

WHEN RECORDED PLEASE MAIL TO:

J. Gordon Sorensen  
Honeycut Acres  
3548 Honeycut Road  
Salt Lake City, Utah 84106

5101080  
23 JULY 91 12:56 PM  
KATIE L. DIXON  
RECORDER, SALT LAKE COUNTY, UTAH  
J GORDON SORESEN  
REC BY: SHARON WEST , DEPUTY

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF HONEYBROOK SUBDIVISION

This Declaration is made and executed this 23rd day of July, 1991, by HONEYCUT ACRES, a Utah general partnership (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the record owner of that certain tract of Property more particularly described in Article II of this Declaration. Declarant desires to create on said Property a residential development with certain Common Facilities, including a private roadway.

B. Declarant desires to provide for preservation of the values and amenities in said development and for maintenance of the Common Facilities. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration to the covenants, restrictions, easements, charges and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of values and amenities in the development, to create an entity which possesses the power to maintain and administer the Common Facilities, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose the Declarant has, in conjunction with the recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the Honeybrook Homeowners Association, Inc.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that all of the Property described in Article II of this Declaration is and shall be held, occupied, improved, transferred, sold, leased and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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## ARTICLE I

### DEFINITIONS

When used in this Declaration (including the foregoing portion hereof entitled "Recitals"), unless the context clearly indicates otherwise, the following terms shall have the meaning indicated.

1.01 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Honeybrook subdivision, as the same may be amended from time to time.

1.02 "Plat" shall mean and refer to the subdivision plat of the Honeybrook subdivision, prepared and certified by L. Mark Neff (a duly registered engineer and/or land surveyor holding Certificate No. PE5512, LS7915), executed and acknowledged by the Declarant on the 24th day of May, 1991, and filed for record in the office of the County Recorder of Salt Lake County, Utah, concurrently with the filing of this Declaration, as the same may be amended from time to time.

1.03 "Property" shall mean and refer to the entire tract of real property covered by the Plat, a description of which is set forth in Article II of this Declaration.

1.04 "Lot" shall mean and refer to any of the four (4) separately numbered and individually described parcels of land shown on the Plat.

1.05 "Common Facilities" shall mean and refer to the private roadway shown on the Plat to be installed by Declarant (the "Private Roadway"), it being acknowledged that the Private Roadway is included within the Lots, a fence to be installed by Declarant within the East four (4) feet of Lot Nos. 1 and 4 as shown on the Plat, an eight~~een~~(<sup>18</sup>) foot by eighteen (18) foot square foot area at the Southeast corner of Lot No. 4 and an eight~~een~~(<sup>18</sup>) foot by eighteen (18) foot square foot area at the Northeast corner of Lot No. 1 for the automatic gate and fence, a gate, street lighting and parcel post facility to be installed by Declarant within the Private Roadway, and the three (3) foot area adjoining the Roadway and other improvements intended for the general use and enjoyment of all Owners located within the Private Roadway. *EgD.*

1.06 "Living Unit" shall mean and refer to a structure or portion of a structure which is designed and

intended for use and occupancy as a single-family residence and which is complete and ready for occupancy, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

1.07 "Owner" shall mean and refer to the owner of record (in the office of the County Recorder of Salt Lake County, Utah), whether one or more persons or entities, of a fee or undivided fee interest in any Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable legal concept or theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not include a mortgagee, a trustee or beneficiary under a deed of trust or holder of a similar interest given merely as security for the performance of an obligation unless and until such party has acquired title pursuant to foreclosure or an arrangement or proceeding in lieu thereof.

1.08 "Member" shall mean and refer to every person or entity who holds membership in the Association.

1.09 "Declarant" shall mean and refer to Honeycut Acres, a Utah general partnership, its successors and assigns if such successors or assigns should acquire all or substantially all of the Declarant's undeveloped and partially undeveloped Lots.

1.10 "Association" shall mean and refer to Honeybrook Homeowners Association, Inc., a nonprofit corporation organized and existing under the laws of the State of Utah, its successors and assigns.

1.11 "Board of Trustees" shall mean the governing board of the Association appointed or elected in accordance with this Declaration and the Articles of Incorporation and Bylaws of the Association.

1.12 "Mortgage" shall mean any first mortgage or first deed of trust by which a Lot or any part thereof is encumbered.

1.13 "Mortgagee" shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage.

## ARTICLE II

### PROPERTY DESCRIPTION

The Property which is and shall be held, occupied, sold, leased, transferred and conveyed subject to the provisions of this Declaration consists of the following described tract of real property situated in the County of Salt Lake, State of Utah:

BEGINNING 1194.62 feet South and 967 feet East from the North Quarter corner of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian, thence North 312.19 feet; thence East 356.86 feet; thence South 312.19 feet; thence West 356.86 feet to the point of BEGINNING.

LESS AND EXCEPTING therefrom the following described property, as conveyed to Salt Lake County for the use of the public as a highway (Honeycut Road) in that certain Right-of-Way Deed recorded March 9, 1960, as Entry No. 1704712 in Book 1693 at Page 142, of the Official records, to-wit:

BEGINNING at the Northeast corner of Lot 13, Millbrook Estates, a subdivision in the Northeast Quarter of Section 33, Township 1 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 26.04 feet; thence North 507.36 feet to the Northwest corner of East Millbrook, a subdivision in said Northeast Quarter of Section 33; thence South 85°50' West 15.04 feet; thence South 405.46 feet to a point of a 215.78 foot radius curve to the right; thence Southerly along the arc of said curve 47.08 feet to a point of reverse curve to the left, the center of which is South 77°30' East 250.0 feet; thence Southerly along the arc of said curve 54.54 feet to the point of BEGINNING.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner not inconsistent with the provisions of this Declaration) to construct a Living

Unit on each and every Lot and to install the Common Facilities designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to this reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire 20 years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions, all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record, including, without limitation, those shown on the Plat.

