

**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS OF  
HORIZONS WEST RETIREMENT COMMUNITY AND  
HORIZONS WEST PHASE II AMENDED RETIREMENT COMMUNITY  
AS OF 12/28/94**

00514687 BK0949 Pg0159

RUSSELL SHIRTS \* WASHINGTON CO RECORDER  
1995 NOV 07 13:07 PM FEE \$58.00 BY RS  
FOR: HORIZON HOMES

**GALLIAN, WESTFALL, WILCOX & WRIGHT**  
ATTORNEYS AND COUNSELLORS AT LAW

TABLE OF CONTENTS OF  
 AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS  
 AND RESTRICTIONS OF  
 HORIZONS WEST  
 A RETIREMENT COMMUNITY  
 AS OF 12/28/94

ARTICLE I - DEFINITIONS-----	2
Section 1 Declaration-----	2
Section 2 Plat or Map-----	2
Section 3 Property or Properties-----	2
Section 4 Common Area-----	2
Section 5 Limited Common Area-----	2
Section 6 Lot-----	3
Section 7 Home-----	3
Section 8 Owner-----	3
Section 9 Association-----	3
Section 10 Member-----	3
Section 11 Trustees-----	3
Section 12 Declarant-----	3
Section 13 Mortgage-----	3
ARTICLE II - PROPERTY RIGHTS-----	3
Section 1 Title to the Common Area-----	3
Section 2 Owners' Easements of Enjoyment-----	3
Section 3 Limited Common Area-----	4
Section 4 Delegation of Use-----	4
Section 5 Rules-----	5
Section 6 Lot-----	5
ARTICLE III - MEMBERSHIP AND VOTING RIGHTS-----	5
Section 1 Membership-----	5
Section 2 Voting Rights-----	5
ARTICLE IV - FINANCES AND OPERATIONS-----	6
Section 1 Creation of the Lien and Personal Obligation of Assessments-----	6
Section 2 Purpose of Assessments-----	6
Section 3 Maximum Annual Assessment-----	7
Section 4 Special Assessments for Cap. Imprvmnts-----	7
Section 5 Additional Assessments-----	7
Section 6 Notice and Quorum for Any Action Author- ized Under Sections 3,4 and 5-----	7
Section 7 Uniform Rate of Assessment-----	8
Section 8 Date of Commencement of Annual Assmnts-----	8
Section 9 Effect of Non-Payment of Assessment Remedies of the Association-----	9
Section 10 Subordination of the Lien to Mortgages-----	9
Section 11 Books, Records and Audit-----	10

GALLIAN, WESTFALL, WILCOX & WRIGHT  
 ATTORNEYS AND COUNSELLORS AT LAW

00514687 Bk0949 Pg0160

ARTICLE V - INSURANCE-----	10
Section 1    Casualty Ins. on Insurable Common Area-----	10
Section 2    Replacement or Repair of Property-----	11
Section 3    Liability Insurance-----	11
Section 4    Fidelity Insurance-----	11
Section 5    Annual Review of Policies-----	11
ARTICLE VI - LANDSCAPING AND ARCHITECTURE-----	12
Section 1    Landscaping-----	12
Section 2    Architectural Control Committee-----	12
ARTICLE VII - EXTERIOR MAINTENANCE-----	12
Section 1    Exterior Maintenance-----	12
Section 2    Maintenance by Owner-----	13
Section 3    Access at Reasonable Hours-----	13
ARTICLE VIII - USE RESTRICTIONS-----	13
Section 1    Construction, Business and Sales-----	13
Section 2    General Use Restrictions-----	13
Section 3    Signs-----	14
Section 4    Quiet Enjoyment-----	14
Section 5    Animals-----	14
Section 6    Use of Common Area-----	14
Section 7    Parking-----	14
Section 8    RV Parking-----	15
Section 9    Planting and Gardening-----	15
Section 10   External Apparatus-----	15
Section 11   Exterior Television or Other Antennas-----	15
Section 12   Garbage Removal and Clutter Control-----	15
Section 13   Use and Maintenance of Lots-----	16
Section 14   Interior Utilities-----	17
Section 15   Leases-----	17
Section 16   Retirement Community-----	17
Section 17   Adult Area-----	18
ARTICLE IX - EASEMENTS-----	18
Section 1    Encroachments-----	18
Section 2    Utilities-----	18
Section 3    Police, Fire and Ambulance Service-----	19
Section 4    Maintenance by Association-----	19
Section 5    Other Easements-----	19
ARTICLE X - GENERAL PROVISIONS-----	19
Section 1    Enforcement-----	19
Section 2    Severability-----	20
Section 3    Duration-----	20
Section 4    Amendment-----	20
Section 5    Notices-----	20
Section 6    Gender and Grammar-----	20
Section 7    Waivers-----	21
Section 8    Topical Headings-----	21
ARTICLE XI - ASSIGNMENT OF POWERS-----	21

