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ELIZABETH PALMIER, Recorder  
WASATCH COUNTY CORPORATION  
For: VILLAGE COMMUNITIES LC

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENT  
FOR  
**MIDWAY VILLAGE**  
A Planned Unit Development

THIS DECLARATION is made this 25<sup>th</sup> day of January,  
2005 by the Declarant as follows:

**RECITALS**

WHEREAS, VILLAGE COMMUNITIES L.C. (hereinafter referred to as "Declarant"), is the owner of certain real property (the "Property") located in WASATCH COUNTY, State of Utah as more particularly described in that certain plat map containing Nineteen (19) lots entitled Midway Village, a Planned Unit Development, recorded in the official records of the office of the County Recorder of WASATCH COUNTY, State of Utah as Entry \_\_\_\_\_ on \_\_\_\_\_, 2005; and

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

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

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

WHEREAS, the Declarant will develop and convey all of

the Property pursuant to a general plan for all of the Property and subject to those certain protective covenants, conditions, restrictions, reservation of easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth: and

WHEREAS, the Declarant may execute, acknowledge, and record a Supplemental Declaration affecting only a "Phase" (as such term is hereinafter defined) so long as the Declarant owns all the real property to be affected by such Supplemental Declaration; and

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

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

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

## ARTICLE I

### Definition

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

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

**Section 2. "Articles"** shall mean the Articles of Incorporation of the Association which have been or forthwith shall be filed in the Division of Corporations of the Department

of Commerce of the State of Utah, as such Articles may be amended from time to time.

**Section 3. "Common Assessment"** shall mean the charge against each Owner and his Lot, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing, managing and operating the Property (other than costs associated with providing services covered by the Optional Assessment, if any), which charge is to be paid uniformly and equally by each Owner to the Association, as provided herein.

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

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

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

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

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

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

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

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

**Section 12. "Common Expenses"** shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefiting the Common Area, and all recreational facilities thereon; the costs of fire, casualty and liability insurance covering the Property or portions thereof; and the cost of bonding of the Directors of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the cost of any other item or items designed by, or incurred by, the Association for any reason whatsoever in connection with the Property, for the benefit of all of the Owners.

**Section 13. "Declarant"** shall mean and refer to VILLAGE COMMUNITIES, L.C, a Utah limited liability company, and the successors and assigns of the said limited liability company or its individual members, so long as the said limited liability company and/or its individual members assign such rights of Declarant hereunder to any such successor and assignee by an express written assignment.

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

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

**Section 16. "Dwelling Unit"** shall mean and refer to a "Single Family Detached House" as that term is defined herein,

located on a Lot designed and intended for use and occupancy as a residence by one or more families.

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

**Section 18. "Improvement"** shall mean all structures and appurtenances thereto of every type and kind, (and any alteration or addition thereto), including but not limited to buildings, out buildings, walkways, sidewalks, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, protective screens and awnings required by governmental entities, stairs, decks, landscaping, hedges, windbreaks, plants, trees, shrubs, streams, ponds, poles, or signs.

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

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

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

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

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

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

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

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

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

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

**Section 29. "Owner"** shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is a part of the Property, including buyers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

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

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

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

**Section 33. "Single Family Detached House"** shall mean a building: (1) which is located on a privately owned Lot, (2) which is not attached to another building, (3) which is used as a dwelling for a single family, (4) which has a private yard on all four sides with the following minimums: front yard from lot line to front of garage - 25 feet; rear yard from lot line to rear of home - 15 feet; side yards - 5 feet and 5 feet (excluding encroachments for cantilevered fireplaces and/or cantilevered bay windows); minimum distance between houses 10 feet (with all

measurements taken from the foundation wall), (5) which has a garage for two or more cars measuring a minimum of 20 feet by 20 feet, and (6) which has a driveway with a minimum of 25 feet from lot line to front of garage.

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

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

**Section 36. "Optional Assessments"** shall mean a charge against certain Owners and their Lots, to reflect the fact that the said Lots and improvements thereon are receiving services substantially different than typical Lots, which Optional Assessments may be assessed at the discretion of the Association.

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

## ARTICLE II

### Owner's Property Rights

**Section 1. Owner's Easements of Enjoyment.** Each Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

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

(b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities and the adjacent Homestead Resort facilities and the frequency thereof.