### ARTICLE III

#### ASSOCIATION MEMBERSHIP AND VOTING

3.01 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it is appurtenant. Any devise, encumbrance, conveyance or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and the rights appurtenant thereto. Membership shall begin automatically and immediately upon becoming an Owner, and shall terminate immediately and automatically upon ceasing to be an Owner. No person or entity other than an Owner may be a Member of the

Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

3.02 Voting Rights. The Association shall have the following-described two classes of voting membership:

Class A. Class A Members shall be all Owners, but excluding the Declarant, until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist or be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to two (2) votes for each Lot in which it holds the interest required for membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A Membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members exceeds the total number of votes held by the Class B Member.

(b) The expiration of three (3) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

3.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as the Owners thereof may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.04 Appointment of Board of Trustees by Declarant. Until the date three (3) years after this Declaration is filed for record in the Official Records of the County Recorder of Salt Lake County, Utah, the Declarant shall have the right and option to appoint, remove and replace all of the members of the Board of Trustees of the Association. In the event the Declarant fails to exercise this option or in the event the Declarant by written notice to the Association voluntarily turns over to the Members the responsibility for electing the Board of Trustees before the

termination of said three-year period, the Board of Trustees shall be elected by the Members of the Association in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association.

3.05 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 3.05:

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

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

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

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

3.06 Amplification. The provisions of this Article III may be amplified by the Articles of Incorporation and Bylaws of the Association; provided however that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners as set forth in this Declaration.

#### ARTICLE IV

##### OWNERS RIGHTS IN COMMON FACILITIES

4.01 Owners' Easements of Use and Enjoyment. Every Owner shall have a nonexclusive right and easement of use and

enjoyment in and to the Common Facilities including, without limitation, a nonexclusive right and easement to use and enjoy the Private Roadway shown on the Plat for access, ingress and egress to and from the Lots. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Such right and easement shall be subject to the following:

(a) The right of the Association to adopt, rescind, amend and enforce rules and regulations governing the use of the Common Facilities, and the personal conduct of Members and their guests thereon as hereinafter provided.

(b) The right of the Association to dedicate or transfer all or any part of the Common Facilities to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association. Except as otherwise provided in Article V below with respect to easements for public utilities, no such dedication or transfer shall be effective unless an instrument signed by Members holding at least seventy-five percent (75%) of the votes of each class of membership agreeing to such dedication or transfer has been recorded in the official records of the County Recorder of Salt Lake County, Utah. No such dedication or transfer which would have the effect of depriving any Owner of his right to use the Private Roadway shown on the Plat for ingress and egress to and from his Lot shall be effective without the written consent of each Owner so affected.

(c) The right of Salt Lake County and any other governmental or quasi-governmental authority having jurisdiction over the Property to access and rights of ingress and egress over and across the Private Roadway shown on the Plat for purposes of providing police and fire protection, providing trash collection and removal services, transporting school children, and providing any other municipal or governmental service.

(d) The rights and easements set forth below in Article V of this Declaration.

4.02 Delegation of Use. Any Owner may delegate, in accordance with this Declaration, his right and easement of use and enjoyment of the Common Facilities to the members of his

family, his guests, his tenants or contract purchasers who reside on the Property, subject to the restrictions set forth in this Declaration and to such rules and regulations as may from time to time be adopted by the Association.

## ARTICLE V

### OTHER EASEMENTS

5.01 Reserved Rights and Easements to Complete Development. There is hereby reserved to Declarant, and the Declarant shall have such easements and rights of ingress and egress over, across, through and under the Property and any improvements now or hereafter constructed thereon as may be reasonably necessary, desirable or convenient to construct a Living Unit on each and every Lot and to install and/or improve the Common Facilities designed for the use and enjoyment of all Members as the Declarant may reasonably deem to be appropriate. Said reserved right and easement shall be transferable and shall include, without limitation, a right and easement to enter that portion of the property upon which the Common Facilities are constructed during the period of construction and sale of the Property, and to maintain such facilities and perform such operations as in the sole discretion of Declarant may be reasonably necessary, desirable or convenient to the construction and sale of a Living Unit. The rights and easements reserved to Declarant in this Section 5.01 shall terminate on the date seven (7) years after this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

5.02 Utilities Easement. If, pursuant to the rights and easements reserved in Section 5.01, above, the Property or any improvement thereon is traversed or partially occupied by a permanent utility line or similar or related improvement (including, but not limited to lines, pipes, wires, conduit and other equipment for water, sewer, gas, telephone, electricity, television cable or antenna systems) a perpetual easement for such utility or improvement and for the maintenance, repair and replacement thereof shall exist. In addition, there is hereby reserved to Declarant for a period of three (3) years, and the Declarant shall have the right and power for such three (3) year period to grant specific easements and rights of way, both temporary and permanent, over, under or across any part of the Private Roadway, to such utility companies and public authorities and on such terms and conditions as the Declarant may in its sole discretion deem to be reasonably necessary or appropriate to provide for construction, maintenance and operation of the Common

Facilities, the Lots, the Living Units or any of them. From and after the three (3) year period, the Association shall have the right and power, without consent or approval of the Members, to grant such rights of way and easements for public utilities over any part of the Private Roadway as the Board of Trustees may deem to be consistent with the intended uses of the Common Facilities.

