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DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

AND RESERVATION OF EASEMENTS FOR

HIGH POINTE

A Utah Planned Unit Development

*05-093- Unit #s
Units 1-11 and 31*

- Platted
- On Margin
- Compared
- Abstracted
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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
HIGH POINTE,
A UTAH PLANNED UNIT DEVELOPMENT

THIS DECLARATION is made on this 24th day of December, 1984, by VICOR CONSTRUCTION, INC., a Utah corporation.

RECITALS:

A. Declarant is the owner of that certain real property in Bountiful, Davis County, Utah, which is more particularly described as follows:

Beginning at a point on the east line of Bountiful Blvd., which is $S0^{\circ}01'20''E$ along the section line 1392.42 feet and East 1584.05 feet from the NW corner of Section 33, T.2N., R.1E., S.L.B. & M.; and running thence along said east line the following three courses, $N45^{\circ}15'38''E$ 31.00 feet to a point of tangency with a 806.33 foot radius curve to the left (Radius point bears $N44^{\circ}44'22''W$); thence along said curve 250.49 feet; thence $N27^{\circ}27'40''E$ 206.47 feet to a point of tangency with a 25.00 foot radius curve to the right (Radius point bears $S62^{\circ}32'20''E$); thence along said curve 43.63 feet to the southerly line of Mueller Park Road; thence along said line the following three courses, $S52^{\circ}32'20''E$ 148.92 feet; thence $S52^{\circ}32'30''E$ 330.24 feet to a point of tangency with a 1228.45 foot radius curve to the right (Radius point bears $S37^{\circ}27'30''W$); thence along said curve 109.07 feet; thence $S53^{\circ}22'37''W$ 50.00 feet; thence $N70^{\circ}05'00''W$ 312.00 feet; thence $S9^{\circ}30'00''E$ 206.00 feet; thence $N81^{\circ}30'00''W$ 290.00 feet; thence $S45^{\circ}00'00''W$ 76.03 feet; thence $S4^{\circ}00'00''E$ 65.08 feet to the northerly line of Cave Hollow Way; thence along said northerly line the following two courses, thence

S74°58'48"W 118.43 feet to a point on a 116.39 radius curve to the right (Radius point bears N15°01'12"W); thence along said curve 79.22 feet; thence leaving said northerly line N45°15'38"E 166.06 feet; thence N44°44'22"W 81.00 feet to the point of beginning.

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the real property described in Paragraph A above (the "Properties") and of the additional properties which may be annexed thereto pursuant to the provisions of this Declaration, to create a non-profit corporation under the Utah Non-Profit Corporation and Cooperative Association Act to which should be delegated and assigned the powers of owning, maintaining, replacing and administering the Common Area, maintaining and replacing the Structural Maintenance Areas, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

C. Declarant shall cause or has caused such corporation, the Members of which shall be the respective Lot Owners in the Properties, and the Lot Owners of real property annexed to the Properties pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid.

D. Declarant shall develop and convey all of the Properties pursuant to a general plan for all of the Properties and subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth. Declarant may execute, acknowledge and record a Supplemental Declaration affecting solely a Subdivision created on all or any portion of the Annexed Property so long as Declarant owns all of the Annexed Property to be affected by such Supplemental Declaration. Such Supplemental Declaration shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions regarding the use, operation, protection, maintenance and replacement of the Subdivision.

E. Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and equitable

servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Properties, or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with the Properties and shall be binding upon all persons having any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successors in interest, and each Lot Owner and his respective successors in interest; and may be enforced by any Lot Owner and his successors in interest, and by the Association through its Board.

Notwithstanding the foregoing, no provisions of this Declaration shall be construed to prevent or, except as specifically provided herein, to limit Declarant's right to complete the development of the Properties and construction of improvements thereon, nor Declarant's right to develop the Annexed Properties and to add all or any portion thereof to the Properties, nor Declarant's right to market the Lots and maintain model homes, construction, sales or leasing offices or similar facilities on any property in the Properties owned by Declarant or the Association, nor Declarant's right to post signs incidental to construction, sales or leasing.

ARTICLE I

DEFINITIONS

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

Section 1.01 "Annexed Property" shall mean the real property located in Bountiful, Davis County, Utah, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference which may hereafter be annexed as a whole or in part to the Properties as provided in Article XVI of this Declaration.

Section 1.02 "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof to review all additions to or alterations or changes in the design, color or location of any structural improvements within the Properties.

Section 1.03 "Articles" shall mean the Articles of Incorporation of the Association which have been filed in the office of the Lieutenant Governor of the State of Utah, a true copy of which is attached hereto, marked as Exhibit "B," and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 1.04 "Assessment Lien" shall mean the lien in favor of the Association which is a continuing charge on the land and secures all sums assessed against each Lot Owner and such Lot Owner's Lot within the Properties pursuant to Article VI hereof.