(c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the adjacent Homestead Resort facilities, including, but not limited to, the right and obligation of the Association to enforce all

parking restrictions within the Common Area as set forth in Section 3 of this Article II.

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

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

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

(g) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless pursuant to an instrument signed by two-thirds (2/3) of the Class A Members of the Association.

(h) The right of the Declarant (and its sales agents, customers and representatives) to the nonexclusive use



of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right the Declarant hereby reserves; provided, however, that such use shall not be for a period of more than ten (10) years after the date of recording this Declaration. Upon the request of the Declarant and upon the vote of fifty-one percent (51%) of the Class A Members of the Association, this term may be extended for an additional period of time.

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

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

(k) The right of the Association to restrict the use of the area delineated as "Wetlands" in accordance with regulations of various regulatory agencies, including but not limited to the Corps of Engineers.

**Section 2. Assignment of Use.** Any Owner may assign, in accordance with the By-laws, his right of enjoyment to the Common area and facilities to the members of his family, his tenants, or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation by the Board.

**Section 3. Easements for Parking.** Temporary guest parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents, is hereby empowered to establish "parking," and "no parking" areas within the Common area, as well as to enforce such parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those empowered. Provided, however, no curbside parking shall be allowed within fifteen (15) feet of a fire hydrant and the portion of the curb within such restricted area shall be marked as a no-parking zone in red paint.

**Section 4. Easements for Vehicular Traffic.** In addition to the general easements or use of the Common Area

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

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

**Section 6. Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him, from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his Lot or any other property in the Property.

**Section 7. Taxes.** Each Owner shall execute such instrument and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

### ARTICLE III

#### Membership in Association

**Section 1. Membership.** Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every Membership in the Association shall be appurtenant to and may not be separated from the fee simple title of such Lot. Ownership of such Lot shall be the sole qualification for Membership in the Association.

**Section 2. Transfer.** The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase such Membership, shall be entitled to assign to such contract purchaser his right of enjoyment of the Common area and facilities as provided in Article II, Section 2, and such Member's voting proxy rights in the Association, but as between the Association and such Member, the Member may not delegate his Membership obligations. Such assignment and/or proxy shall be in writing and shall be delivered to the Board before such contract purchaser may use the Common area and facilities or vote, as the case may be. The contract seller shall remain liable for all charges and assessments attributable in his Lot until fee simple title to the Lot sold is conveyed. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee simple title thereto, the Board shall have the right to record the transfer upon the books of the Association. Upon any transfer, pledge, or alienation of a Lot, the Board shall have the right to charge a Transfer Assessment against any new Owner, and his Lot, not less than Three Hundred Dollars (\$300.00) and not more than three (3) times the current monthly Common Assessment to cover the cost to the Association of effectuating any such transfer of Membership upon the books of the Association and to perpetuate the reserve funds of the Association.

#### ARTICLE IV

##### Voting Rights

**Section 1. Classes of Voting Membership.** The Association shall have two (2) classes of voting Membership as follows:

**Class A.** Class A Members shall originally be all Owners, with the exception of the Declarant, for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. The Declarant shall become a Class A Member with regard to Lots owned by the Declarant upon conversion of Declarant's Class B Memberships as provided below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration, and in no event shall more than one (1) vote be cast with

respect to any Lot owned by Class A Members.

**Class B.** The Class B Member shall be the Declarant and it shall be entitled to a total of three (3) votes for each Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

(a) When the total votes outstanding in the Class A Memberships, inclusive of votes attributable to any property annexed to the Property, equals the total votes outstanding in the Class B Memberships;

(b) Ten (10) years from the date of recording this Declaration; or

(c) On voluntary cancellation of Class B Membership by the Declarant.

**Section 2. Vote Distribution.** Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds an interest required for that Membership. When more than one person holds such interest or interest in any Lot, (a "co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote (or votes in the case of the Class B Member) to which the Lot is entitled. Such co-owners may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A Member's and Class B Member's vote (or votes in the case of the Class B Member) for each Lot shall be exercised, if at all, as a unit. When no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the By-laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations

provided in this Declaration and in the Articles of Incorporation and By-laws of the Association.