GALLAN, WESTFALL, WILCOX & WRIGHT  
ATTORNEYS AND COUNSELLORS AT LAW

**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS OF  
HORIZONS WEST RETIREMENT COMMUNITY AND  
HORIZONS WEST PHASE II AMENDED RETIREMENT COMMUNITY  
AS OF 12/28/94**

Declarant, Horizons Homes, L.C., a Utah limited liability company (hereinafter "Declarant") and Horizons West Homeowners Association, Inc., a Utah non-profit corporation (hereinafter "Homeowners Association"), hereby amend the Declaration of Covenants, Conditions & Restrictions of Horizons West and Horizons West Phase II Amended, as follows:

1. The parties to this Declaration of Covenants, Conditions & Restrictions have found that multiple declarations have been filed on a commonly managed property, and the parties desire to eliminate the multiple declarations to eliminate confusion or other problems and bring the entire Horizons West total project under a single Declaration of Covenants, Conditions & Restrictions. Accordingly, the original Declaration of Covenants, Conditions & Restrictions of Horizons West dated May 4, 1993 recorded May 21, 1993, as Entry No. 434070, the Declaration of Covenants, Conditions & Restrictions of Horizons West Phase II, and the Declaration of Covenants, Conditions & Restrictions of Horizons West Phase II Amended, are hereby eliminated and subsumed in this single covenant. In so making this amendment, the parties state that they have obtained sufficient consents for the Amendment as required in all three Declarations' amendment clause (see Article X, Section 4 which requires signature on an instrument signed by not less than 67% of the owners), copies of which consents are attached hereto.

Except as otherwise shown below, the wording of the Declaration of Covenants, Conditions & Restrictions of Horizons West is identical except that the parties have changed the wording of Article VIII, Use Restrictions, Section 8, RV Parking, to provide for certain minor adjustments and amendments as set forth hereinafter.

Accordingly, the balance of the Declaration as Amended shall read as follows:

DECLARATION

Declarant hereby declares that all of the properties described below shall be held and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Map recorded concurrently. This is for the purpose of protecting the value and desirability of the Properties. This Declaration and the Map shall be construed as covenants of equitable servitude, shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

GALLAN, WESTFALL, WILCOX & WRIGHT  
ATTORNEYS AND COUNSELLORS AT LAW

00514687 BK0949 Pg0162

The properties are located in Washington City, Washington County, and are described as:

Beginning at a point N. 00°07'58" W. 1693.59 feet along the Section Line and N. 89°41'58" W. 1328.81 feet from the Southeast Corner of Section 14, Township 42 South, Range 15 West, Salt Lake Base & Meridian, said point being on the South Right-of-Way line of the Old State Highway 91; and running thence S. 00°07'58" E. 325.00 feet; thence N. 89°48'26" E. 324.96 feet; thence S. 00°07'58" E. 500.00 feet; thence N. 89°41'58" W. 981.43 feet; thence N. 44°30'00" E. 267.18 feet; thence N. 27°30'00" E. 310.00 feet; thence N. 00°21'00" E. 397.92 feet to a point on the South Right-of-Way Line of Said Highway 91; thence along said Right-of-Way Line S. 89°41'58" E. 363.76 to the point of beginning. Containing 11.827 acres.