5.03 Easements for Maintenance and Repair. There is hereby granted to the Association, its officers, agents and employees, a right and easement to have access to all of the Common Facilities to maintain any utilities for which an easement has been granted, to prevent damage to the Common Facilities or to perform any other function which the Association is obligated or permitted to perform under this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association. Any damage caused thereby shall be repaired by the Association and at the expense of the Association.

#### ARTICLE VI

#### OPERATION AND MAINTENANCE

6.01 Operation and Maintenance of Common Facilities by Association. Subject to the rights and duties of the Declarant and of the Owners as set forth in this Declaration, the Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Common Facilities, and shall keep the same in good, clean, attractive, safe and sanitary condition, unless, until and except to the extent that such responsibility is transferred to and accepted by Salt Lake County or other public agency, authority or utility, and such transfer is agreed to by Members holding at least seventy-five percent (75%) of the votes of each class of membership of the Association.

6.02 Owner Maintenance of Living Units. Each Owner shall keep the Lot owned by him, and all improvements therein or thereon, including the exterior maintenance and upkeep of the Living Unit, in good order and repair and free of debris, all in a manner consistent with good property management, and so as not to detract from the appearance of the Property or to affect adversely the value or use of any other Lot or Living Unit. Without limiting the generality of the foregoing, in the event of damage or destruction of any of the improvements on any Lot by fire or other casualty, it shall be the obligation of the Owner or Owners of such Lot to promptly repair or rebuild the damaged or destroyed portions of the Living Unit and improvements on the Lot in a good and workmanlike manner and substantially in

accordance with the original plans and specifications for said property, subject only to such changes and modifications as may be approved by the Architectural Control Committee pursuant to Article X below. In the event the Owner of any Lot shall fail to maintain the premises and the improvements situated thereon as provided herein, the Association may give written notice to such Owner in accordance with Section 14.03 below specifying the deficiencies in maintenance required of such Owner hereunder. In the event that such Owner fails to commence appropriate action to correct such deficiencies within thirty (30) days after such notice and to diligently pursue the same to completion, the Association, after approval of a majority vote of the Board of Trustees, shall have the right to enter upon the Lot to repair, maintain and restore the Lot and the improvements thereon and the owner shall be obligated to immediately reimburse the Association for the costs thereof. The Owner's obligation to reimburse the Association for all costs related to such correction, repair or restoration shall be secured by a lien against the Owner's Lot in the same manner as provided in Section 9.03 below with respect to Annual and Special Assessments.

6.03 Trash Collection and Other Public Services.

During any period of time when the Property or the Lots shall be ineligible, by reason of the private nature of the Private Roadway or for any other reason, to receive trash collection, street lighting, snow removal, or other municipal or public services from Salt Lake County or such other governmental authority as may then be responsible for providing such public services in the area of the Property, the Association shall provide such trash collection, street lighting, snow removal and other public services upon the Property and to the Lots and the Owners thereof as the Board of Trustees of the Association may deem to be necessary or appropriate.

6.04 Rules and Regulations. The Association shall have the power and the authority to promulgate, rescind, amend and enforce reasonable rules and regulations governing the use of the Common Facilities; provided, however, that such rules and regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall furnish to each Owner copies of all such rules and regulations promulgated by the Association, and copies of all amendments thereto and rescissions thereof.

6.05 Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein

or reasonably necessary to effectuate any such right or privilege.

## ARTICLE VII

### ASSOCIATION'S INSURANCE AND TAXES

7.01 Public Liability Insurance. The Association shall obtain and maintain at all times a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as the Association deems advisable to provide adequate protection for the Association, its Board of Trustees, agents and employees of the Association and the Members against liability for personal injury, death, and property damage arising from or incident to the ownership, operation, management, maintenance, repair, use, and other functions related to the Common Facilities. Said policy or policies of insurance shall provide a cross-liability endorsement pursuant to which the rights of the named insureds among themselves are not prejudiced.

7.02 Fire and Casualty Insurance. In the event that the Common Facilities shall include any insurable improvements having an aggregate value in excess of One Thousand Dollars (\$1,000.00), the Association shall obtain and keep in full force and effect at all times a policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full replacement value of all insurable improvements comprising part of the Common Facilities. The insured under any such policy shall be the Association.

7.03 Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

7.04 Fidelity Insurance or Bond. The Association may purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of officers, agents or employees, destruction or disappearance of money or securities, and forgery.

7.05 Officers and Directors Liability Insurance. The Association may purchase and maintain insurance on behalf of any person who is a member of the Board of Trustees or other officer, director, agent or employee of the Association in such forms and amounts as the Association may deem necessary or appropriate in accordance with its Bylaws to protect any such person against

liability asserted against him or incurred by him in any such capacity or arising out of his status as such.

7.06 Insurance Policies. All insurance policies obtained by the Association shall be provided by companies licensed to do business in the State of Utah. The Association shall make every effort to secure insurance policies that will provide for the following:

(a) The insurer or insurers shall waive subrogation as to any claims against the Association, Owners and their families, the Declarant, and their respective agents, employees, tenants and guests.

(b) The policy or policies cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Owners.

(c) Any "no other insurance" clause in the policy or policies shall exclude from consideration the policies of any individual Owners.