#### ARTICLE V

##### Duties and Powers of Association

The Association, acting through the Board, shall have the power and duty to:

(a) Maintain, repair and otherwise manage the Common Area and all facilities and improvements, and replace those elements of the Common Area that must be replaced on a periodic basis, including but not limited to the improvements and landscaping thereon, in accordance with the provisions of Article VI of this Declaration.

(b) Maintain all private roads within the Common Area, all sidewalks within the Common Area, all parking areas within the Common Area, and all roads and greenscape areas located on easements, including cleaning, snow removal, sign maintenance, landscape maintenance and periodic resurfacing;

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

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

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

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

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

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

(i) Maintain and repair all landscaping installed by Declarant and/or the Association on all Lots.

(j) Maintain and repair all sprinkling systems within the Common Area and upon all Lots.

(k) Exercise any and all additional powers required to accomplish the duties and functions provided for in this Declaration.

(l) Provide snow removal for driveways and sidewalks on all Lots up to the front entrance.

(m) Maintain and repair the exterior surface of the roofs of all Dwelling Units (if the Association elects to assume responsibility for exterior surface maintenance of roofs, which election must be made by the Association within one year of the date the Declarant turns over the community to the Homeowner's Association).

(n) Abide by all of the terms and conditions of all contracts entered into by Declarant for the benefit of future Owners.

(o) Pay to Midway City, on a timely basis, all pressurized irrigation water system assessments with respect to the Common Area and all Lots for which the Association receives such services.

## ARTICLE VI

### Covenant to Pay Maintenance Assessments

**Section 1. Creation of Lien and Personal Obligation to Pay Assessments.** Declarant, for each Lot owned by it, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association (1) annual Common Assessments for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, (4) Reconstruction Assessments, (5) Optional Assessments, if any, and (6) Transfer Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting first Mortgagees, the personal obligation

for delinquent assessments shall pass to the successors in interest of such Owner. The Board shall establish at least two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association. At least one of the accounts (the "Operating Fund") shall include funds for replacement, painting, repairs and operations which would reasonably be expected to occur on an annual or more frequent basis. At least one of the accounts (the "Reserve Fund") shall include such funds as the Board determines shall constitute an adequate and reasonable reserve for replacement and repairs which would reasonably be expected to occur less frequently than on an annual basis. The Board shall not co-mingle any amounts deposited into any of the separate accounts.

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

**Section 3. Damage to Common Area by Owners.** Any maintenance, repairs or replacements completed by the Association arising out of or caused by the willful or negligent act of the Owner, his family, guests, invitees or lessees shall be done at said Owners' expense, or a Special Assessment therefore shall be made against his Lot.

**Section 4. Basis of Maximum Common Assessment.** Until January 1st of the year immediately following the conveyance of the first Lot in the Property to any Owner, the maximum Common Assessment under Article VI shall be Two Hundred Fifteen Dollars (\$215.00) per Lot per month.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner,

the maximum annual Common Assessment may be increased by the Board above the annual Common Assessment for the previous year, effective January 1st of each year, not more than the greater of: (1) ten percent (10%); or (2) the percentage by which the area Consumer Price Index for All Items, of the U.S. Bureau of Labor, has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established.

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

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

**Section 5. Capital Improvement and Reconstruction Assessments.** In addition to any Common Assessments, the Board may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to the year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Property, including fixtures and personal property related thereto; provided that the total of any such assessment which is in excess of Ten Thousand Dollars (\$10,000.00) shall require the vote or written assent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessments.

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



(25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

**Section 7. Equal Rate of Assessment.** Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots. Provided, however, if the Association elects to insure individual Dwelling Units or to create a roof replacement fund, the Association may make such equitable adjustments to the Common Assessments to reflect the size and value differentials between the various Dwelling Units. Also, the Association may levy Optional Assessments to reasonably reflect the fact that some lots are receiving substantially different services, provided that such Optional Assessments shall not be more than one hundred percent (100%) of the Common Assessments on all other Lots. Provided further, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against particular Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Common Assessments shall be collected on a regular monthly basis by the Board.

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

The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures

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

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot.

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

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

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

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

## ARTICLE VII

### Effect of Non-Payment of Assessments

#### Remedies of the Association

**Section 1. Effect of Non-Payment of Assessments; Remedies of the Association.** Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefor may be required further by the Board to pay a late charge of Fifteen Dollars (\$15.00) or fifteen percent (15%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and the sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common

Assessment and all charges thereon in any manner authorized by law and this Declaration.