Section 1.05 "Association" shall mean HIGH POINTE OWNERS ASSOCIATION, a corporation formed under the Utah Nonprofit Corporation and Co-operative Association Act, its successors and assigns.

Section 1.06 "Board" shall mean the Board of Trustees of the Association, elected in accordance with the Bylaws of the Association.

Section 1.07 "Bylaws" shall mean the Bylaws of the Association, which have been or shall be adopted by the Board substantially in the form of Exhibit "C" attached hereto and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 1.08 "Capital Improvement Assessment" shall mean a charge against each Lot Owner and such Lot Owner's Lot, representing a portion of the costs to the Association for installation or construction of any improvements on any portion of the Common Area which the Association may from time to time authorize.

Section 1.09 "Common Area" shall mean all of the real property and improvements, including without limitation any recreation areas and facilities, landscaped areas, fences, Common Area lighting, guest parking and private roadways and walkways, which are owned by the Association for the common use and enjoyment of all of the Lot Owners. The Common Area shall

specifically not include the Lots. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall include the property described in Paragraph A of the Recitals of this Declaration, less all areas which lie within the confines of the Lot boundaries. Additional Common Area may be transferred to the Association in the future pursuant to the terms of Article XVI of this Declaration. The Common Area located within any future Subdivision or portion thereof shall be conveyed, lien free, to the Association prior to the sale of the first Lot in that Subdivision or prior to the sale of any portion of the Subdivision to the public.

Section 1.10 "Common Assessment" shall mean the charge against each Lot Owner and his Lot, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Properties, which are to be paid uniformly and equally by each Lot Owner to the Association, as provided herein, and which shall include an adequate reserve fund for maintenance, repairs and replacement of the Structural Maintenance Areas and those elements of the Common Area that must be replaced on a periodic basis.

Section 1.11 "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Structural Maintenance Areas and the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Lot Owner responsible for payment; management and administration of the Association, including but not limited to compensation paid by the Association to managers, accountants, attorneys and other employees; all utilities, gardening and other services benefiting the Common Area, and all recreational areas and facilities thereon; fire, casualty and liability insurance, workmens compensation insurance and other insurance covering the properties; bonding of the Association's manager, members of the Board, and any agents, employees and volunteers of the Association; taxes paid by the Association; amounts paid the Association for discharge of any lien or encumbrance levied against the Properties or portions thereof; and any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the Properties, for the benefit of all of the Lot Owners.

Section 1.12 "Declarant" shall mean and refer to Vicor Construction, Inc., a Utah corporation and its successors and

assigns so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written assignment.

Section 1.13 "Declaration" shall mean this instrument as it may be amended from time to time.

Section 1.14 "Dwelling Unit" shall mean and refer to a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

Section 1.15 "Eligible Insurer or Guarantor" shall mean and include any federal or quasi-federal governmental insurer or guarantor of Mortgages, including, without limitation, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, the Veterans Administration, and the Government National Mortgage Association.

Section 1.16 "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not all so related, inclusive of their domestic servants, who maintain a common household in a Dwelling Unit.

Section 1.17 "First Mortgage; First Mortgagee; Eligible First Mortgagee" shall mean a Mortgage which constitutes a first mortgage lien on any Lot in the Properties. The term "First Mortgagee" shall mean a Mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, or any federal or state agency which is regularly engaged in residential mortgage lending and has a first mortgage lien on a Lot in the Properties. "Eligible First Mortgagee" shall mean a First Mortgagee who has requested notice from the Association of any proposed action that requires the consent of a specified percentage of such Eligible First Mortgagees.

Section 1.18 "Improvement" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, recreational facilities, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, patios, terraces, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water-softener fixtures or equipment.

Section 1.19 "Limited Common Area" shall mean any portion of the Common Area designated as reserved for the use by the Lot Owner or Owners of a certain Lot or Lots within the Properties to the exclusion of the other Lot Owners of Lots within the Properties. Any balconies, porches, patios, decks, parking stalls, or storage facilities that are located within the Common Area, but are identified on a recorded subdivision map of the Properties with the same number or other designation by which a Lot is identified shall be Limited Common Areas for the exclusive use of the Lot Owner of the Lot bearing the same number or designation.

Section 1.20 "Lot" shall mean and refer to any residential lot shown upon and designated as a Lot on any recorded subdivision plat of High Pointe, a Utah planned unit development. Lot shall specifically not include the Common Area.

Section 1.21 "Lot Owner" shall mean and refer to the person or persons or other legal entity or entities, including Declarant, holding fee simple interest of record to any Lot which is a part of the Properties, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X of this Declaration only, unless the context otherwise requires, Lot Owner shall also include the Family, invitees, licensees and lessees of any Lot Owner.

Section 1.22 "Manager" shall mean the person, firm or corporation appointed by the Association hereunder as its agent and to which is delegated certain duties, powers, or functions of the Association.

