

August 28, 1997

**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
THE ESTATES AT ROSE CREEK**

August 28, 1997

08/29/97 3:31 PM 6727909 210.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE
REC BY: R JORDAN , DEPUTY - WI

**ARTICLE I
RECITALS**

NOTE: Capitalized terms found throughout this instrument shall have the meaning given at the first point in this instrument where such term is utilized and defined or as defined in Article III hereof, "Definitions."

WHEREAS, WATT RESIDENTIAL PARTNERS, a California General Partnership, d.b.a., Watt Homes, Utah Division (hereafter the "Grantor") is the owner of certain land situated in Salt Lake County, Utah, more particularly described as follows (hereafter the "Property" or "Subdivision"):

THE ESTATES AT ROSE CREEK PLAT 1, recorded August 28, 1997 as Entry No. 6726198, in Book 97-8P of plats, at page 264, in the records of the Salt Lake County Recorder, State of Utah.

WHEREAS, the Grantor desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes set forth in this Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek, (hereafter the "Declaration") to: (i) insure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Grantor and all other persons or entities who may subsequently acquire an interest in the Property consistent with a general master plan approach, and (iii) create a residential development of high quality; and

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WHEREAS, as additional land owned and platted by the Grantor adjacent to or in the vicinity of the Property is platted and developed for uses similar to that of the Property, upon election by the Grantor, such shall become subject to the terms of this Declaration by annexing the same as provided herein; and

WHEREAS, in order to achieve the objectives and desires of the Grantor, the Grantor will control the management and government of the Property and the non-profit association of Owners to be created until such time as the Owners take over the management functions through the Association upon conveyance of the last lot in the Subdivision and in accordance with the management transfer conditions more particularly set forth in this Declaration.

ARTICLE II DECLARATION

The Grantor hereby declares that the Property and each lot, tract or parcel thereof (hereafter called "Lot," unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "Covenants and Restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the subdivision, protection, maintenance, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The Covenants and Restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot in the Subdivision and any interest therein; and shall inure to the benefit of and be binding upon the Grantor and its successors-in-interest, and may be enforced by the Grantor, or by any Owner, or by the Association, or by the Architectural Control Committee on behalf of the Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Grantor's right to complete development of the Property in accordance with the plan therefor as the same exists or may be modified from time to time by the Grantor nor prevent normal construction activities during the construction of Improvements upon any Lot in the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the Architectural Control Committee provided that such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

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In the event of any conflicts between the provisions of this Declaration and the requirements of the applicable ordinances of Salt Lake County, Utah or any municipality which may annex any portion of said project (as to that portion or portions), the more restrictive provisions shall control.

ARTICLE III DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

ACC: The Architectural Control Committee for the Subdivision.

ACC Rules/ACC Standards: The written rules and standards developed and adopted, initially by the Grantor and, subsequently by the ACC pursuant to the powers granted under Article X hereof, as amended from time to time. Such ACC Rules/ACC Standards shall be developed and contain rules and standards which will promote both high quality architectural, design, engineering and building standards while, incorporating a reasonable degree of variety and flexibility while maintaining an overall design and conceptual consistency congruent with a master planned community concept.

Annexation: The process by which additional tracts or parcels of land, including platted lots improved with single family dwellings, not initially a part of the Property are made subject to this Declaration.

Assessment: A payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.

Association: The Estates at Rose Creek Owners Association, Inc., a Utah non-profit corporation.

Basement: Any living area which is more than 5 feet below the average adjacent grade.

Board: The duly elected and qualified Board of Directors of the Association.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

By-Laws: The By-Laws of the Association, including any amendments thereto duly adopted.

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County: Salt Lake County, State of Utah.

Declaration: This instrument as it may be amended from time to time.

Development: The project to be undertaken by the Grantor resulting in the improvement of the Subdivision or any additional property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other Improvements.

Grantor: The undersigned owner and its successors and assigns of the land comprising the Subdivision.

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent Improvements on a Lot following the sale of that Lot by the Grantor to an Owner, and intended for residential occupancy.

Limited Assessment: An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Subdivision or which is designated as a Lot on any recorded subdivision plat relating to the Property.

Master Plan: Shall mean the master development plan for the Property (as amended and expanded from time to time to include additional property annexed to the Subdivision and to accommodate reasonable variations from the original master concepts for subdivisions within the Property and to meet the requirements of governmental authorities having jurisdiction over the development of the Property), which development plan has been created by the Grantor, reviewed by and conceptually accepted by appropriate governmental authorities and includes single-family detached residence subdivisions, combined with certain recreational and open-space uses. Modification of the Master Plan shall be within the sole discretion of the Grantor subject to the requirement that any such modifications shall not result in a material inconsistency in property use or material departure from the overall master plan and conceptualization of the overall community encompassed by the Subdivision.