(d) The policy or policies cannot be canceled, invalidated, or suspended on account of the conduct of any director, trustee, officer, or employee of the Association, without a prior written demand that the Association cure the defect.

(e) The policy or policies shall contain only such "deductible" provisions as the Association may deem to be in accordance with good business practice.

7.07 Additional Insurance. In addition to the insurance coverage required by this Declaration, the Association shall have the power and authority to obtain and maintain other similar and dissimilar insurance coverage in relation to the Common Facilities and the Association's duties and responsibilities hereunder, which additional insurance coverage may be in such amounts and in such forms as the Association from time to time deems appropriate.

7.08 Adjustment and Contribution. Exclusive authority to adjust losses under policies hereunder purchased and maintained by the Association hereunder shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgages.

7.09 Taxes and Assessments on Common Facilities. The Association shall pay all taxes, assessments, charges, and impositions of every kind and nature which are lawfully assessed or imposed by any governmental or public authority with respect to the Common Facilities for the period commencing on the date specified in Section 9.03(a) below for commencement of annual assessments.

## ARTICLE VIII

### OWNER'S INSURANCE

8.01 Owner's Fire and Casualty Insurance. Each Owner of a Lot, except the Declarant, shall be required at his own cost and expense to obtain and at all times maintain in full force and effect a policy or policies of fire and casualty insurance, with extended coverage endorsement, insuring the Living Unit located on such Owner's Lot in an amount equal to its full insurance replacement value. Each Owner shall provide the Association with a copy of each policy of insurance or a certificate issued by the insurance company to evidence such insurance, and each such policy shall provide that it will not be canceled or terminated by the insurance company without giving the Association at least ten (10) days advance written notice of such cancellation or termination. Such policy or policies shall waive the insurance company's right of subrogation against the Association, the owners, and the servants, agents and guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge for waiver of subrogation rights. Such policy may include a standard, non-contributory mortgagee clause or endorsement in favor of any Mortgagee who holds a Mortgage covering all or any part of the Lot. Except as otherwise required by an applicable Mortgage, the proceeds of any such insurance shall be applied to the extent necessary to repair or replace any damage or destruction by fire or other casualty in accordance with Section 6.02 above. In the event that any Owner fails to obtain and maintain the insurance required by this Section 8.01 or to provide the Association with suitable evidence of such insurance, the Association shall have the right, but without any obligation, to obtain such insurance on behalf of such Owner, and the Owner shall be obligated to immediately reimburse the Association for the cost thereof. The Owner's obligation to reimburse the Association for the cost of any such insurance shall be secured by a lien upon the Owner's Lot in the same manner provided in Section 9.08 below with respect to Annual and Special Assessments.

8.02 Owner's Liability and Other Insurance. Each Owner may obtain, at his own cost and expense, such insurance in addition to that required in Section 8.01, above as the Owner may deem appropriate to cover his Living Unit, his personal property, his personal liability or other risks; provided that no such policy shall diminish the insurance carrier's liability for coverage arising under insurance policies obtained by the Association pursuant to Article VII above.

## ARTICLE IX

### ASSESSMENTS

9.01 Covenant to Pay Assessments. The Declarant, for each Lot owned by it, and for and as owner of the Property and every part thereof, hereby covenants and each Owner of any Lot by acceptance of instruments of conveyance and transfer thereof, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all annual and special assessments, such assessments to be fixed, established, levied, and collected from time to time as hereinafter provided. No Owner may exempt himself or his Lot from liability from payment of the assessments provided for herein or diminish the amount of such liability by waiver or non-use of his rights concerning the Common Facilities or of services and amenities provided by the Association or by abandonment of his Lot.

9.02 Purpose of Assessments. The annual and special assessments levied by the Association hereunder shall be used exclusively to promote the, health, safety and welfare of the residents of the Property, to operate, maintain and improve the Common Facilities, and to perform any other functions which the Association is obligated or permitted to perform under this Declaration. Without limiting the generality of the foregoing provisions of this Section 9.02, the uses made by the Association of assessments collected hereunder may include, among other things, payment of the costs of the following: Expenses of management, if any; taxes and special assessments; all insurance that the Association is required or permitted to maintain hereunder; wages and related expenses for the services of such personnel the Association may determine to be necessary or desirable for the proper performance of its functions hereunder, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom it contracts; legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration; water, sewer, electricity, garbage

collection, snow removal, street lighting and other necessary or desirable utilities or public services for the Common Facilities or for the common use and benefit of the Owners as herein provided; any deficit remaining from a previous period; creation of a reasonable contingency, reserve surplus and/or sinking fund; all goods and services procured by the Association in performing its responsibilities for maintenance of the Common Facilities; and any other expense necessary or desirable to enable the Association to perform or fulfill its obligations, purposes, or functions under this Declaration or its Articles of Incorporation.

9.03 Annual Assessments. Annual assessments shall be determined and levied by the Association against each and every Lot as follows:

(a) Commencement of Annual Assessments. Annual assessments hereunder shall commence with respect to all Lots as of the first day of the first calendar month following the date on which the first deed or conveyance of a Lot from Declarant to Owner who is a Class A Member is recorded in the official records of the County Recorder of Salt Lake County, Utah.

(b) Maximum Annual Assessment. The Association may fix the annual assessment at an amount not in excess of the maximum provided in this Subsection (b):

(i) The maximum amount of the first annual assessment shall be Two Hundred Dollars (\$200.00) per Lot, less one-twelfth (1/12) of such amount for each month of the year which has expired prior to the commencement date specified above in Section 9.03(a).