Section 1.23 "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article VI of this Declaration.

Section 1.24 "Member" shall mean any person or entity holding a membership in the Association as provided herein.

Section 1.25 "Mortgage"; "Mortgagee"; "Mortgage Servicer". The term mortgage shall mean any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or

"Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term "Mortgagee" shall mean a person or entity, its successors and assigns, to whom a Mortgage is made, and shall include the Beneficiary of a Deed of Trust; "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage or Deed of Trust on any Dwelling Unit in the Properties on behalf of any Eligible Insurer or Guarantor.

Section 1.26 "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.27 "Properties" shall mean and refer to all of the real property described in Paragraph A of the Recitals to this Declaration, together with such portion of the real property described on Exhibit "A" with respect to which a Supplemental Declaration shall hereafter be recorded pursuant to Section 16.03 of this Declaration subjecting it to this Declaration and to the jurisdiction of the Association as provided herein.

Section 1.28 "Reconstruction Assessment" shall mean a charge against such Lot Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the Improvements on the Common Area pursuant to the provisions of this Declaration.

Section 1.29 "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Davis County, Utah.

Section 1.30 "Special Assessment" shall mean a charge against a particular Lot Owner and his Lot, directly attributable to the Lot Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 1.31 "Structural Maintenance Areas" shall mean, as the same may from time to time exist, the exterior surfaces of all attached row residential townhouse Dwelling Units, the patio fences, the exterior roofing material of such Dwelling

Units, the exterior lighting fixtures, and the exterior sidewalks on the Lots; Structural Maintenance Areas shall specifically exclude all glass areas.

Section 1.32 "Subdivision" shall mean a parcel of real property which has been duly annexed to the Properties and divided or separated into Lots as shown on a subdivision map which has been duly recorded in the county wherein the Properties are located.

Section 1.33 "Supplemental Declaration" shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XVI of this Declaration.

Section 1.34 "Total Votes of the Lots" shall mean the total number of votes appurtenant to all of the Lots in the Properties.

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

ARTICLE II

LOT OWNERS' PROPERTY RIGHTS

Section 2.01 Lot Owners' Easements of Enjoyment. Every Lot Owner shall have an unrestricted, perpetual, non-exclusive right and easement of ingress and egress to such Lot Owner's Dwelling Unit and of enjoyment in, to and over the Common Area which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the following rights:

(a) The right of Declarant to annex additional Common Area to the Properties pursuant to the terms of Article XV.

(b) The right of the Association (by action of the Board) to reasonably limit the number of guests of the Lot Owners using the Common Area facilities.

(c) The right of the Association (by action of the Board) to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational areas and

facilities thereof, including but not limited to the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 2.03 of this Declaration.

(d) The right of the Association in accordance with its Articles, Bylaws and this Declaration, with the vote or written assent of Lot Owners representing at least sixty-seven percent (67%) of the Total Votes of the Lots, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and, subject to the provisions of Article XIV of this Declaration, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Lot Owners.

(e) The right of the Association (by action of the Board) to suspend any Lot Owner's voting rights and use of the Common Area facilities for any period during which any assessment against his Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association.

(f) Subject to the provisions of Article XIV of this Declaration, the right of the Association (by action of the Board) to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective unless approved by the vote or written assent of Lot Owners representing at least sixty-seven percent (67%) of the Total Votes of the Lots.

(g) The right of the Declarant (and its sales agents, customers and representatives) to the reasonable non-exclusive use of the Common Area and the facilities thereof, without charge, for the purpose of marketing the Lots and activities related thereto.

(h) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area, substantially in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and not substantially in accordance with such original design, finish

or standard of construction only with the vote or written consent of at least sixty-seven percent (67%) of the Total Votes of the Lots.

(i) The right of the Association (by action of the Board) to replace destroyed trees or other vegetation and to plant trees, shrubs and ground cover upon any portion of the Common Area.

Section 2.02 Delegation of Use. Any Lot Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his Family, his tenants, or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation by the Board.

Section 2.03 Easements for Parking. Temporary guest parking shall be permitted within the Common Area only within spaces and areas clearly marked for this purpose. Spaces shall be shown by signs or markings on the paved area. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce these parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those so empowered. No recreational vehicle parking is allowed in the Properties. Lot Owners shall store recreational vehicles off-site.

Section 2.04 Easements for Vehicular Traffic. In addition to the general easements for use of the Common Area reserved herein, there shall be, and Declarant hereby reserves and covenants for itself and all future Lot Owners and their successors in interest within the Properties that each and every Lot Owner and their successors in interest shall have, a non-exclusive, perpetual easement appurtenant for vehicular traffic over all private streets within the Properties, subject to the parking provisions set forth in Section 2.03 of this Declaration. Declarant reserves the right to grant similar easements to Lot Owners of property in Subdivisions annexed hereto pursuant to Article XVI of the Declaration.