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

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

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

**Section 5. Cumulative Remedies.** The assessment liens and the rights to foreclosure and sale thereunder, shall be in addition to and not in substitution for, all other rights and

remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**Section 6. Subordination of the Lien to First Mortgage.** The lien of assessment provided for herein shall be subordinate to the lien of any first Mortgage (meaning any recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to the Mortgage foreclosure of first mortgage or deed in lien thereof shall extinguish the lien of such assessments as to the installments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner from personal liability for such assessment, nor such Lot from liability for any installments or assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VIII

##### Architectural Control

**Section 1. Members of Committee.** The Architectural Committee shall consist of three (3) members. The initial members of the Architectural Committee shall consist of individuals appointed by the Declarant. The said individuals shall hold office until the election of the first Board by the Membership of the Association. Thereafter, the members of the Architectural Committee shall be appointed by the Board and shall hold office until such time as they have resigned or have been removed or their successors have been appointed, as provided herein. Members of the Architectural Committee may be removed at any time with cause. The Board shall have the right to appoint and remove members of the Architectural Committee.

**Section 2. Review of Proposed Construction.** Subject to Article X, Section 5, of this Declaration, no building, fence, wall, deck, patio cover, dog run, front storm door, satellite dish, driveway, front or rear yard landscaping or other improvement or fixture shall be commenced, painted, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Architectural Committee shall approve proposals or 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 of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, or upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for the purpose of maintenance, and may require submission of additional plans and specifications or other information and agreements prior to approving or disapproving material submitted. The Architectural Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it shall be determined in any other reasonable manner, such as by the reasonable costs of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed the amount of the last monthly common assessment fee. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone review of any plans submitted for approval. Once approved by the Architectural Committee, no construction, alteration or additions shall be commenced until a building permit is obtained from Midway City and any application for such a building permit submitted to Midway City shall be accompanied by the written approval of the Architectural Committee.

**Section 3. Meeting of the Architectural Committee.**

The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of a variance pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of any two (2) Members of the Committee taken without a meeting, shall constitute an act of the Committee.

**Section 4. No Waiver of Future Approvals.**

The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and

consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

**Section 5. Compensation for Members.** The members of the Architectural Committee shall receive reasonable compensation for services rendered, including reimbursement for expenses incurred by them in the performance of their duties hereunder, as determined by the Board from time to time.

**Section 6. Inspection of Improvement.** Inspection of any Improvement and the correction of defects therein shall proceed as follows:

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

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

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Board in writing of such failure. Upon Notice and Hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated costs of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement.

(d) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

**Section 7. Non-Liability of Architectural Committee Members.** Neither the Architectural Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, solely on the basis of aesthetic consideration and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but 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, excepting that the Architectural Committee hereby waives the non-liability provision of this paragraph to the extent necessary to obtain insurance as provided for in Article XII hereof.

**Section 8. Variances.** The Board of Directors of the Association, upon a favorable recommendation of the Architectural Committee, may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in a written document signed by at least two (2) officers or members of the Board of Directors of the Association. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplement Declaration for any purpose except as to the particular portion of the Property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting misuse of the premises, including, but not limited to,



zoning ordinances, lot set-back lines or requirements, the Subdivision Plat, and rules and regulations imposed by any governmental or municipal authority. Notwithstanding anything herein to the contrary, all Lot owners shall have the right to construct a reasonable privacy screen or fence which is attached to the home on the Lot, subject to obtaining approval through the process set forth above, which approval shall not be unreasonably withheld. In considering the request for a variance with respect to a privacy screen or fence, the Board shall consider the configuration, size and materials and make sure that the interests of the other Lot owners and the Association are protected.