The above description encompasses all of Phase I, Phase II and Phase II Amended.

#### ARTICLE I - DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1. Declaration means this instrument, and any amendments.

Section 2. Plat or Map means the subdivision plat recorded herewith entitled "Horizons West Phase I, Phase II and Phase II Amended" consisting of one (1) sheet each, prepared and certified by Lloyd Reid Pope, a Utah Registered Land Surveyor or any replacements thereof, or additions thereto.

Section 3. Property or Properties means that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 6. Lot means a separately numbered and individually described plot of land shown on the plat designated for private ownership, but specifically excludes the common and limited common areas.

Section 7. Home means a single family dwelling. These homes are slab-on-grade single family dwellings and may have a common garage wall with an adjacent home in some instances.

Section 8. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the Properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner."

Section 9. Association means Horizons West Homeowners Association, its successors and assigns.

Section 10. Member means every person or entity who holds membership in the Association. Every Member is an owner, and every Owner is a Member.

Section 11. Trustees means the governing body of the Association.

Section 12. Declarant means Horizons, Inc. and its successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

#### ARTICLE II - PROPERTY RIGHTS

Section 1. Title to the Common Area The Declarant will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owners' Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. this easement is appurtenant to and passes with the title to every lot, subject to:

- (a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall

be charged for parking specifically designated on the plat as appurtenant to a lot.

- (b) The right of the Association to limit the number of guests or members using the common area.
- (c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) The right of the Association to enter into agreements or leases which provide for use of the common areas and facilities by a similar association in consideration for use of the common areas and facilities of the other Association, or for cash consideration;
- (e) The right of the Association with the approval of sixty-seven percent (67%) of each class of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area or any interest therein to any private individual, corporate entity, public agency, authority, or utility.
- (f) The right of the Association to grant easements for water, sewer, gas, telephone, electricity and drainage purposes.
- (g) The right of the Association to take such steps as are necessary or desirable to protect the common area against foreclosure.
- (h) The terms and conditions of this Declaration.
- (i) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

**Section 3. Limited Common Area** A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. The association, through its Trustees, may adopt rules and regulations concerning use of the limited common area.

**Section 4. Delegation of Use** An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have

any such right of enjoyment.

Section 5. Rules The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees.

Section 6 Lot Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the manufactured home walls shall be treated as limited common area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a lot larger than the manufactured home is to allow flexibility in building the foundations and installing the permanent manufactured home on the lot. After the initial construction on a lot, subsequent construction, if any, on that lot must nevertheless conform to the location, size, and appearance of the original manufactured home.

### ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting rights The Association has two classes of voting membership:

CLASS A. Class A members are all members with the exception of the Declarant. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each lot owned. The Class B membership will cease and be converted to Class A



membership on the happening of either of the following events, whichever occurs earlier:

- (a) upon conveyance of seventy-five percent (75% of the lots subject to this Declaration to purchasers; or
- (b) the expiration of four (4) years from the first lot conveyance to a purchaser.

#### ARTICLE IV - FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation of Assessments The Declarant and each subsequent owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when all the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; Insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustee shall determine to be necessary to meet the

primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 3. Maximum Annual Assessment Until January 1 following recording of this Declaration, the maximum annual assessment shall be Nine Hundred Dollars (\$900.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.

(b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements In addition to the annual assessments, the Association may levy in any assessment year a special assessment applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of Washington in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty

(30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment; Periodic Assessment  
Both annual and special assessments must be fixed at a uniform rate for all lots; provided, however, that assessments shall not accrue against the Declarant so long as the Declarant has Class B membership on the condition that the Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Class B Membership. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees.