Section 2.05 Easements for City and County Public Service Use. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves and covenants for itself and all future Lot Owners within the Properties, easements for city, county and federal public services, including but not limited to the right of the police

to enter upon any part of the Common Area for the purpose of enforcing the law.

Section 2.06 Easements for Encroachments. If any part of the Common Area encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Lots. Encroachments referred to herein shall include but are not limited to encroachments caused by any natural movement or settling of any Dwelling Unit located on a Lot, any encroachment of any Dwelling Unit due to minor engineering or construction variances, any encroachment of eaves, roof overhangs and architectural features as parts of the original construction of any Dwelling Unit located on a Lot, and any encroachment caused by Improvements constructed or to be constructed within the Common Area, or any part thereof, in accordance with the provisions of this Declaration.

Section 2.07 Utilities Drainage and Access Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. Declarant expressly reserves for the benefit of all of the real property in the Properties, and the Lot Owners, reciprocal easements of access, ingress and egress over all Lots and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including, without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any Dwelling Unit. Such easements may be used by Declarant, its successors, purchasers and all Lot Owners, their guests, tenants and invitees residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of the Lots and the Common Area. No Lot Owner shall interfere with the established drainage pattern over his Lot from adjoining Lots, other Lots or the Common Area. Each Lot Owner shall make adequate provision for drainage in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as

the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant.

Section 2.08 Easements for Maintenance, Cleaning, Repair and Replacement. A portion of the exterior of the Dwelling Units and the Common Area is or may be conveniently accessible only through the Dwelling Units. The Association shall have the irrevocable right to have access to each Dwelling Unit and to the Common Area from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any portion of the Common Area or for making emergency repairs at any time therein necessary to prevent damage to the Common Area or to any Dwelling Unit. In addition, agents of the Association may enter any Dwelling Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Lot Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Maintenance Funds.

Section 2.09 Waiver of Use. No Lot Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Lot or any other property in the Properties.

Section 2.10 Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns that it will convey fee simple title to the Common Area described in Section 1.09 of this Declaration to the Association, free and clear of all encumbrances and liens, except easements, conditions and reservations set forth in this Declaration. Said conveyance shall be made prior to the conveyance of the first Lot to a purchaser from Declarant. Declarant shall similarly convey the Common Area of any property annexed hereto.

Section 2.11 Taxes. Each Lot Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Lot Owner shall be

obligated to pay or to reimburse the Association therefor on a uniform basis.

ARTICLE III

MEMBERSHIP IN ASSOCIATION

Section 3.01 Membership. Every Lot Owner shall be a Member of the Association, and no Lot Owner shall have more than one membership in the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Lot Owner, and every membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Lot. Ownership of such Lot shall be the sole qualification for membership in the Association.

Section 3.02 Transfer. The Association membership held by any Lot Owner shall not be transferred, pledged or alienated in any way except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Lot until fee title to the Lot sold is transferred. In the event the Lot Owner shall fail or refuse to transfer the membership registered in his name to the purchaser of such Lot upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. The Board shall have the right to charge a reasonable Special Assessment against any Lot Owner, and his Lot, equal to the cost to the Association of effectuating any such transfer of his membership upon the books of the Association.

**ARTICLE IV
VOTING RIGHTS**

Section 4.01 Classes of Voting Membership. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A Members shall originally be all Lot Owners with the exception of the Declarant for so long as there exists a Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. Declarant shall become a Class A Member with regard to Lots owned by Declarant upon conversion of Declarant's Class B membership as provided below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Section 4.02 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Lot.

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

(a) Four (4) months after seventy-five percent (75%) of the Dwelling Units in the project have been conveyed to Lot Owners; or

(b) Five (5) years after the first Dwelling Unit is conveyed to a Lot Owner; or

(c) Upon the voluntary written cancellation of the Class B membership by Declarant.

Section 4.02 Vote Distribution. When fee simple title to a Lot is held by more than one person ("co-owners"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote appurtenant to such Lot. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Lot shall be exercised, if at all, as a unit. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree.

Unless the Board receives a written objection from a co-owner, it shall be presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all Lot Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and Bylaws of the Association.

ARTICLE V

DUTIES AND POWERS OF ASSOCIATION

Section 5.01 Duties and Powers of Association. The Association, acting through the Board, shall also have the power and duty to:

- (a) Maintain, repair, replace and otherwise manage the Common Area and all facilities, Improvements and landscaping thereon in accordance with the provisions of Article VI of this Declaration.
- (b) Maintain, repair and replace the Structural Maintenance Areas in accordance with the provisions of Article VI of this Declaration.
- (c) Maintain all private streets within the Properties, including cleaning and periodic resurfacing.
- (d) Maintain all private sewer systems within the Common Area.
- (e) Grant easements or rights of way, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.
- (f) Maintain such policy or policies of liability and fire insurance with respect to the Common Area and personal

property, if any, owned by the Association as provided herein in furthering the purposes of and protecting the Association and the Members as directed by this Declaration and the Bylaws of the Association.