## ARTICLE IX

### Maintenance and Repair Obligation

**Section 1. Maintenance Obligations of Owners.** Subject to the duty of the Association to provide for maintenance as provided in Section 2, of this Article IX, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas of the Property subject to his exclusive control, including any improvement thereon, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to, the structure of the Owner's Dwelling Unit and all exterior and interior portions of the Owner's Dwelling Unit. In the event that any Owner shall permit any Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or fail to so maintain such Improvement so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the costs thereof shall be charged to the Owner. Said costs shall constitute a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Owner as Common Assessments. Owners who purchase a Lot without full landscaping shall have the Lot fully landscaped, including a full sprinkling system, no later than sixty (60) days after taking occupancy of the home located upon the Lot. Provided, however, Owners who take occupancy of the home between November 1<sup>st</sup> through April 30<sup>th</sup> shall have the landscaping completed no later than the following June 1<sup>st</sup>.

**Section 2. Maintenance Obligations of Association.** In addition to the provisions of Section 1 of this Article IX, the Association shall maintain in good order and repair all of the Common Area and any Improvement thereon, and all perimeter fences. In addition to the maintenance and repairs set forth above, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area and on the Lots which are maintained by the Association. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. The Association shall carry out the foregoing obligations when and in such manner as the Board shall determine in its judgment to be appropriate. Midway City shall have the right, but not the duty, to perform the foregoing obligations of the Association (including but not limited to landscaping, maintenance, and snow removal within the common areas) provided that Midway City shall have first given the Association prior written notice and the Association shall have failed to perform such duties in a reasonable fashion within sixty (60) days of such written notice, in which case Midway City shall be entitled to recover any reasonable associated costs, including attorneys fees, from the Association. This Section 2 shall not be amended or deleted without the approval of Midway City.

**Section 3. Damage and Destruction Affecting Dwelling Unit, Duty to Rebuild.** If all of or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

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

**Section 5. Time Limitation.** The Owner or Owners of any damaged Dwelling Unit, the Association and the Architectural

Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

## ARTICLE X

### Use Restrictions

All real property within the Property shall be held, used and enjoyed pursuant to the following limitations and restrictions, subject to the exemption of the Declarant as provided in Section 5 of this Article X:

**Section 1. Single Family Residences, Business or Commercial Activity.** Each Lot shall be used as residence for a single family. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose, other than a home office permitted under applicable zoning ordinances, without the vote of seventy-five percent (75%) of the votes eligible to be cast by Members of the Association or the approval of the Architectural Control Committee. Provided, further, however, the Association shall never be permitted to allow more than twenty-five percent (25%) of the lots to be used as a non-owner occupied residence. No outbuildings shall be constructed on any Lot and nothing shall be placed upon or attached to the roof of any home constructed on a Lot. Notwithstanding any provisions herein to the contrary, nothing herein shall be construed as prohibiting the Declarant, its successors and assigns, from using any portion of the Property for a model home site, and display and sales office during the construction and sales period and for a period of three (3) years thereafter in accordance with Article II Section 1 (h), of this Declaration.

**Section 2. Nuisances.** No noxious or offensive activity (including but not limited to the major repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the By-laws if any noise, odor or activity producing such noises, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes),

noisy or smokey vehicles, large power equipment or large power tools, satellite dishes, radio or television antennas, evaporative coolers, permanent flag poles, or items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

**Section 3. Signs.** No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Lot, without the prior written consent of the Architectural Committee, except signs used by Declarant, their successors or assigns, to advertise the Property during the construction and sale period. All signs or billboards and the regulations promulgated for the regulation thereof shall conform to the requirements of all applicable governmental agencies.

**Section 4. Common Area Facilities.** Nothing shall be altered or constructed on or removed from the Common Area except upon the written consent of the Association.

**Section 5. Declarant's Exemption.** The Declarant or its successors or assigns may undertake the work of constructing Dwelling Units and developing all of the Lots included within the Property and any annexation thereto. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of the Property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Property be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by the Declarant, whatever it determines to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as the Declarant deems advisable in the course of development; or

(b) Prevent the Declarant, its successor or assigns, or its or their representatives, from erecting, constructing, or maintaining on any Lot, or portion thereof, owned or controlled by the Declarant, or its successors or assigns or its or their contractors or

subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Property as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

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

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

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

(f) Prevent the Declarant from having unrestricted access to the Property until all Dwelling Units have been constructed and sold. The Declarant shall have the right to control all access gates until all Dwelling Units have been constructed and sold.

**Section 6. Pets and Other Animals.** No bar, coop, shed, sty or building of any type shall be constructed, kept, maintained or permitted for the purposes of housing pigs, cows, sheep, goats, horses, poultry, or other livestock at any place within the limits of the Property. Each Lot Owner may keep and maintain three (3) common household pets, unless otherwise provided by the affirmative vote of seventy-five percent (75%) of the Members.

