trustees to seven (7) at any meeting of Association members called for such purpose. At the first meeting of Owners to elect a Board of Trustees two (2) shall be elected to a three-year term, two (2) to a two-year term, and one (1) to a one-year term. As Trustees' terms expire, new Trustees shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Trustees from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Trustee they were appointed to replace. The Board shall designate one of its members as the Development's Trustee to serve on the Board of The Villages of Westgate Owners Association as provided in Article III of The Villages of Westgate Master Declaration.

9.14 Indemnification of Board. Each of the Trustees shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Trustee may become involved by reason of being or having been a member of said Board.

ARTICLE X

BYLAW

DUTIES AND POWERS OF THE ASSOCIATION

10.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Bylaws or this Declaration, the Association working through its Board, shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall ensure complete architectural control compliance within the Development pursuant to the applicable provisions of this Declaration.
- (c) The Association shall work closely and maintain liaison with The Villages of Westgate Owners Association to ensure that the Development, as a separate Village within The Villages of Westgate residential complex, is in complete compliance with the provisions of this Declaration and The Villages of Westgate Master Declaration to which the Development and its Owners are also subject. In carrying out its duties in this regard, the Association may request that The Villages of Westgate Owners Association take action, or the Association may act as agent for The Villages of Westgate Owners Association in taking action, which could require the imposition of a Reimbursement Assessment on a Lot within the Development.
- (d) The Association shall obtain and maintain in force policies of liability or other insurance deemed necessary in the discretion of the Board and approved by a majority of the Owners.

10.02 Powers and Authority of the Association. The Association shall have the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- (a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.
- (b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance and repair of Lots (to the extent necessitated by the failure of the Owners of such Lots) the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:
 - (i) Construction, maintenance and repair services as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners pursuant to Section 10.01 (d).

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

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

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

10.03 Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of this Declaration, may adopt, amend, repeal and enforce reasonable rules and regulations governing all matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development.

10.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board or any committee of the Board.

ARTICLE XI

BYLAWS

THE VILLAGES OF WESTGATE OWNERS ASSOCIATION

11.01 Membership. Upon acquiring title to a Lot, the Owner thereof automatically becomes a member of The Villages of Westgate Owners Association which membership is appurtenant to and may not be separated from the interests of ownership in any Lot.

11.02 Purpose. The purpose of The Villages of Westgate Owners Association is to protect and enhance value, desirability, attractiveness, and quality of environment of The Villages of Westgate as a multi-style residential complex. In furthering such purposes, The Villages of Westgate Owners Association is empowered to enforce the provisions of The Villages of Westgate Master Declaration which could result in the imposition of a Reimbursement Assessment against a Lot and its Owner.

11.03 Board of Trustees. The Development, and consequently the Association, shall be represented in The Villages of Westgate Owners Association by one of the members of the Association's Board selected by the Board to be a member of the Board of Trustees of The Villages of Westgate Owners Association as provided in Article III of The Villages of Westgate Master Declaration.

ARTICLE XII

BYLAWS

ASSESSMENTS

12.01 No Development Assessments. Inasmuch as there are no Common Areas within the Development for which the Association has current maintenance or repair obligations, there are no Development assessments, either annual or special.

12.02 Reimbursement Assessment on Specific Lot. The Board may levy at any time a Reimbursement Assessment on any Lot as to which the Association shall incur any expense for maintenance or repair, work performed, or enforcement action taken, pursuant to Section 10.01(c), Section 8.02 or other provisions of this Declaration. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work.

12.03 Other Assessments. By reason of the Development's being a separate Village within The Villages of Westgate complex, each Owner and Lot within the Development are subject to the assessments and enforcement procedures related thereto as set forth in The Villages of Westgate Master Declaration and, to the extent provided in this Declaration, the Reimbursement Assessment referred to herein which may be enforced by the Villages of Westgate Owners Association.

ARTICLE XIII

MISCELLANEOUS

13.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

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

notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Association or any member of the Architectural Control Committee.

13.03 Amendment. Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by Owners (including Declarant) who collectively hold at least seventy-five percent (75%) of the total outstanding votes in the Association. The foregoing right of amendment shall, however, be subject to the right to supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration. In addition, such right of amendment shall be subject to the following qualification: no amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) or to The Villages of Westgate Owners Association shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant or by such Association, as the case may be.

13.04 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 or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 13.04:

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

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

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

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

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

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

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

13.08 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration:

- (a) Any Owner;
- (b) The Association; or
- (c) Any Mortgagee.

The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

13.09 Duration. This Declaration shall remain in effect until such time as there is recorded in Utah County, Utah, an instrument of termination which is executed by all of the parties required by Section 13.03 hereof, plus the Mortgagee of each and every Lot.

13.10 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

EXECUTED by Declarant on the day and year first above written.

WESTGATE, INC.,

By: H. M. Magleby
H. M. Magleby, President

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On this 28 day of February 1994, personally appeared before me, H. M. Magleby, who, being by me duly sworn, did say that he is the President WESTGATE, INC., a Utah corporation; that said instrument was signed by him in behalf of said corporation pursuant to authority; and that said corporation executed the same.

Sandra Steere
NOTARY PUBLIC