(g) Employ or contract with a professional manager to perform all or any part of the duties and responsibilities of the Association, and shall have the power to delegate its powers to committees, officers and employees. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days prior written notice.

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

(i) Keep and maintain current books, records and financial statements of the Association in accordance with the requirements of the Utah Nonprofit Corporation and Co-operative Association Act and generally accepted accounting principles.

(j) Have available for inspection by the Lot Owners or any First Mortgagee current copies of this Declaration, the Articles, the Bylaws, and other rules concerning the Properties and the Association, as well as the Association's books, records and financial statements.

The conveyance of each Lot shall be subject to the covenants, conditions, restrictions, easements, charges and liens as contained in this Declaration, and any supplements or amendments thereto recorded in the Office of the County Recorder of the County wherein the Properties are located, prior to the conveyance of any Lot. The Declaration provides, inter alia, that all Lot Owners shall, upon becoming Owners, automatically become members of the Association, which shall maintain the Common Area in the Properties, and enforce the covenants and restrictions as imposed in this Declaration, and collect and disburse the assessments and charges created herein through its Board elected by the Lot Owners, as described herein.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.01 Creation of Assessment Liens and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Lot Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following assessments: (1) annual Common Assessments for Common Expenses, (2) Capital Improvements Assessments, (3) Special Assessments, and (4) Reconstruction Assessments. All such assessments shall be established and collected as hereinafter provided, and such assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the land and shall be a continuing Assessment Lien upon the Lot against which such assessments are made. All Assessment Liens shall be in favor of the Board and shall inure to the benefit of any successor of the Board or Association. Each such assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the person who was the Lot Owner of such Lot at the time when the assessment fell due, and shall not pass to any successor in interest of such Lot Owner unless such successor agrees to assume the obligation. The Board shall establish no fewer than three (3) separate accounts (the "Maintenance Funds") which shall include: (1) an "Operating Fund" for current expenses of the Association, (2) a "Reserve Fund" for maintenance, repair, replacement, and painting (which would not reasonably be expected to recur more often than annually) of the Structural Maintenance Areas and the Common Area that must be replaced on a periodic basis, and (3) a "Working Capital Fund" to permit the Association to meet unforeseen expenditures or to purchase any additional equipment or services deemed necessary to the operation of the properties or the proper functioning of the Association. Monies paid to the Association shall be deposited into the Maintenance Funds, and disbursements shall be made therefrom, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Board shall not commingle any amounts deposited into either of the Maintenance Funds with one another.

Section 6.02 Purpose of Common Assessments. The assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of

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

Section 6.03 Damage to Common Area by Lot Owners. The foregoing maintenance, repairs or replacements within the Structural Maintenance Areas and the Common Area arising out of or caused by the wilful or negligent act of the Lot Owner, his Family, guests or invitees shall be done at said Lot Owner's expense, or a Special Assessment therefor shall be made against his Lot; provided, however, that the liability of an individual Lot Owner for such damage to the Common Area shall not be absolute, but shall only be that for which the Lot Owner is legally responsible under State law.

Section 6.04 Basis of Maximum Common Assessment. Until January 1 of the year immediately following the conveyance of the first improved Lot in the Properties to a Lot Owner, the maximum Common Assessment per Lot under this Article VI shall be _____ (\$ _____) per year, or _____ (\$ _____) per month.

(a) From and after January 1 of the year immediately following the conveyance of the first improved Lot to a Lot Owner, the maximum annual Common Assessment may, without a vote of the membership, be increased by the Board effective January 1 of each year by not more than the greater of (1) twenty

percent (20%), or (2) the percentage by which the "U.S. Bureau of Labor Statistics for the Northern Utah Area - All Items Consumer Price Index" has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established, above the maximum annual Common Assessment for the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first improved Lot to a Lot Owner, the maximum annual Common Assessment may, with the vote or written assent of fifty-one percent (51%) of each class of Members, be increased above the percentage permitted in Section 6.04(a) above.

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

Section 6.05 Capital Improvement and Reconstruction Assessments. In addition to the Common Assessments authorized above, the Board may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Structural Maintenance Areas or the Common Area, including fixtures and personal property related thereto; provided that any such assessment in excess of Ten Thousand Dollars (\$10,000) shall have the vote or written assent of a majority of the Total Votes of the Lots who are subject to such assessments, excluding therefrom the votes of Declarant.