(ii) From and after January 1 of the year immediately following the commencement date specified above in Section 9.03(a), the maximum annual assessment which may be assessed without a vote of the membership shall be an amount equal to ten percent (10%) above the annual assessment for the previous year.

(iii) From and after January 1 of the year immediately following the commencement date specified above in Section 9.03(a), the maximum annual assessment may be increased to an amount which exceeds ten percent (10%) above the annu.

assessment for the previous year only if such increase is assented to by sixty percent (60%) of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

(c) Proposed Annual Budget. Annual assessments shall be made on the basis of the fiscal year of the Association as the same may be established from time to time pursuant to the Articles of Incorporation and By-Laws of the Association, except the first annual assessment which shall be made on the basis of a period commencing on the commencement date specified above in Section 9.03(a) and ending on the next following December 31. As to each respective fiscal year or period, the Association shall prepare a proposed annual budget based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of management, control, operation, care, maintenance, repair, replacement, and upkeep of the Common Facilities and performance by the Association of its other obligations hereunder, including payment of any deficit remaining from a previous period and the creation of a reserve or contingency fund in such sum as the Association may deem necessary or prudent to provide an adequate reserve for maintenance, repairs and replacements that must be performed or provided on a periodic basis and for other expenses or liabilities thereafter to accrue, although not payable in that fiscal year.

(d) Notice and Hearing. The Association shall give written notice of the proposed annual budget to each Owner and shall thereafter hold a hearing with the Owners in connection with and to consider said proposed annual budget. The said notice of the proposed annual budget shall set forth the date, time, and place for the hearing, which hearing shall be held not more than thirty (30) nor less than ten (10) days after mailing of such notice to the Owners.

(e) Final Annual Budget. The Association shall, after due consideration of the results of the hearing on the proposed annual budget, prepare a final annual

budget for the following fiscal year or period. The total amount of said final annual budget shall be divided among all of the Lots at the rates specified in Section 9.05, below. The portion of the final annual budget so allocated to each Lot shall be levied against and assessed to such Lot as the annual assessment for the fiscal year or period to which such assessment related. Annual assessments shall be due and payable in monthly, quarterly, semiannual or annual installments, as determined from time to time by the Association.

(f) Notice of Annual Assessment. Not less than fifteen (15) days before the beginning of each fiscal year or period, the Association shall give written notice to each Owner as to the amount of the annual assessment with respect to his Lot for the subject fiscal year or period, setting forth the total amount of such assessment and the date or dates on which the same or installments thereof are due and payable. However, failure of the Association to give timely notice of any annual assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

9.04 Special Assessments. In addition to the annual assessments provided for above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (ii) the cost of any construction, reconstruction or unexpectedly required repair or replacement of an improvement or of personal property with respect to the Common Facilities. Any such special assessment must be assented to by sixty percent (60%) of the votes of each class of membership which Members present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. Any special assessments levied hereunder shall be divided among and assessed to the Lots in accordance with the rates specified in Paragraph 9.05 below, and shall be payable over such periods and on such terms as the Association may determine. The Association shall give written notice to each Owner as to the amount of any special assessment against his Lot, setting forth the total amount of such assessment and the date or dates on which the same or installments thereof are due and payable. No special assessment or installment thereof shall be due and

payable less than fifteen (15) days after the mailing or hand delivery of notice thereof to the Owners.

9.05 Rate of Assessments. Both annual and special assessments shall be fixed at a uniform rate for all Lots. Notwithstanding any contrary provision of this Declaration, this Section 9.05 shall not be amended unless the Owners of all Lots in the Property unanimously consent and agree to such amendment by instruments duly recorded in the official records of Salt Lake County, Utah.

9.06 Quorum Requirements. The quorum required for any action authorized by Section 9.03(b)(iii) or Section 9.04 above shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Sections 9.03(b)(iii) or Section 9.04 at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

9.07 Interest. All unpaid portions of any annual or special assessment shall bear interest at the rate of one and one-half percent (1½%) per month from the date such portions become due until paid.

9.08 Lien for Assessments. All sums assessed to or levied against any Lot by the Association pursuant to the provisions of this Article IX, together with interest thereon and costs of collection thereof as herein provided, shall be secured by a lien on such Lot in favor of the Association. To further evidence such liens for sums assessed pursuant to this Article IX, the Association may (but shall not be obligated to) prepare a written notice of lien setting forth the amount of the assessment, the date or dates due, the amount remaining unpaid, a description of the Lot, and the name of the record Owner thereof. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the Office of the County Recorder of Salt Lake County, State of Utah. No such notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien shall exist solely by reason of this Declaration, and the preparation and recording of any such notice of lien shall not be required in order to create or perfect such lien, but shall be solely at the discretion and for the convenience and better protection of the Association.

The Association may enforce such lien by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under Utah law. In any such foreclosure, the Owner of the Lot involved shall be required to pay all costs and expenses incurred by the Association in such proceeding, including court costs and reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed.

9.09 Personal Obligation of Owner. The amount of each annual assessment and each special assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. The Association may maintain a suit to recover a money judgment for such personal obligation without foreclosing or waiving the lien securing the same. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay all costs and expenses incurred by the Association in connection therewith, including court costs and reasonable attorneys' fees.