**Section 7. Parking.** No long-term parking (over 48 hours without moving or relocating the vehicle) of any vehicle

shall be permitted on the Common Area or on any Lot, except in a garage.

**Section 8. Rubbish.** No rubbish shall be stored or allowed to accumulate anywhere on the Property, except in sanitary containers and at such locations as the Board shall determine from time to time.

**Section 9. Insurance Rates.** Nothing shall be done or kept on the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

**Section 10. Front Window Treatment.** No blinds, draperies, or other window coverings or treatments shall be permitted with respect to Dwelling Unit windows which face any road, whether public or private, except those which are conservative in style or otherwise approved by the Architectural Committee. Provided, however, such approval shall not be unreasonably withheld.

## ARTICLE XI

### Damage or Destruction to Common Area

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

(a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and any Improvement thereon to be reconstructed substantially as it previously existed.

(b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such repair and reconstruction to be substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners in accordance with the provisions of Article VI, Section 5, of this Declaration.

(c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the

negligence or willful misconduct of said Owner or of his family and guests, including minors and adults. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damaged caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall also be a Special Assessment against the Lot owned by Owner.

## ARTICLE XII

### Insurance

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

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

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

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

**Section 5. Liability Insurance.** The Association shall obtain comprehensive public liability insurance including medical payments, liquor liability insurance and malicious mischief, in the minimum amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to the Common Area including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional Mortgage investors for projects similar in construction, location and use.

**Section 6. Miscellaneous.**

(a) **Minimum Financial Rating of Carrier.** Each hazard-insurance policy must be written by a hazard insurance



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

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

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

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

#### ARTICLE XIII

**Mortgage Protection Clause**

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

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

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

**Section 3. Non-Liability for Prior Unpaid Dues or Charges.** Any First Mortgagee, or a purchaser who purchases a Lot from any First Mortgagee who obtains title to a Lot pursuant to a deed (or assignment) in lieu of foreclosure, or pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the First Mortgagee.

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

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly, by the Association for

the benefit of the Lots (the granting of an easement of public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause);

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

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

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

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

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

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

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

**Section 8. First Mortgagees Written Notice of Amendments and Damage.** Upon written request, all First Mortgagees shall be given (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to the

Declaration, the Articles or By-laws, and prior to the effective date of any termination of an agreement for professional management of the Property following a decision of the Owners to assume self-management of the Property; and (ii) immediate notice following any damage to the Common Area whenever the cost of the reconstruction exceeds Ten Thousand Dollars (\$10,000.00) and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Property.

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

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

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

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

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

occupied).

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

#### ARTICLE XIV

##### Annexation of Additional Property

Additional real property may be annexed to the Property and such additional real property may become subject to this Declaration by any of the methods set forth hereinafter:

**Section 1. Additions by Declarant.** If the Declarant, its successors or assigns, shall develop, or cause to be developed, additional real property (the "Annexed Property") which is contiguous to the Property or accessible by public streets and not more than one thousand (1,000) yards from the Property, the Declarant, or its successors or assigns, shall have the right from time to time to add the Annexed Property or any portion or portions thereof to the Property and to bring the Annexed Property within the general plan and scheme of the Declaration without the approval of the Association, its Board, or Members; provided that such right of the Declarant, its successors and assigns, shall terminate ten (10) years from the date of recording this Declaration.

**Section 2. Other Additions.** In addition to the provisions for annexation specified in Section 1 above, additional real property may be annexed at any time to the Property by the Declarant or its assigns and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3) of the voting power of the Class A Members, excluding the votes of the Declarant.

**Section 4. Title to Common Area.** Prior to the conveyance of any Lot within the Annexed Property to any individual purchaser thereof, whether such annexation was accomplished by either method set forth in Section 1 or 2 above, title to the Common Area, if any, within said Annexed Property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

**Section 5. Notice of Addition of Property.** The additions authorized under Sections 1 and 2 of this Article XIV shall be made by filing of record a Notice of Addition of

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

#### ARTICLE XV

##### General Provisions

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

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

(b) The result of every act or omission whereby any of the covenants contained in this Declaration, the

Articles or By-laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interests.