Section 6.06 Notice and Quorum for Certain Authorized Actions. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 6.04 and 6.05 of this Declaration shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the Total Votes of the Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the Total Votes of the Lots. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 6.07 Uniform Rate of Assessment. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at a uniform rate for all Lots within the Properties; provided, however, that the Association may, subject to the provisions of Section 6.03 of this Declaration, levy Special Assessments against selected Lot Owners who have caused the Association to incur special expenses due to wilful or negligent acts of said Lot Owners, their family, lessees, licensees, guests or agents. All Common Assessments shall be payable in regular installments rather than by special assessment and shall be collected on a regular basis by the Board, at such frequency as the Board shall determine.

Section 6.08 Date of Commencement of Common Assessments: Due Date. The annual Common Assessments provided for herein for each phase of development within the Properties shall commence as to all Lots within such phase of development sixty (60) days after the date the first Lot within such phase is conveyed. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Lot Owner subject thereto at least thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Reserve Fund and the Operating Fund, and shall cause to be distributed a copy of each such statement to each Member, and to each First Mortgagee who has filed a written request for copies of the same with the Board. At least sixty (60) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the membership of the Association a written, itemized estimate

(budget) of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Maintenance Fund).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Fund established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Lot Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to the provisions of Section 6.04 of this Declaration, for any of the Maintenance Funds which shall be assessed equally against each Lot Owner in the Properties.

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

At the end of any fiscal year of the Association, the Board may determine that all excess funds remaining in the Operating Fund over and above the amounts used for the operation of the Properties may be returned to the Members proportionately or may be retained by the Association and used to reduce the following year's Common Assessments. Notwithstanding anything contained in the Article or Bylaws to the contrary, if prior to dissolution of the Association the Association has not obtained non-profit status from both the Federal and State government, then upon such dissolution of the Association any amounts remaining in the Common Area Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

Section 6.09 Exempt Property. The Common Area shall be exempt from the assessments herein.

Section 6.10 Working Capital Fund. In order to insure that the Association shall have sufficient funds to meet unforeseen expenditures and to purchase any additional equipment or services, Declarant shall establish a working capital fund (the "Working Capital Fund") which shall at least be equal to two (2) months Common Assessments for each Dwelling Unit. Amounts paid into the Working Capital Fund shall not be deemed to be advance payments of regular assessments. Each Dwelling Unit's share of the Working Capital Fund shall be collected at the time that the sale of the Dwelling Unit is closed and shall then be transferred to the Association for deposit to the segregated Working Capital Fund. Within sixty (60) days after closing has been held for the first sale of a Dwelling Unit, Declarant shall pay each unsold Dwelling Unit's share of the Working Capital Fund to the Association, for which payment Declarant shall thereafter reimburse itself from funds collected at closing when each unsold Dwelling Unit is sold.

ARTICLE VII

EFFECT OF NON-PAYMENT OF ASSESSMENTS.

REMEDIES OF THE ASSOCIATION

Section 7.01 Effect of Non-Payment of Assessments: Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment of an assessment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Lot Owner responsible therefor may be required further by the Board to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater. The Association may bring an action at law against the Lot Owner personally obligated to pay the same, or foreclose the Assessment Lien against the Lot. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. If any installment of a Common Assessment is not paid within (30) days after its due date, the

Board shall mail an acceleration notice to the Lot Owner and to each First Mortgagee of a Lot which has requested a copy of such notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Lot Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessments for the then current fiscal year, and the sale of the Lot. The notice shall further inform the Lot Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Lot Owner to acceleration and sale. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessments and all charges thereon in any manner authorized by law and this Declaration.

Section 7.02 Notice of Assessments. No action shall be brought to enforce any Assessment Lien herein unless at least thirty (30) days has expired following the date a Notice of Assessment (hereinafter referred to as the "Notice of Assessment") is deposited in the United States mail, certified or registered, postage prepaid, to the Lot Owner, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Properties are located. The Notice of Assessment must recite a good and sufficient legal description of any such Lot, the Lot Owner of record or the reputed Lot Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorney's fees and expenses of collection in connection with debt secured by said lien), and the name and address of the claimant. The Notice of Assessment shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded, to the extent allowed by law. The lien shall continue until fully paid or otherwise satisfied.

Section 7.03 Foreclosure Sale. Any such sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of Utah Code Annotated (1953), as amended,

applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 7.04 Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Lot Owner of a fee, to be determined by the Association, but not to exceed Fifty Dollars (\$50), to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the Assessment Lien upon any Lot created hereunder shall be conclusive upon the Association and the Lot Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Lot Owner upon request at a reasonable fee, not to exceed Ten Dollars (\$10.00).

Section 7.05 Cumulative Remedies. The Assessment Liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as provided above.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 8.01 Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee," shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board shall have the right to appoint and remove all members of the Committee.