9.10 Statement of Account. Upon payment of a reasonable fee not to exceed Ten and No/100 Dollars (\$10.00) and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth any unpaid amounts of prior annual and special assessments against such Lot, the amount of the current annual assessment against such Lot and the due date or due dates thereof, the amount of any obligations for reimbursement of the Association owing by the Owner of such Lot pursuant to Sections 6.02 or 8.01, and any creditors or prepaid items with respect to such Lot. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.11 Liability of Purchaser. Subject to the provisions of Section 9.10 and subject to the provisions of Article XII, a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice such purchaser's right to recover from such seller the amount paid by the Purchaser for such assessments.

## ARTICLE X

### ARCHITECTURAL CONTROL

10.01 Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member

Architectural Control Committee the function of which shall be to insure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Architectural Control Committee need not be composed of Owners. If such a Committee is not appointed the Board itself shall perform the duties required of the Architectural Control Committee.

10.02 Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Facilities, including but not limited to yard lights, mail boxes, window shades, awnings, lanterns, window guards, light fixtures, fans or similar items, or other improvement of a Lot which is visible from the Common Facilities, shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

10.03 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it the Architectural Control Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures.

10.04 Approval Procedure. Any plans and specifications submitted to the Architectural Control Committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

10.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Architectural Control Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy unimproved portions of the Lots in the vicinity of the activity.

10.06 No Liability for Damages. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article X.

10.07 Exception for Declarant. The foregoing provisions of this Article X shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Facilities and which occurs at any time during the period of five (5) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

10.08 Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all improvements of the Common Facilities accomplished by it shall be architecturally compatible with respect to one another.

#### ARTICLE XI

##### USE RESTRICTIONS

11.01 Residential Uses Only. Each Lot is intended to be improved with a Living Unit to be used for single family residential purposes, and is restricted to such use. No Lot or Living Unit shall be used for business or commercial activity; provided, however, that nothing contained herein shall be deemed to prevent any Owner from leasing his Lot and Living Unit to a single family, subject to all of the provisions of this Declaration.

11.02 Pets. No animals other than small household pets (provided that they are not kept, bred or maintained for any commercial purpose and further provided that they do not become an annoyance or nuisance) shall be kept or allowed on any Lot or in any Living Unit, and whenever a pet is allowed to leave a Living Unit it shall be either on a leash or in a cage. Except as otherwise expressly allowed by the rules and regulations adopted by the Association, no pets or animals of any kind shall be brought or allowed to remain in or upon any part of the Common Facilities. The Association, in the sole discretion of its Board of Trustees, shall have the right to change or revoke such rules and regulations at any time.

11.03 Prohibition of Damage and Certain Activities. No damage to, or waste of, the Common Facilities or any part thereof shall be committed by any Owner or any guest of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste of the Common Facilities caused by such Owner, his family, guests, tenants or invitees. No Lot or Living Unit shall be used, occupied or altered in violation of the law, so as to jeopardize or cause a hazard to any person or other

property, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in cancellation or increase in the cost of any insurance which the Association or any other Owner is required to maintain under this Declaration.

11.04 Restrictions on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots nor shall any Lot or fractional portion thereof be sold or conveyed so as to be held in divided ownership; provided that this Section 11.04 shall not be interpreted or construed to prohibit deeds of correction, deeds to resolve boundary disputes or similar corrective instruments or to prohibit the creation of conveyance of easements and rights of way consistent with the provisions of the Declaration.

11.05 Electronic Antennas. No television, radio, satellite dish or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the Living Units or on the Lots unless and until the same shall have been approved in writing by the Architectural Control Committee of the Association.

11.06 Setback Requirements. No Living Unit or other structure shall be located on any Lot nearer than thirty (30) feet to the front line of the Private Roadway or nearer than thirty (30) feet to the rear lot line, or nearer than an aggregate of twenty-four (24) feet to the side yard lines (the smallest side yard line of which must not be less than ten (10) feet); provided, however, notwithstanding anything contained herein to the contrary, if a Living Unit is to be placed on two or more Lots owned and used by the same persons, the side yard set back may be waived by the Architectural Control Committee.

11.07 Accessory Buildings. Living Units may include the following accessory buildings and structures not used for residential occupancy: private garage for the storage of not more than four (4) automobiles owned by persons residing on the premises; small greenhouses for private use only; private swimming pools; and private tennis courts.

11.08 Garage or Carport Required. Every Living Unit must have a minimum of a two-car garage; provided, however, Living Units on Lot Nos. 2 and 3 must have a minimum of a three car garage. If the garage is separate from the dwelling, the same must be approved by the Architectural Control Committee.

11.09 Driveways. Driveways for Living Units must be large enough to accommodate two (2) parked automobiles side by side.

11.10 Minimum Square Footage and Cost. No Living Unit shall be permitted on any Lot at a cost of less than \$150,000.00 (excluding the cost of the Lot) based upon costs levels prevailing on the date this Declaration is recorded, it being the intention and purpose of the Declarant to assure that all Living Units shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date this Declaration is recorded at the minimum costs stated herein for the minimum permitted size. The minimum square footage requirements for a one-story dwelling shall be 2,400 square feet of finished interior feet, exclusive of basements and below ground level areas, garages, patios, balconies, decks or other semi-external space, and the minimum square footage requirements for a dwelling of more than one story shall be 3,600 square feet of finished interior feet, exclusive of basements and below ground level areas, garages, patios, balconies, decks or other semi-external space. Split entry Living Units, bi-level split Living Units, tri-level Living Units, etc., shall be reviewed and defined as square footage requirements applicable to them by the Architectural Control Committee.

11.11 Fences. No fences will be allowed in the front yards or in side yards from the front line of the dwelling forward or in side yards of corner lots which face a street, except with the consent of the Architectural Control Committee.