Annual, special and additional assessments may be collected on a monthly basis, as the Trustees determine.

Section 8, Date of Commencement of Annual Assessments: Due Dates  
The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to 90% of the maximum annual assessment provided above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent, a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the

Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 9. Effect of Non-Payment of Assessment - Remedies of the Association Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed ten per cent (10%) of the installment.

The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale, the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any

lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a lot or owner from personal liability for assessments coming due after he takes title or form the lien of such later assessments.

Section 11. Books, Records and Audit The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall be available for inspection by lot owners and insurers, as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

#### ARTICLE V - INSURANCE

Section 1. Casualty Insurance on Insurable Common Area The Trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may 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, 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. 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 are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all the Manufacture Homes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other Insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Homes shall be written in the name of and the proceeds thereof shall be

payable to the Association as trustee for the owners.

**Section 2. Replacement or Repair of Property** In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of 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 assessments made against such lot owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the Homes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each owner for this purpose.

**Section 3. Liability Insurance** The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operations, maintenance or use of the common areas. Liability insurance policies obtained by the Association 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.

**Section 4. Fidelity Insurance** The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

**Section 5. Annual review of Policies** All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies

is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

ARTICLE VI - LANDSCAPING & ARCHITECTURAL CONTROL COMMITTEE

Section 1. Landscaping Horizons West shall utilize desert landscaping with minimal to no water requirements between the houses coupled with small front and rear lawns that drain away from the houses. Owners landscaping proposals should take into account a continuation of the general appearance of the subdivision and must be submitted to the Landscaping and Architectural Control committee before putting in the landscape.

Section 2. Architectural Control Committee No structure, building, fence, basketball standard, wall or expansion of any of the foregoing shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration to any lot or home be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of homes and lots, and the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and paintings.

The Declarant shall not be required to comply with the provisions of this paragraph in the initial construction of the Properties.

ARTICLE VII - EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance In addition to maintenance upon the common area and limited common area, the Association shall provide exterior maintenance upon each lot, including, but not limited to the following: outside perimeter fences, street signs, lights, mailboxes, trees, shrubs, grass, walks, driveways and other exterior improvements. The cost of

regular exterior maintenance shall be a common expense and shall be added to and become part of the regular annual assessment.

Section 2. Maintenance by Owner Each owner shall be solely responsible for maintenance to glass, doors and screens and lot line fences on his lot or Home, and for any maintenance on his lot or Home required due to willful or negligent acts. In the event an owner shall fail to perform this maintenance in a manner satisfactory to the Trustees, as determined by a 2/3 vote, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which such lot is subject.

Section 3. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

#### ARTICLE VIII - USE RESTRICTIONS

Section 1. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incident to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 2. General Use Restrictions All of the properties which are subject to this declarations are hereby restricted to residential dwellings, and buildings in connection therewith including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures erected in the properties shall be removed from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, barn or other outbuilding shall be placed or used on any lot at any time. An exception may be granted for one (1) Association approved storage shed or building erected toward the back of a lot. No major repairing or overhauling of cars is permitted on the streets,



driveways or parking lots.

Section 3. Signs; Commercial Activity No advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. Commercial activities other than simple 1 person service type businesses that are properly licensed shall not be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the Declarant or the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 4. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties. Loud ball bouncing, skate boarding, loud outside radio playing and late night noises are to be controlled and avoided in deference to the needs for neighbors to enjoy quiet surroundings. Any annoyance or nuisance to the neighborhood which shall in any way interfere with quiet enjoyment of the community or which shall in any way increase the rate of insurance should be avoided or stopped when asked by a neighbor or the Association.

Section 5. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 6. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Parking All automobile parking must be off the

street on the owners driveway or garage area. Visitors must either park in the driveway also or use the spillover parking around the clubhouse.

No motor vehicle which is inoperable shall be allowed within the Properties, and any such motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense.