Member: Any person(s) who is an Owner of a Lot within the Subdivision.

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Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including the Grantor, holding fee simple title to a Lot in the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any real property in the Subdivision, as recorded in the office of the County Recorder, Salt Lake County, Utah, as the same may be amended by duly recorded amendments thereto.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Special Assessment: An assessment levied by the Association other than a Regular or Limited Assessment.

Supplemental Declaration: The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Subdivision promulgated by the Grantor and recorded in the official records of Salt Lake County, Utah. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Declaration" shall include "Supplemental Declaration."

Subdivision: The whole of the Property and any additional land annexed thereto as provided herein, including any such additional land as may be platted and annexed hereunder under a different name (also sometimes referred to herein as "Property").

The Estates at Rose Creek Owners Association, Inc.: The Utah non-profit corporation organized by the Grantor and comprised of Members and existing for the purpose of providing self-government for the Property.

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**ARTICLE IV
PURPOSE**

The Property is hereby made subject to the Covenants and Restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors-in-interest and assigns, to insure the proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.
- (b) Preventing the erection in the Subdivision of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from streets and open areas in the Subdivision and adequate free spaces between Improvements
- (e) Integrating the development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time to time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.
- (g) Taking advantage of and utilizing, for purposes of promoting all of the foregoing and further enhancing the value and quality of each Owner's and each Occupant's interest in the Subdivision or in any Lot or Lots therein, a master planned residential community concept accommodating a diversity of residential property uses and designs within a common and harmonious community plan with recreational and open space uses supportive of the overall planned community concepts envisioned by the Grantor.

As used hereafter, "Project Objectives" shall mean the foregoing specified purposes.

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**ARTICLE V
PERMITTED USES AND PERFORMANCE STANDARDS**

SECTION 5.01. Use. Unless otherwise specified in a Supplemental Declaration covering a particular Lot(s) or parcel(s), Lots shall be used only for residential purposes and such uses as are customarily incidental thereto.

SECTION 5.02. Buildings. The Master Plan contemplates that no Lot shall be improved except with one (1) dwelling unit. Each detached dwelling unit shall have an attached or fully enclosed garage adequate for a minimum of two (2) and a maximum of four (4) standard size automobiles. No carports or front-yard (meaning anywhere closer to the front property line of the lot than the front-most portion of the Building) parking pads shall be allowed. Unless otherwise specified in a Supplemental Declaration recorded after the date of this Declaration, the following shall be the minimum square footage requirements for detached dwelling units (excluding basements) within the Subdivision:

Lots 162 through 197 - 900 square feet;
Lots 101 through 114 - 1,000 square feet;
Lots 125 through 138 - 1,000 square feet;
Lots 139 through 161 - 1,200 square feet;
Lots 115 through 124 - 1,300 square feet.
Lots 198 through 208 - 1,300 square feet

SECTION 5.03. Approval of Use and Plans. The overall architectural style and detailing of each Improvement (including each Building) and the associated landscaping and site use is subject to ACC review and approval. Extraordinarily stylized or unique building shapes, or styles, such as geodesic domes, A-Frames, or cubic block homes are prohibited. The determination of whether or not a proposed Building is within this prohibited category of unique building styles shall rest with the ACC and such determinations shall be made in the sole and absolute discretion of the ACC; provided, that in making such determination, the ACC may consult with Owners of Lots in the immediate surrounding area of the Lot where the subject Building is proposed. No Initial Construction, including any site preparation or excavation of the Lot or other preparatory construction of Improvements for such Initial Construction shall be undertaken, built, constructed, erected or placed on a Lot unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of Article X, below. After Initial Construction, no other work of construction, excavation, or any material alteration to Improvements on a Lot shall be undertaken without obtaining the same advance approvals as are required with respect to Initial Construction. Two sets of site, building, all four elevations, fencing, and landscaping plans are to be submitted to the ACC for approval.

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SECTION 5.04. Prohibited Buildings/Uses. No trailer or other vehicle, tent, shack, garage, accessory building or out-building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done or any use made thereon or thereof which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

SECTION 5.05. Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dishes larger than 24 inches, shall be erected or maintained on a Lot without the prior written approval of the ACC.

SECTION 5.06. Easements. Certain easements, as hereinafter described, are hereby reserved for the use and benefit of the Grantor and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association and/or the County, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, in conformance with the following:

- (a) The easements are as follows:
 - (i) An easement for the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat(s) for the Subdivision.
 - (ii) An easement for the purpose of permitting the Grantor, the Association and/or the County, their contractors and agents, to enter onto those portions of Lots contiguous to any property owned by the Association and/or the County to maintain, replace and restore landscaping and other Improvements within the Association and/or County property.
 - (iii) Reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and any property owned by the Association and/or the County adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements including fences constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be

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altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner.