Section 8.02 Review of Proposed Construction. Subject to Section 10.12 of this Declaration, no building, fence, wall, patio cover or other structure shall be commenced, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve proposals or plans and specification submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, upon the agreement by the Lot Owner submitting the same to grant appropriate easements to the Association for the cost of maintenance, or both, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation floor plans, site plans, drainage plans, elevation drawing and description and/or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

Section 8.03 Meeting of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8.08 of the Declaration. In the absence of such designation,

the vote of any two (2) members of the Committee taken without a meeting shall constitute an act of the Committee.

Section 8.04 No Waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatsoever subsequently or additionally submitted for approval or consent.

Section 8.05 Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by such members in the performance of their duties hereunder.

Section 8.06 Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

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

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

(c) If upon the expiration of thirty (30) days from the date of such notification the Lot Owner shall have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. The Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Lot Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Lot Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Lot Owner

shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Lot Owner to the Association, the Board shall levy a Special Assessment against such Lot Owner for reimbursement. The Association shall institute judicial proceedings before demolishing or altering any items of construction on a Lot by means of summary abatement or similar means of enforcing restrictions against a Lot or its use.

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

Section 8.07 Non-Liability of Committee Members. Neither the Committee nor any member thereof nor the Committee's duly authorized representative shall be liable to the Association or to any Lot Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building codes or other codes.

Section 8.08 Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Board and two (2) members of the Committee. If such variances are granted, no violation of the covenants, conditions and restrictions

contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Lot Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

ARTICLE IX

MAINTENANCE AND REPAIR OBLIGATIONS

Section 9.01 Structural Maintenance Areas. No Improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain, or provide for the maintenance in good order and repair of, and shall reconstruct, replace or refinish the Improvements within the Structural Maintenance Areas.

Section 9.02 Maintenance Obligations of Lot Owners. Subject to the duty of the Association to provide for maintenance as provided in Section 9.03 of this Declaration, it shall be the duty of each Lot Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Lot Owner shall be deemed to include, but not be limited to, the interior and all glass portions of the Lot Owner's Dwelling Unit and the individual Lot Owner's Lot. In the event that any Lot Owner shall permit any Improvement, which is the responsibility of such Lot Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice

to the Lot Owner, to correct such condition and to enter upon such Lot to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Lot Owner. Said cost shall become the obligation of the Lot Owner in the same manner as other assessments as set forth in this Declaration. The Lot Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Lot Owner as Common Assessments.

Section 9.03 Maintenance Obligations of Association.
 Subject to the provisions of Section 9.02 of this Declaration, the Association shall maintain or provide for the maintenance of all of the Common Area and all Improvements thereon, including recreational facilities, in good order and repair, and shall likewise provide for the painting and repair and replacement as necessary of the Structural Maintenance Areas, commonly metered utilities, common recreational facilities, and any and all utility laterals and buildings. In addition to building maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area at the time that it is conveyed to the Association and on each Lot up to the foundation lines of the residential dwelling and up to the fences surrounding the enclosed patio areas. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

Section 9.04 Damage and Destruction Affecting Residences. Duty to Rebuild. If all of or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Lot Owner to rebuild, repair, or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 9.05 Variance in Exterior Appearance and Design. Any Lot Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for

such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only upon determining that the design proposed by the Lot Owner should result in a finished residence in harmony with the exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing, coupled with the drawings and plot plans showing the full and complete nature of the proposed changes, shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.

Section 9.06 Time Limitation. The Lot Owner or Lot Owners of any damaged Dwelling Unit, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond such party's reasonable control.

Section 9.07 Right of Entry. The Association shall have a reasonable right of entry on any Lot or Dwelling Unit to perform emergency repairs or to do other work reasonably necessary for the proper maintenance of the Properties.

ARTICLE X

USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed in accordance with the following limitations and restrictions.

Section 10.01 Single Family Residence. Subject to Section 10.03 of this Declaration, each Lot shall be used as a residence for a single Family and for no other purpose.

Section 10.02 Business or Commercial Activity. Subject to Section 10.03 of this Declaration, no part of the Properties shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any

business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes, except that Declarant, its successors or assigns may use any portion of the Properties for a model home site and display and sales office during the construction and sales period in accordance with Section 2.01(g) of this Declaration, and except that professional and administrative occupations without external evidence thereof shall be permissible so long as such occupations are in conformance with Bountiful City ordinances and are merely incidental to the use of the Dwelling Unit as a single family residence.

Section 10.03 Real Estate Business. No Dwelling Unit. Lot, Improvement or portion of the Common Area shall be used in conduct of any real estate business, gainful occupation, profession, trade office or other nonresidential activity, provided, however, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Section 2.01(g) of this Declaration, to use without additional cost the portions of any recreational areas constructed on the Common Area or Dwelling Unit owned by Declarant for purposes of sales of Lots within the Properties, so long as such use does not unreasonably interfere with the use of any recreational facilities by the Members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

Section 10.04 Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles or the storage in any uncovered parking space of inoperable or unlicensed motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done therein, which may be or become an unreasonable annoyance or a nuisance to any other Lot Owner. No loud noises or noxious odors shall be permitted on the Properties, and the Board shall have the right to determine in accordance with the Bylaws if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Lot Owner in the Properties shall be located, used or

placed on any portion of the Properties or exposed to the view of other Lot Owners without the prior written approval of the Architectural Committee.