If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner with the corresponding number. If parking areas are not designated on the plat with lot numbers, the Trustees may assign vehicle parking space for each lot.

Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use.

Section 8. RV Parking Recreational vehicles and travel trailers in special cases may be parked on the lots or may be permitted in the overflow fenced parking area. Any charges for parking in the overflow area shall be determined by rule of the Association. Any R.V.'s parked in a limited common area next to the home or on the owners property must be kept behind the 10 foot setback from the street or should not protrude out past the front of the home. This special parking may be used for RV's, and personal vehicles in operating condition. Travel trailers, boats, camper shells, pickup canopies and any detachable device if stored next to the home, must be kept out of sight towards the back of the lot. All other personal property are considered general clutter and must be kept put away and out of sight so as to preserve the neat and tidy appearance of the subdivision and general area.

Section 9. Planting and Gardening All planting or gardening shall be done in accordance with section 1, Article VI Landscaping & Architectural Design Changes.

Section 10. External Apparatus No lot owner shall cause or permit anything (including without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 11. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.

Section 12. Garbage Removal and Clutter Control All

rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the community. No lot shall be used in whole or in part for the storage of rubbish, trash, used or new building materials (except during construction), used or new metal trucks, automobiles or machinery in whole or in parts. Bicycles, toys, and other similar items shall not be left in front yards when not in use but shall be placed out of sight within a storage building or other area. No personal property, substance, thing or material shall be kept on any lot or part thereof that will emit foul or obnoxious odors, or that will cause any noise that might disturb the peace and quiet of the surrounding property owners, or will cause the lot or part thereof to appear in unclean or untidy condition.

Section 13. Use and Maintenance of Lots It shall be the responsibility of the owners to keep their lot neat and clean, and landscaped in types of landscaping deemed reasonable and compatible to surrounding lots by the Association, and the improvements on their lot in a state of repair in such a way as not to destroy or impair the aesthetic qualities of Horizons West.

The Association shall have the right, either itself or through another person, to furnish the labor and/or materials necessary to bring said lot or parcel up to a standard approved by the Association, and to maintain them according to such a standard. In such event, the owner of such lot shall pay the Association an amount equal to all direct and indirect costs and expenses by the Association in furnishing such labor and/or materials or having the same furnished; the amount that the owner of any such lot is obligated to pay hereunder shall constitute a lien on such lot or parcel, and shall be payable within ten (10) days after the charge is made. The Association shall be entitled to enforce its rights hereunder by following the procedure provided for the enforcement of Mechanic's and Materialmen's liens in the State of Utah.

No storage of any kind will be permitted around or within the lot boundaries except in a utility building that may be approved by the Association as to design in writing or in accordance with the approval of the Association.

No more than one (1) single family home shall be construed or permitted to be maintained upon any lot in said subdivision.

No sign excepting a temporary "for sale" or "for rent" sign shall be erected, placed, permitted or maintained on any lot except as herein expressly permitted.

There shall be no new or additional construction of buildings, fences or other structures, or modifications to existing buildings, fences or other structures without written approval of the Association. No oil drilling, mining or other resource study efforts will be permitted on any lot.

Laundry may be dried in the back yard of the lot, but must be completely screened from view from the front yard of said lot. All facilities for the hanging and/or drying of laundry, clothing, household linens and bedding must be approved by the Association.

All personal cars must be fully parked on the owner's lot and in the garage or on the driveway. No in-street and cul-de-sac parking will be permitted at any time except for approved deliveries, pick-ups or short-time visitors.

No lot or lots shall be re-subdivided except for the purpose of combining two or more lots into one homesite.

No elevated tanks of any kind shall be erected, or placed, or permitted on any lots.

No outdoor burning or trash other debris shall be permitted. This shall not prohibit the use of normal residential barbecue or other similar outside grill.

Section 14. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 15. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. All leases shall contain a verbatim restatement this section and of the following Sections 16 and 17.