- (iv) Any additional easements, if any, as shown and designated on the recorded Plat(s) for the Subdivision.
- (b) Except as provided herein, the above easement areas (excluding any equipment or appurtenances owned by the Grantor, the Association, the County, or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.
- (c) No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.
- (d) The easements reserved to the Grantor hereunder shall be fully assignable or otherwise transferrable by the Grantor to the Association and/or the County at the sole discretion of the Grantor.

SECTION 5.07. Lighting. All exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on any neighboring Lot(s).

SECTION 5.08. Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except as follows:

- (a) Not more than two (2) domesticated dogs and/or cats, or other small household pets shall be allowed so long as said animals do not unreasonably bother or constitute a nuisance to others, and provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot.
- (b) On Lots 115 through 124 and 198 through 206, not more than two (2) horses shall be allowed so long as said animals do not unreasonably bother or constitute a nuisance to others, and provided that they are not kept, bred or maintained for any commercial purpose.

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SECTION 5.09. Commercial Use Prohibited. No Lot shall be used for commercial or business activity; provided, however, that the Grantor or persons authorized by the Grantor may use a Lot(s) for development and sales activities relating to the Subdivision, model homes or real estate sales. As used herein, "commercial or business activity" shall not include the rental by an Owner of a Lot and the Improvements thereon for residential purposes or the incidental use of a Lot and the Improvements thereon by an Occupant for purposes incidental to a commercial or business activity, and such activity shall not be a use in violation of this Section, provided that: (i) provided that the Occupant has applied for a Home Occupation, Home Care facility, or Day Care permit complying with the appropriate public agency's requirements and been approved for same, (ii) such Lot is not used for storage of commercial or business items, (iii) employees, customers, clients, patrons and similar persons related to such commercial or business activity are not present on the Lot on a regular basis except as may be permitted in (i) above, and (iv) no exterior signage (except for one non-illuminated, non-dayglo, non-fluorescent or non-reflective sign of a maximum one square foot in a window may be permitted by the Architectural Control Committee). This Section specifically prohibits the use of a Lot for the commercial repair or sale of any vehicle, equipment, boat or other fuel operated equipment.

SECTION 5.10. Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows unbroken and glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) Each Owner of a Lot shall have the responsibility for all upkeep and maintenance of their Lot to the lip of the curb, whether sidewalk Improvements have been constructed or not.
- (c) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (d) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals.
- (e) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.

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- (f) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (g) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall, in a manner satisfactory to the ACC, be corrected, removed or screened from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.
- (h) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board and/or its assignees, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in Article VIII of this Declaration.

The foregoing provisions shall not apply to subdivided land owned by builders or by the Grantor, that is used for agriculture, open space, or is otherwise in a predevelopment status.

SECTION 5.11. Boats, Campers and Other Vehicles. Trailers, mobile homes, trucks larger than standard pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, when not in actual use, shall be kept at all times in an enclosed structure or in a paved sideyard area next to the garage and at no time shall any of said vehicles or equipment be parked or stored on a public or private right-of-way within the Subdivision. The parking or storage of commercial equipment, including, but not limited to, truck trailers or cabs, construction or excavation equipment, etc., is prohibited. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles (hereafter "Automobiles"). No other use of a garage or conversion of a garage, which prohibits or limits the

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use of a garage for the parking or storage of the number of automobiles for which it is designed, shall be permitted. Parking on the lawn or unpaved portion of the Lot or in a public right-of-way within the Subdivision, other than for temporary purposes (as determined by the ACC), is prohibited. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. A minimum of two (2) off-street parking spaces for automobiles shall be provided on each Lot in addition to the garage spaces, provided that no parking in the front yard setback area of the Lot shall be allowed only in space directly in front of the garage.

SECTION 5.12. Garage Doors. Garage doors shall be kept closed except when open for a temporary purpose.

SECTION 5.13. Exterior Materials and Colors. All exterior materials and colors shall be selected and used as approved by the ACC. No gravel roofs shall be permitted.

SECTION 5.14. External Energy Devices. No energy producing devices including, but not limited to, solar panels and generators of any kind, shall be constructed, installed or maintained on any Lot without the prior written approval of the ACC, except as follows:

- (a) Heat pumps, air conditioning compressors, evaporative coolers, or similar appliances shown on the plans approved by the ACC shall be authorized.
- (b) The use of generators and other external energy producing devices shall authorized on a temporary basis in the event and during the period of an emergency.

SECTION 5.15. (reserved)

SECTION 5.16. Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon and home occupation signage as per 5.09 (iii). Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign in the Subdivision shall be permitted, provided the same is approved by the ACC prior to installation. The Grantor shall regulate project and builder signage during the development phases of construction and marketing of homes within the Subdivision.