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

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

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

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

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

**Section 4. Amendments.** This Declaration may be amended only upon the affirmative vote or written consent of the Owners holding not less than two-thirds (2/3) of the voting power of the Members, except with respect to matters dealt with herein which require a higher percentage for approval thereof; provided, however, that the prior written approval of at least one hundred

percent (100%) of all First Mortgagees must be obtained as provided in Section 12 of Article XIII above.

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

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

**Section 7. Reservation of Easements.** Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities and storm drains of adjoining Lot Owners. The Declarant expressly reserves for the benefit of all of the real property in the Property, and Owners, reciprocal easements of access, ingress and egress over all Lots, and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, and for maintenance and repair of any Dwelling Unit or landscaping located on any Lot. Such easements may be used by the Declarant, its successors, purchasers and all Owners, their guests, tenants, lessees and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provision for drainage in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage conveyed to a purchaser from the Declarant. The Declarant also expressly reserves for the benefit of the Declarant, its agents and assigns, a construction easement which will allow access, ingress and egress, over the Lots and the Common Area for the purpose of constructing improvements on the Common Area and building Dwelling Units and related improvements on each of the Lots. This construction easement will terminate with respect to individual Lots when all contiguous Lots are fully improved and will terminate with respect to the Common Area when all Common Area Improvements have been completed and when Dwelling Units have been completed on all Lots.



The Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, cable television facilities, and telephone lines, in accordance with the provisions of this Declaration, and as otherwise provided by law. The Declarant, as well as Owners of Lots, and all others who shall come in contact with the Property, shall use reasonable restraints with regard to the Property when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and maintenance of all of the Property, and the use and enjoyment by an Owner of his Lot.

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

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

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

**Section 11. Arbitration Required.** Any contracts which the Association enters into shall provide for arbitration. In the

event of a dispute between the Association and Declarant which cannot be resolved by the parties, then upon ten (10) business days advance written notice from the Association to the Declarant or from Declarant to the Association, as the case may be, setting forth the issues in dispute, the dispute shall be submitted to binding arbitration by a member of the American Arbitration Association. All costs of the arbitration shall be equally shared by the parties, excluding attorney's fees which shall be the sole responsibility of the party incurring such fees.

**Section 12. Potential Golf Course Liability.** Each Owner of a Lot acknowledges that he or she has fully inspected such Lot in its relationship to the Homestead Golf Course and its fairways, greens and driving range and accepts the same "as-is". Each Owner of a Lot which abuts the Homestead Golf Course fairways, greens or driving range hereby releases and discharges the Declarant and the Homestead Resort and its owners, officers, directors, agents, lessors, lessees, and affiliates, from all claims, damages, liabilities and obligations concerning the use, location and design of the Homestead Golf Course.

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

**DECLARANT:**

VILLAGE COMMUNITIES, L.C.