Section 16. Retirement Community This planned unit development is an adult 55 years of age and older community, developed to provide housing for older persons. Each grantee of a deed for a lot within the properties acknowledges by acceptance of that deed that a purpose of the development, and the facilities within the development are designed for retirement, are a significant consideration in the purchase of the lot. A Home must be occupied by at least one person over the age of fifty-five, or by the surviving spouse of a person over the age of fifty-five who

has occupied the Home. When the surviving spouse continues to occupy the Home; it must be acknowledged, however, that no surviving spouse may occupy a Home in Horizons West under this provision if that occupancy would cause the number of Homes occupied by persons under the age of fifty-five to fall below eighty percent of the total number of Homes in the Properties.

Section 17. Adult Area General areas shall be designated as Adult.

No person occupying a lot within the adult area shall allow any child under the age of 18 or to live upon said lot except for short term visits not to exceed 90 days. In the event that any individual within the adult area should receive any child under the age of 18 as a permanent or long-term resident subsequent to its occupation of any lot, it shall be the responsibility of the owner to use reasonable and necessary efforts to fully instruct this younger person to live according the Covenants and Restrictions of Horizons West.

If a problem develops, the Association shall inform the owner of noncompliance and set up a 90 day period of evaluation. In the event that noncompliance continues in excess of the 90 day review period, then the Association shall have the right to acquire said lot and dwelling at a purchase price not to exceed the original purchase price of the lot and Home plus the purchase price of any permanent improvements that can be reasonably substantiated. This provision shall not be interpreted to restrict the Association from seeking any other legal or equitable remedy that is allowable by law.

#### ARTICLE IX - EASEMENTS

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of the same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone, cable and electricity. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes,

mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be replaced underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained under the direction of the Association.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all such special services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

Section 5. Other Easements the easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE X - GENERAL PROVISIONS

Section 1. Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed 10% of the amount of the maximum

annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

Section 2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3. Duration The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declaration to comply with City, State or other laws, or regulations or requirements of holders, insurers, or guarantors of first mortgages, subject to compliance with applicable guidelines of the Federal Housing Administration or Veterans Administration.

Section 5. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7. Waivers No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XI - ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 28th day of December, 1994.

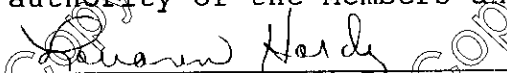
HORIZON HOMES, L.C.

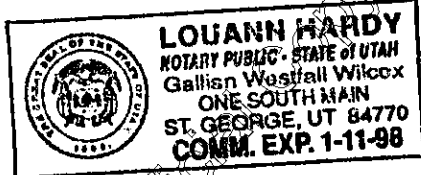


N. FRED ANDERSON  
Operating Manager

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

On the 28th day of December, 1994, before me personally appeared N. Fred Anderson, Operating Manager of Horizon Homes, L.C., who acknowledged to me that he executed the same by authority of the Members and Officers of Horizon Homes, L.C.

  
NOTARY PUBLIC





CONSENT

Consent is hereby given to the recording of the foregoing Amended Declaration of Covenants, Conditions and Restrictions of Horizons West pursuant to written consents received from over 67% of its lot owners, and agreement to the provisions and effect thereof.

Dated: 12/28/94

HORIZONS WEST HOMEOWNERS ASSOCIATION, INC., a Utah Non-profit Corporation

N. Fred Anderson  
N. Fred Anderson, President

STATE OF UTAH )  
) ss.

COUNTY OF WASHINGTON )

On this 28<sup>th</sup> day of December, 1994, before me personally appeared N. Fred Anderson, the President of Horizons West Homeowners Association, Inc., a Utah non-profit corporation, who acknowledged to me that he executed the foregoing document on behalf of that corporation by proper authority and he acknowledged before me that the corporation executed the document and said document was the act of the corporation for its stated purpose.

Louann Hardy  
NOTARY PUBLIC