SECTION 5.17. Subdividing. No Lot which has been platted and approved as a final building or residential lot (whether for single-family buildings or otherwise) may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one

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person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.18. Fences. It is the intent of the Grantor to create an open, spacious and landscaped appearance throughout the Subdivision. Therefore, all fences, walls, hedges, high plantings, obstructions and other visual or privacy barriers (hereafter collectively "fences") shall be constructed and installed in compliance with the applicable ordinances of the County, and in conformance with fencing standards and specifications to be promulgated by the ACC. In the event there is a conflict between the requirements of the County ordinances and the ACC standards and specifications, the more strict requirement shall control. **OWNERS SHOULD NOT ORDER FENCE MATERIALS THAT ARE NOT IN COMPLIANCE WITH SUCH ORDINANCES, STANDARDS AND SPECIFICATIONS.** All fences constructed on Lots within the Subdivision shall be subject to the following additional conditions and restrictions:

- (a) Fences greater than 36" in height shall not project beyond the front yard setback or the principal Building (whichever distance is greater) on the Lot upon approval of the ACC. No fence higher than six feet (6') shall be allowed.
- (b) Street side yard fences on corner lots shall not be erected within a required street side yard. It is strongly encouraged that privacy between Lots be established by hedges, trees, shrubbery or other landscaping, provided that the same complies with the intent of this Declaration and the ACC fencing standards and specifications. Heavy foliage and fences are not allowed to interfere with the vision triangle of traffic.
- (c) All fences shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs.
- (d) No fence shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Plat(s) of the Property.
- (e) Fences installed by the Grantor, County or other public agency, or the Association on or along property owned by the the County or Association shall not be altered or modified by any Owner or Occupant in any manner other than for routine

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maintenance (including painting, repair and replacement). Owners and Occupants shall not install parallel fences to those installed by Grantor, the Association or the County, behind or along the original fence installed by the Grantor, the Association, or the County, except that in the event horses are to be maintained by the Owner on a Lot, the Owner shall be required to install adequate fencing inside any decorative perimeter fencing.

- (f) Except as provided herein, chain link fencing is not a permitted fence type. Exceptions may be granted by the ACC on a case-by-case basis where: (1) such fence would be limited to a small area (such as a dog run) and (2) where the chain link fence is not used as a perimeter fencing method and would not be open to public view. In all events, uses of chain link fencing must receive prior approval by the ACC in writing with respect to location, color and other compliance with the ACC fencing standards and specifications. Notwithstanding the foregoing, the Grantor shall be authorized to utilize chain link fencing, in the sole discretion of the Grantor, as necessary for the Development.

SECTION 5.19. Open Space Landscaping. Large areas of open space will be maintained in native plant materials according to the approved landscape plan for the Estates at Rose Creek PUD.

SECTION 5.20. Landscaping of Lots. The following provisions shall govern the landscaping of Lots within the Subdivision:

- (a) The ACC shall promulgate a list of trees, including street trees and other trees, and a list of shrubbery which shall be approved for planting by Owners in landscaping their Lots. No tree or shrub shall be planted in any Lot within the Subdivision that is not included within the approved lists without the prior approval of the ACC.
- (b) The minimum landscaping requirements for Lots within the Subdivision shall be as follows:
- (i) An innovative landscape design, including sculptured planting areas, berms or other features with screening or bordering of foundations, fences (if any), curbs and other similar elements.
- (ii) The initial landscaping shall include, as a minimum, the planting of lawn, trees and shrubs from the approved lists as follows: lawn in the front yard using sod or hydroseed; two - one and one-half inch caliper trees in the front yard, one of which shall be a street tree; and five shrubs in the front yard.

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- (iii) All yards shall be irrigated with an automatic underground sprinkler system.
 - (iv) All lots with a 30 foot front yard landscape easement must plant and maintain landscaping consistent with an approved landscape plan for those areas, so as to maintain a common look and arrangement.
- (c) All required landscaping on a Lot shall be installed within one year after occupancy of the Building by an Occupant.

SECTION 5.21. Addition of ACC Rules/ACC Standards. The Grantor, or in the event of the Grantor's failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property as shall be deemed necessary or desirable by the Grantor, or the ACC, as the case may be, to carry out the purposes of this Declaration.

SECTION 5.22. Exemption Of Grantor. Nothing herein contained shall limit the right of the Grantor to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Grantor, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Grantor deems advisable in the course of Development of the Subdivision. This Declaration shall not limit the right of the Grantor at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Grantor need not seek or obtain ACC approval of any Improvements constructed or placed within the Property by the Grantor in connection with the Development of the Subdivision. The Grantor shall be entitled to the non-exclusive use, without charge, of any property owned by the Association within the Subdivision in connection with the marketing of the Lots therein.