11.12 Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of a Lot, except one sign for each building site, of not more than eighteen (18) inches by twenty-four (24) inches, advertising the property for sale or rent or except signs used by Declarant, its successors or assigns, to advertise the Property during the construction and sales period.

11.13 Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything to done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Living Unit or which shall in any way increase the rate of insurance.

11.14 Temporary Structure and Equipment. No structure of a temporary character, trailer, basement, tent, shack, garage,

barn, or other out building shall be used on any Lot at any time as a residence, either temporarily or permanently.

11.15 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by a fence, building, or appropriate screen.

11.16 Ponds or Reservoirs. No ponds, reservoirs or ditches (except swimming pools) shall be allowed on any Lot.

11.17 Height. No Living Unit or structure shall be higher than two (2) stories from any one elevation and shall not exceed forty (40) feet from the lowest finished grade elevation contiguous to the Living Unit or structure.

11.18 Foundations. All Living Units shall be set on permanent foundations.

11.19 Completion. All Living Units shall be completed on the exterior within eighteen (18) months from the start of construction, and building construction must begin within two (2) years of purchase date of Lot or one (1) year after second purchase date or with written approval of Declarant.

11.20 Plumbing and Electrical. No Living Unit shall be occupied until plumbing and electrical work are substantially completed.

11.21 Slope and Drainage Control. No Living Unit, structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

11.22 Landscape. Front landscaping on each Lot must be completed within ninety (90) days after substantial completion of the Living Unit (the duty to landscape not being applicable during December 1 through March 31) and the balance of landscaping on each Lot must be completed within two (2) years after substantial completion of the Living Unit, and the

landscaping plans must be approved by the Architectural Control Committee.

11.23 Parking. No vehicles or personal property of any kind, including but not limited to automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, motor homes, motorcycles, motorbikes, all terrain vehicles or other similar units and any part thereof shall be parked and/or stored on any part of the Private Roadway on a permanent or regular basis, nor shall they be parked and/or stored on a permanent or regular basis in any driveway or sideyard of a Lot.

11.24 Motorcycles and Motorbikes. Motorcycles, motorbikes, all terrain vehicles and other similar units shall not be used or ridden within the Property for recreational or sport purposes, except that the same may be used to transport persons to or from the Living Unit located within the Property.

11.25 Lights, Poles and Exterior Fixtures. No lighting device shall be installed or maintained on a Lot which causes an intensity or glare offensive to or interfering with any Owners or occupants of a Living Unit. Exterior roof mounted air conditioners shall be installed only on the rear side of a roof of a Living Unit and shall not be visible from the front side of a Living Unit. Exterior side-mounted air conditioners shall be installed only on the rear side of a Living Unit.

11.26 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

11.27 Exemption for Construction Period. During the course of actual construction and sale of the Property or any part thereof by the Declarant, the restrictions, provisions and covenants contained in this Article XI shall be deemed waived to the extent necessary or convenient to permit such construction and sale and/or to the extent such restrictions, provisions and covenants are inconsistent with the rights and easements reserved to Declarant in Section 5.01 of Article V of this Declaration.

## ARTICLE XII

### MORTGAGE PROTECTION

12.01 Notice of Owner's Default. From and after the time a Mortgagee makes written request to the Association therefor, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of thirty (30) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

12.02 Subordination of Assessment Liens to Mortgages. The lien on a Lot for unpaid assessments provided for under Article IX, or for obligations owing by the Owner pursuant to Sections 6.02 or 8.01, shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee thereunder which comes into possession of the Lot shall take the same free of such lien for unpaid assessments, but only to the extent of assessments which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

12.03 Actions Prohibited Without Consent of Mortgagees. Unless at least three-fourths (3/4) of the Mortgagees (based upon one vote for each Mortgage) of the individual Lots have given their prior written approval, neither the Association nor any other party shall be entitled, by act, omission, or otherwise:

(a) To alter the provisions of Section 9.05 of Article IX hereof (pertaining to uniform rate of assessments);

(b) To abandon, partition, subdivide, encumber, sell, dedicate, or transfer all or any part of the Common Facilities (except for the transfer of title from Declarant to the Association contemplated by Section 4.03 of Article IV hereof and except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Facilities);

(c) To seek to abandon or materially alter the arrangement which is established by this Declaration;

(d) To change, waive, abandon, or cease enforcement of the arrangements created under this Declaration concerning architectural control or maintenance of the exteriors of Living Units and of the Common Facilities;

(e) To fail to maintain any insurance coverage required by Section 7.02 of Article VII hereof;

(f) To use proceeds of such insurance for purposes other than the repair, replacement, or reconstruction of improvements comprising a part of the Common Facilities; or

(g) To amend the provisions of this Section 12.03.

12.04 Right of Mortgagees to Examine Association Records. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association.

12.05 Advances by Mortgagees. In the event any taxes on the Common Facilities are not timely paid, or in the event required fire, casualty, and extended coverage insurance on the Common Facilities is not maintained or the premiums therefor are not paid when due, any Mortgagee or any combination of Mortgagees may, jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association, together with interest thereon from the date of expenditure at the rate of ten percent (10%) per annum.