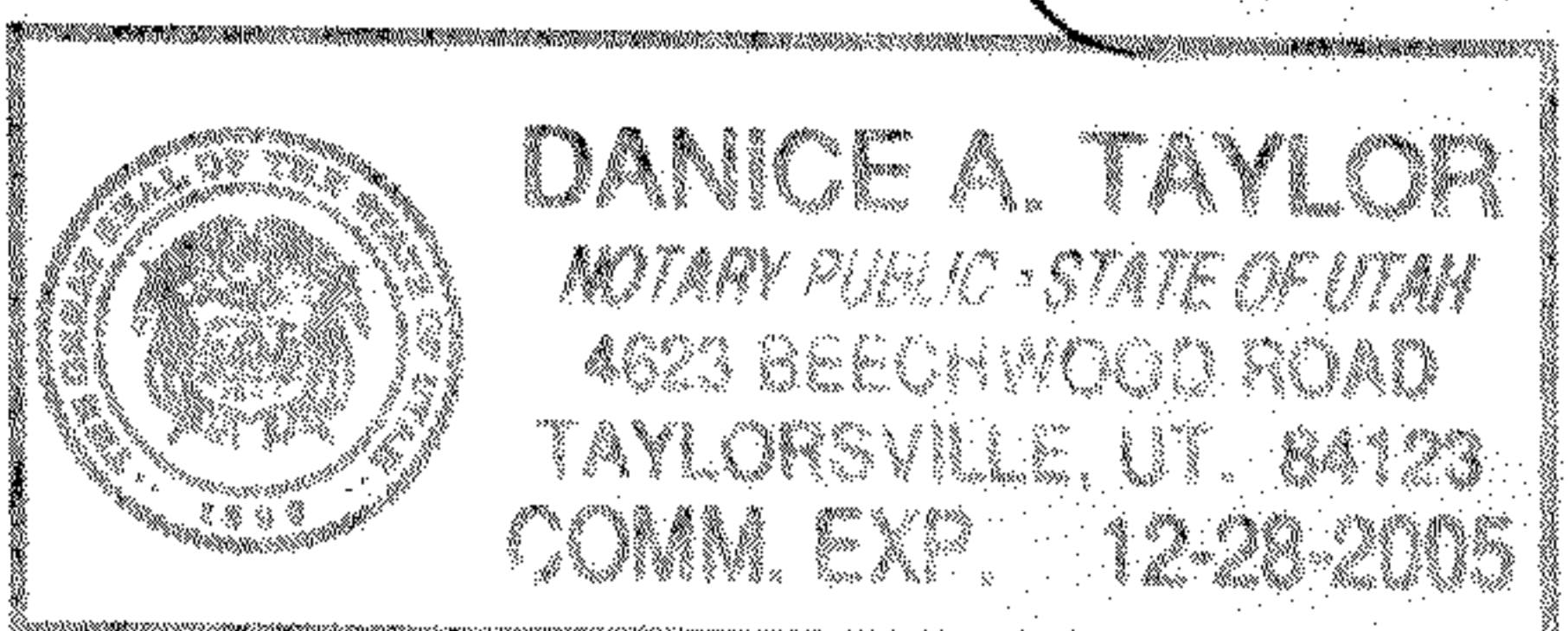
By L. Kelly Sheppard Robert C. Tippet

STATE OF UTAH )  
(ss:  
COUNTY OF SALT LAKE )

On this 25<sup>th</sup> day of JANUARY, 2005, personally appeared before me Kelly Sheppard & Robert C. Tippet being by me duly sworn and the said individuals did say that they are the Declarant of Midway Village, and managing members of VILLAGE COMMUNITIES, L.C., a Utah limited liability company, and that the within and foregoing Declaration was signed in behalf of the said limited liability company pursuant to valid authority.

Danice A. Taylor  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
12/28/2005



## BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE DEDICATED WEST RIGHT-OF-WAY LINE FOR PINE CANYON ROAD. SAID POINT BEING NORTH 803.53 FEET AND EAST 549.09 FEET FROM THE FOUND WASATCH COUNTY SURVEYORS BRASS CAP FOR THE SOUTH QUARTER CORNER OF SECTION 27, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;

SOUTH 89°26'11" WEST 491.36 FEET; THENCE NORTH 62°42'08" WEST 69.10 FEET; THENCE NORTH 372.26 FEET; THENCE NORTH 88°44'14" WEST 388.38 FEET; THENCE NORTH 13°34'51" WEST 144.43 FEET; THENCE NORTH 06°38'54" EAST 85.73 FEET; THENCE NORTH 79°18'10" EAST 80.27 FEET; THENCE SOUTH 17°10'44" EAST 62.21 FEET; THENCE SOUTH 26°13'24" EAST 89.02 FEET; THENCE SOUTH 68°10'59" EAST 73.11 FEET; THENCE SOUTH 12°50'41" WEST 53.61 FEET; THENCE SOUTH 89°13'28" EAST 348.22 FEET; THENCE NORTH 14°01'50" WEST 295.32 FEET; THENCE NORTH 26°54'27" WEST 45.31 FEET; THENCE SOUTH 89°12'00" EAST 521.23 FEET ALONG THE PROPERTY LINE WITH BRINTON TO THE WEST RIGHT-OF-WAY FOR PINE CANYON ROAD; THENCE SOUTH 00°22'03" WEST 744.34 FEET ALONG THE DEDICATED RIGHT-OF-WAY FOR PINE CANYON ROAD TO THE POINT OF BEGINNING.

CONTAINING 9.79 ACRES

Midway Village PUD A  
Lots 1-19  
Lots A-H