**ARTICLE VI
COUNTY PARKS AND OPEN SPACES,
AND ASSOCIATION PROPERTIES**

SECTION 6.01. County Parks and Open Spaces. All parks and open spaces identified in the approved plan for the Estates at Rose Creek PUD will be owned, operated and maintained by the County.

SECTION 6.02. Association Property. The Association may own, hold and control real property and easements within the Subdivision, together with facilities, equipment and other related personal property, and operate and maintain the same, for the use, enjoyment and/or

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benefit of the Owners of Lots and property within the Subdivision. Each Owner of a Lot, the Owner's family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the property owned by the Association subject to the following:

- (a) Articles, etc. The provisions of the Articles and By-Laws of the Association applicable to the Lot, this Declaration, and the rules, regulations and standards promulgated thereunder, and each Owner, in using the Association properties, shall comply with the same.
- (b) Suspension of Rights. The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction of published rules and regulations of the Association.
- (c) Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board.
- (d) Mortgage or Conveyance of Association Property. Except as provided in subsection (c) above, after governance of the Association vests in the Class A Members, no portion of the Association's property shall be mortgaged or conveyed by the Association without the prior approval of at least two-thirds (2/3) of the Class A Members, which approval may be obtained in writing or by a vote of the respective Class A Members at a meeting called for such purpose.

SECTION 6.03. Damages. An Owner shall be liable for any damages to property owned by the Association which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in Article IX, below.

SECTION 6.04. Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, and the Association shall thereafter determine what repair or reconstruction shall be undertaken.

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ARTICLE VII
THE ESTATES AT ROSE CREEK OWNERS ASSOCIATION, INC.

SECTION 7.01. Organization of Association. The Association shall be organized by the Grantor as a Utah non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-laws and this Declaration. Neither said Articles nor By-laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

SECTION 7.02. Members. Each Owner (including the Grantor) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association. No Owner shall have more than one membership in the Association, but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

SECTION 7.03. Classes of Membership. The Association shall have two (2) classes of membership, as follows:

- (a) **Class A Members.** Class A Members shall be all Owners of Lots within the Subdivision, with the exception of the Grantor.
- (b) **Class B Members.** Class B Members shall be the Grantor, and its successor or successors in title to one or more Lots, which Lots are held by any such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor the Grantor has specifically granted rights of Class B membership in writing; provided, that if such membership rights are not so granted, such successor shall be entitled to the membership rights of a Class A Member with respect to each Lot owned.

SECTION 7.04. Governance and Voting Rights of Members, Board of Directors and Officers. The governance of the Association and voting rights of the Class A and Class B Members shall be as follows:

- (a) Upon the effective date of the Association's Articles of Incorporation, the right to govern the affairs of the Association shall be vested in the Class B Members, as follows:

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- (i) In order to assure its right of governance and voting control during this period, the Class B Members shall have five hundred (500) total votes.
 - (ii) During the initial period of governance by the Grantor, the affairs of the Association shall be governed by a Board of Directors appointed by the Class B Members. The Directors so appointed need not be Owners.
 - (iii) The right to govern the affairs of the Association shall be and remain in the Class B Members until the last Lot is sold and transferred to an Owner (other than the Grantor), at which time the Class B Members' right of governance shall end and all Class B Memberships shall cease.
- (b) Upon the termination of governance by the Class B Members, the governance of the Association shall thereupon be and remain vested in the Class A Members, as follows:
- (i) The Class A Members, being the Owners of Lots within the Subdivision, shall be entitled to one (1) vote per Lot for each Lot owned.
 - (ii) The Class A Members shall elect a Board of Directors, each of whom shall be Owners, who shall govern the affairs of the Association, and the Board of Directors shall elect officers, all in accordance with the Articles and By-laws of the Association, as the same may be amended from time to time.

SECTION 7.05. Powers of the Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Utah subject only to such limitations as are expressly set forth in the Articles, the By-Laws and this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, By-Laws and this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of its properties and facilities and the performance of other responsibilities including, but not limited to, the following:

- (a) **Acquisition of Real and Personal Property and Facilities.** The power to acquire and improve any Lot, tract, parcel or portion of land within or without the Subdivision and such facilities, equipment and other personal property related thereto as shall be deemed advisable by the Association.
- (b) **Rules and Regulations.** The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall

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govern the use by Owners, Occupants, or any other person, of property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws and this Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

- (c) Services, Fees and Charges. The power to determine those services which are to be furnished to or for the benefit of the Members of the Association, and to impose reasonable fees and charges for property and facilities owned and maintained by the Association and for other services rendered by the Association, in addition to Regular, Special and Limited Assessments, as deemed necessary by the Board.
- (d) Assessments. The power to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- (e) Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-laws, Declaration or ACC Rules/ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (f) Delegation of Powers. The authority to delegate its power and duties to any officer, committee, employee, or to any person, firm or corporation to act as manager.
- (g) Liability of Board Members and Officers. Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act, error, or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer,