#### ARTICLE XIII

##### ANNEXATION OF ADDITIONAL PROPERTY

Any real property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

13.01 Annexation Without Approval and Pursuant to General Plan. Any real property may be annexed to and become subject to this Declaration and subject to the jurisdiction and a part of the Association without the approval, assent or vote of the Association or its Members, providing and on condition that:

(a) Prior to the conveyance of title to any improved lots within the real property to be annexed to individual purchasers thereof, fee simple title or right-of-way to the common area within said real property shall be conveyed to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be

prorated to the date of transfer, and easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

(b) A Supplementary Declaration of Covenants, Conditions and Restrictions covering said additional real property described shall be executed and recorded by Declarant, the owner of said real property, or its successors and assigns. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said real property shall automatically be members of the Association.

13.02 Supplementary Declarations. The additions authorized under the foregoing Section shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of this Declaration to such property.

Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such supplementary Declaration merger or consolidation, revoke, modify or add to the covenants established by this Declaration within the existing property, except as hereinafter otherwise provided.

The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of lots in said real property shall automatically be members of the Association.

13.03 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively,

the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions or restrictions established by this Declaration with the existing property, together with the covenants and restrictions established upon any other property, as one plan.

#### ARTICLE XIV

##### GENERAL PROVISIONS

14.01 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, limit, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof. Failure to enforce any provision, covenant, condition or restriction of this Declaration shall not operate as a waiver of any such provision, covenant, condition, or restriction or any other provision, covenant, condition, or restriction.

14.02 Compliance and Enforcement. Each Owner and other occupant of the Property shall comply strictly with the provisions, covenants, conditions, and restrictions of this Declaration, all rules and regulations promulgated hereunder by the Association and all decisions and resolutions of the Association adopted pursuant to the foregoing, as the same may be amended, modified, revised, or adopted from time to time. Failure on the part of any Owner or other occupant of the Property to comply with any of the foregoing shall be grounds for an action to recover damages or for injunctive relief or both, maintainable by the Association or, in a proper case, by an aggrieved Owner. In the event of any action by the Association to enforce the provisions, covenants, conditions, or restrictions of this Declaration or rules and regulations promulgated

hereunder, whether by formal legal proceeding or otherwise, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection therewith, including court costs and reasonable attorneys' fees. The obligations, provisions, covenants, conditions and restrictions contained in this Declaration with respect to the Association shall be enforceable by the Declarant or by any Owner through a proceeding for a prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to all other rights and remedies of this Declaration, rules and regulations promulgated by the Association, and decisions and resolutions of the Association adopted pursuant thereto.

14.03 Registration of Mailing Address. Each Owner shall register with the Association from time to time his current mailing address. All notices and demands intended to be given to or served upon any Owner may be hand delivered or sent by first class U.S. mail, postage prepaid, and addressed to the Owner at his registered mailing address or, if no address has been registered, to the Owner at the address of his Lot. All notices and demands intended to be given to or served upon the Association may be sent by first class U.S. mail, postage prepaid, and addressed to the Association at the address of its registered agent as the same may be established from time to time in the corporation records of the Department of Commerce of the State of Utah, or to the Association at such other address as the Association may from time to time designate by written notice to the Owners. Any notice or demand referred to in this Declaration or in the rules and regulations promulgated hereunder by the Association shall be deemed to have been given or served when hand delivered or when deposited in the U.S. mail, first class postage thereon prepaid, and addressed as provided in this Section.

14.04 Obligations of Owners. All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Lot. The Owner of a Lot shall have no obligation for assessments hereunder or other obligations hereunder (except interest and costs of collection with respect to prior obligations) accruing after he conveys such Lot.

14.05 Amendment. Except as otherwise provided herein, this Declaration may be amended only by an instrument duly executed and acknowledged by Members holding at least seventy-five percent (75%) of the votes of each Class of Membership and recorded in the Official Records of the County Recorder of Salt

Lake County, Utah. The foregoing right of amendment shall be subject to the following paramount right: For a period of three (3) years from the date this Declaration is filed for record in the Official Records of the County Recorder of Salt Lake County, Utah, the Declarant shall have and is hereby vested with the right to amend this Declaration by an instrument duly executed and acknowledged by Declarant and recorded in the Official Records of the County Recorder of Salt Lake County, Utah. Such right of amendment shall apply without regard to the subject matter or the nature of the amendment involved, provided only that such right of amendment shall be subject to the specific provisions of Article XII above (Mortgagee Protection) and Section 9.05 above (Uniform Rate of Assessments) and that any such amendment shall be consistent with applicable law.

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

14.07 Declarant's Rights Assignable. The rights of the Declarant under this Declaration or in any way relating to the Property may be assigned to any person or entity who acquires all or substantially all of the Declarant's rights and interests in and to the undeveloped and partially undeveloped Lots.

14.08 Effective Date. This Declaration and any amendment hereof shall take effect upon recording in the office of the County Recorder of Salt Lake County, State of Utah.

IN WITNESS WHEREOF, the undersigned have executed this Declaration the day and year first above written.

DECLARANT:

HONEYCUT ACRES, a Utah general partnership

By:

J. Gordon Sorensen  
General Partner

By :

Elaine J. Sorensen  
Elaine J. Sorensen  
General Partner

STATE OF UTAH )

: ss.

COUNTY OF SALT LAKE )

On the 23<sup>rd</sup> day of July, 1991, personally appeared before me J. GORDON SORESENSEN and ELAINE J. SORESENSEN, who being by me duly sworn did say that they are the General Partners of Honeycut Acres, a Utah general partnership, and said J. GORDON SORESENSEN and ELAINE J. SORESENSEN acknowledged to me that said limited partnership executed the same.

Laura L. Blanford  
NOTARY PUBLIC  
Residing at SLC, UT

My Commission Expires:

10-14-94