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manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

- (h) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or over the properties of the Association as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
- (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling and irrigation water systems, water, heating and gas lines or pipes.
 - (iii) Any similar public or quasi-public improvements or facilities including but not limited to parks, pathways, streets, nature trails, recreational facilities, pools, ponds, entrances, waterways, open spaces, clubhouses, game rooms, craft and handicraft facilities, greenhouses, hobby facilities and all other common amenities pertaining to the Development, provided that the particular feature or facility has been deeded by the Grantor to the Association.
- (i) Fiscal Year. The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

SECTION 7.06. Duties of Association. In addition to the powers delegated to it by the Articles, By-laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall conduct all business affairs of common interest to all Owners and perform each of the following duties:

- (a) Operation and Maintenance of Association Property. Perform, or provide for the performance of, the operation, maintenance and management of all property owned by the Association including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss and all other property owned by the Association.

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- (b) Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- (c) Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the property owned by the Association.
- (d) Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Utah, and maintain in effect, fire insurance, comprehensive public liability insurance, full coverage directors and officers liability insurance, and such other insurance, including workmen's compensation insurance, fidelity, performance, and other bonds, to the extent and in such amounts as deemed necessary by the Board in order to comply with applicable law and to carry out the Association's functions. With respect to such insurance:
 - (i) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.
 - (ii) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
- (e) Rule Making. Make, establish, promulgate, amend and repeal Association rules.
- (f) Architectural Control Committee. Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Declaration. One or more members of the Board may serve on the Architectural Control Committee.
- (g) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably

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necessary to enforce any of the provisions of this Declaration and the Association rules.

SECTION 7.07. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed at the Associations annual meeting as follows:

- (a) A pro forma operating statement (budget) for each fiscal year.
- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

ARTICLE VIII ASSESSMENTS

SECTION 8.01. Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges levied by the Association, in such amounts as the Board shall determine to be necessary, in conformance with the provisions hereof. All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and payable, provided, however, that all such assessments shall be junior and subordinate to the lien of a First Mortgage or First Deed of Trust encumbering the Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the property of the Association or by abandonment of his Lot.

SECTION 8.02. Regular Assessments. Regular Assessment shall be levied in conformance with the following:

- (a) Regular Assessments shall be assessed on a calendar year basis unless otherwise determined by the Board.
- (b) The Regular Assessments shall be based upon advance estimates of annual cash requirements as determined by the Board for the maintenance and operation of the property owned by the Association and all easement areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses

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of management, administration and funding of ACC activities, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s), and other expenses or obligations incurred or expected as they may be required by the Association in compliance with this Declaration.

- (b) The initial annual Regular Assessment due and payable for that calendar year during which the Grantor conveys fee title to a Lot to an Owner shall be in the amount of:
 - (i) \$1.00 per Lot per month for developed lots (with infrastructure), without homes completed. A Lot will be considered "developed" when the Lot is eligible for building permit and the lot has been conveyed from the Grantor to an individual or Builder.
 - (ii) \$5.00 per Lot per month for a completed home.

SECTION 8.03. Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on property owned by the Association, unexpected repair or replacement of property or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

SECTION 8.04. Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary, in the opinion of the

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Board, to protect the property owned by the Association or any other portion of the Property, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.

- (b) Correction of Violations. In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in Article X of this Declaration.
- (c) Limited Purpose. The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing before the Board with respect to said Limited Assessment.

SECTION 8.05. Commencement of Regular Assessments. Regular Assessments of the Association against each Lot shall commence on the date the Grantor conveys title to the Lot to an Owner. If the Grantor pays all or any portion of the expenses of the Association in excess of the amount assessed to Lots owned by the Grantor, such excess amounts so paid shall constitute a prepayment of Assessments (Regular and Special) to become due and payable on the Lots owned by the Grantor within the Subdivision; provided that unless such excess amounts so paid by the Grantor are paid pursuant to a written agreement with the Association to the contrary, the Grantor shall not be entitled to reimbursement in cash of any such Assessment credit nor shall such credit inure to an Owner purchasing a Lot from the Grantor, unless such person is the successor to substantially all of the interest of the Grantor in the Property. Nothing herein contained shall obligate the Grantor to pay any Assessment with respect to a Lot within a separately platted phase or subdivision within the Subdivision in which the Grantor owns all of the Lots.

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SECTION 8.06. Uniform Rate Or Assessment. Except as expressly provided to the contrary in this Declaration, Regular and Special Assessments of the Association shall be levied at a uniform rate for all Lots.

SECTION 8.07. Assessment Due Date. The due dates for Regular, Special and Limited Assessments shall be the first day of the first month of the second calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

SECTION 8.08. Interest and Penalties. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

ARTICLE IX ENFORCEMENT OF ASSESSMENTS

SECTION 9.01. Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees and court costs in connection therewith.

SECTION 9.02. Creation of Assessment Liens. There is hereby created a continuing lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subdivision pursuant to this Declaration, together with interest thereon and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in the County, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of

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applicable law. All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent be specifically set forth in the instruments creating such other liens.

SECTION 9.03. Notice of Delinquency. If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Delinquency setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Association, acknowledged by a Notary Public and recorded in the office of the Salt Lake County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

SECTION 9.04. Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Utah for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

SECTION 9.05. Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 9.06. Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration or any applicable Supplemental Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable; provided, however, that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

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SECTION 9.07. Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

**ARTICLE X
ARCHITECTURAL CONTROL COMMITTEE**

SECTION 10.01. Members of the Committee. The Architectural Control Committee shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

SECTION 10.02. Appointment. So long as the governance of the Associations remains vested in the Grantor, the Grantor shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board. The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

SECTION 10.03. Compensation. The members of the ACC may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and may be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

SECTION 10.04. Non-Liability. Neither the ACC, or any member thereof, or the Grantor or any partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Grantor or any officer, partner, employee, agent, successor or assign thereof to recover such damages.

SECTION 10.05. Approval Required. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ACC.

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SECTION 10.06. Variances. The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC. If a variance is granted as provided herein, no violation of this Declaration, ACC Rules/ACC Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon. The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of the County, or any annexing municipality and the P.U.D. standards and other conditions of approval for the Subdivision.

SECTION 10.07. Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in conformance with the following:

- (a) The application shall be in a form required by the ACC, which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.
- (b) All applications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:
 - (i) Site Plan. A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements, at a scale no smaller than 1" = 200'.
 - (ii) Building Plan. A building plot plan at a scale no less than 1" = 20'. Building elevation drawings of the north, south, east and west sides, and detailed specifications which shall indicate, by sample if

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required by the ACC, all exterior colors, materials and finishes, including roof, to be used.

- (c) The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

SECTION 10.08. Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgment to insure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a quality residential development. Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted and complete application. The decision of the ACC may be in the form of an approval, a conditional approval or denial, as follows:

- (a) The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.
- (b) In addition to the requirements of Section 10.8(a), a conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.
- (c) In addition to the requirements of Section 10.8(a), a denial of an application shall state with particularity the reasons for such denial.

SECTION 10.09. Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time and receive complaints from other Owners as follows:

- (a) An ACC inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specifications. Each owner or builder shall instruct their respective workers and employees to proceed with construction only per ACC approved plans. Any modifications or deviations from approved plans must be reapproved by the ACC prior to installation.

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- (b) The ACC is further empowered to receive from other Owners ("Complainants"), complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable ACC Rules/ACC Standards. In the event the ACC receives such a complaint from a Complainant:
 - (i) It shall first determine the validity of such complaint by inspection or otherwise. Should the ACC determine that there has been a substantive deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complainant, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:
 - (A) The Owner shall immediately cease the activity which constitutes a deviation or violation.
 - (B) The Owner shall adhere to the corrective measures set forth in the written notice.
 - (ii) Should the ACC determine there has been no substantive deviation or violation, it shall promptly issue a notice of such determination to the Owner and the Complainant.

SECTION 10.10. Hearing. An Owner submitting an application under Section 10.07, or an Owner served with a written notice of deviation or violation, or a Complainant, shall have the right to a hearing to be held by the ACC for the purpose of presenting facts and information to the ACC relative to the application, deviation or violation or complaint, as the case may be. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner or Complainant, as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Owner requesting the hearing, or in the case of a complaint, a Complainant, unless an Owner is found to be in violation in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 10.12, below.

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SECTION 10.11. Appeal. The Owner or Complainant shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 10.10, above, subject to the following:

- (a) Neither an Owner nor a Complainant shall be entitled to an appeal with respect to deviations or violations unless said Owner or Complainant, or their authorized representatives, has participated in the ACC hearing.
- (b) A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complainant, as the case may be, together with a copy of the written decision or determination of the ACC.
- (c) The failure of an Owner or Complainant to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complainant to appeal said decision and it shall be binding and enforceable.
- (d) The Board shall fix a date for the hearing of such an appeal which date shall be not later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complainant, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.
- (e) The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal.
- (f) At the hearing the Owner or the Complainant, as the case may be, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board; provided, however, that the Owner or the Complainant, as the case may be, and the ACC, shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner or the Complainant, as the case may be, and the ACC, will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

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- (g) Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner or the Complainant, as the case may be, and the ACC members, shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.
- (h) If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 10.12, below.
- (i) A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

SECTION 10.12. Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association, to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Rules/ACC Standards or the approved plans and specifications, subject to the following:

- (a) The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.
- (b) The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.
- (c) In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, the Board may elect to require that all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five

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(5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments or any installment thereof when due, shall be enforceable in the manner provided in Article IX, above.

SECTION 10.13. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article IX, above.

SECTION 10.14. Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 10.12 and 10.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 10.15. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefitted thereby.

ARTICLE XI ANNEXATION

SECTION 11.01. Annexation. Additional property may be annexed to the Subdivision and brought within the provisions of this Declaration by the Grantor, at any time, without the approval of any Owner or the Association. To annex additional property to the Subdivision, the Grantor shall record an amendment to this Declaration which shall describe the additional property to be annexed to the Subdivision, and the Grantor may supplement this Declaration with additional or different Covenants and Restrictions applicable to the annexed property, as the Grantor may deem appropriate, and the Grantor may delete or modify such covenants as are contained herein which the Grantor deems inappropriate for the annexed property. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the

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Association with the same rights, privileges and obligations as all other members. The amendment of this Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 12.02 of this Declaration. Notwithstanding the foregoing, it is anticipated that each annexed parcel shall be developed and platted as a separate and distinct subdivision and the annexation thereof shall not, by virtue of such annexation, be considered an alteration, amendment or change to the plat for any prior subdivision comprising the Property governed by the provisions of this Declaration.

SECTION 11.02. De-Annexation. The Grantor shall have the right to delete all or a portion of the Property from the coverage of this Declaration and the jurisdiction of the Association, so long as the Grantor is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Declaration is recorded in the office of the Salt Lake County Recorder.

ARTICLE XII MISCELLANEOUS

SECTION 12.01. Term. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2030, unless amended as hereafter provided. After December 31, 2030, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the Salt Lake County Recorder.

SECTION 12.02. Amendment. This Declaration may be amended as follows:

- (a) **By Grantor.** Until title to a Lot within the Subdivision is conveyed by the Grantor to an Owner, this Declaration may be amended or terminated by the Grantor by recordation of a written instrument signed by the Grantor and acknowledged setting forth such amendment or termination.
- (b) **By Owner(s).** Except where a greater percentage is required by an express provision in this Declaration, the provisions of this Declaration, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a vote or written consent of 66% of the Class A Members and 100% of the Class B Members and such amendment shall be effective upon its recordation with the Salt Lake County Recorder.

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SECTION 12.03. Books and Records. All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

SECTION 12.04. Non-Waiver. The failure of the Grantor, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 12.05. Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration and agrees to be bound by the same.

SECTION 12.06. Indemnification of Board Members. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Grantor during the period that the governance of this Association is vested in the Grantor.

SECTION 12.07. Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 12.08. Interpretation. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed to effectuate objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Utah. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine feminine or neuter shall include the masculine, feminine or neuter. All

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captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

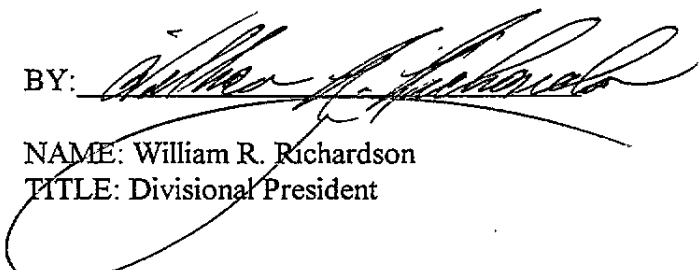
SECTION 12.09. Severability. Notwithstanding anything herein to the contrary, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

IN WITNESS WHEREOF the Grantor has executed this Declaration as of the date first hereinabove set forth.

GRANTOR:

WATT RESIDENTIAL PARTNERS, a California
General Partnership, d.b.a., Watt Homes -
Utah Division

BY:



NAME: William R. Richardson
TITLE: Divisional President

ACKNOWLEDGMENT

STATE OF UTAH)

) ss.

County of Salt Lake)

On the 28 day of August, 1997, personally appeared before me William R. Richardson, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of the partnership therein named, and who acknowledged to me that the partnership executed it

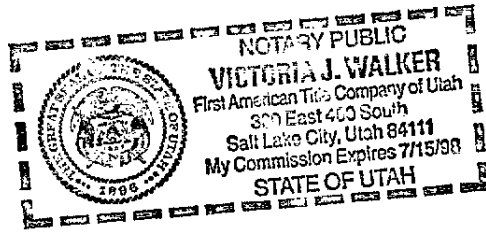
see attached

NOTARY PUBLIC

State of Utah

County of Salt Lake

On the 28th day of August, 1997, personally appeared before me William R. Richardson, who being by me duly sworn did acknowledge that he is the Utah Divisional President and authorized signer of Watt Residential Partners, a California General Partnership, dba Watt Homes - Utah Division who acknowledged to me that said partnership executed the same.



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