Section 10.05 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot without the prior written consent of the Architectural Committee, except one sign for each Dwelling Unit, of not more than three (3) feet by two (2) feet, plain white with black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during construction and sale period. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of the Bountiful City ordinances.

Section 10.06 Parking and Vehicular Restrictions. No Lot Owner shall park, store or keep any vehicle except wholly within the parking area designated therefor, and any inoperable or unlicensed vehicle shall be stored only in enclosed garages. No Lot Owners shall park, store or keep on any property or street (public or private) within the Properties any large commercial-type vehicle (dump truck, cement-mixer truck, oil or gas truck, delivery truck and any other vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board), any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle), or any inoperable or unlicensed motor vehicle upon any uncovered parking space, so as to be visible from anywhere in the Properties (except as otherwise provided by the Board). No Lot Owner shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area.

Section 10.07 Animal Restriction. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or in the Common Area, except that usual and ordinary household pets such as dogs, cats, fish, and birds may be kept on Lots, subject to the prior written approval of the Board and rules and regulations adopted by the Association, provided that such pets are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than one (1) pet per household, provided, however, that the Association (or the Architectural Committee or such

other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Lot Owner. Animals (whether belonging to Lot Owners, occupants or their licensees, tenants, or invitees within the Properties) must be either kept within a Dwelling Unit or on a leash being held by a person capable of controlling the animal. Should any animal belonging to a Lot Owner be found unattended out of the Dwelling Unit and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by Declarant to do so, to a pound under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. The cost of such removal shall be borne by the Lot Owner to whom the pet belongs. Furthermore, any Lot Owner shall be absolutely liable to each and all remaining Lot Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by a Lot Owner or by members of his Family, his tenants or his guests. Animals shall not be allowed to urinate or defecate in the Common Area, and it shall be the absolute duty and responsibility of each Lot Owner to clean up after his animal in the event such animal inadvertently uses any portion of the Common Area.

Section 10.08 Trash. No rubbish, trash or garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the

Properties except within an enclosed structure or appropriately screened from view.

Section 10.09 View Obstructions. No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Lot Owner, by accepting a deed to a Lot, hereby acknowledges that any construction by Declarant may impair the view of such Lot Owner and hereby consents to such impairment.

Section 10.10 Temporary Buildings. No outbuildings, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreation vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 10.11 No Alteration or Construction. Nothing shall be altered or constructed in or removed from the Structural Maintenance Areas or the Common Area except upon the written consent of the Board.

Section 10.12 Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing Dwelling Units and developing all of the Lots included within the Properties and any annexation thereto. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of the Properties as a residential community. As used in this Section 10.12 and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Lot Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction

plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any Lot, or portion thereof, owned or controlled by Declarant, or its successors or assigns or its or their contractors and subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

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

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

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in a Subdivision by a purchaser from Declarant, from establishing on that Subdivision additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Properties.

Section 10.13 Outside Installations. No radio station or shortwave operators of any kind shall operate from any Lot or Dwelling Unit unless approved by the Board. Exterior radio antenna, television antenna, or other antenna system may not be erected or maintained in the Properties.

Section 10.14 Insurance Rates. Without prior approval by the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association, nor shall anything be done or kept

in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 10.15 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500) feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 10.16 Further Subdivision. No Lot Owner shall further partition or subdivide his Lot; provided however, that this provision shall not be construed to limit the right of a Lot Owner to do the following: (1) rent or lease all or any portion of his Lot by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and Bylaws of the Association, and any failure by the lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 10.17 Drainage. There shall be no interference with the established drainage pattern over any Subdivision within the Properties unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Committee. For the purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any Subdivision is completed by Declarant, or that which is shown on any plans approved by the Architectural Committee, which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 10.18 Water Supply Systems. No individual water supply, sewage disposal system, or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the

Bountiful City Health Department, the Architectural Committee, and all other applicable governmental authorities.

Section 10.19 Leasing. Any lease or rental agreement of a Dwelling Unit must be in writing and be subject to the requirements of this Declaration, the Articles, the Bylaws and such additional reasonable requirements and restrictions as may be imposed hereafter by the Association. No Dwelling Unit may be leased or rented for less than thirty (30) days.

Section 10.20 Right to Mortgage. Each Lot Owner shall have the right to mortgage his interest in the Dwelling Unit.

ARTICLE XI

PARTY FENCES AND PARTY WALLS

Section 11.01 Non-Party Fences. Each fence which is built as part of the original construction of the Dwelling Units upon the Properties shall be placed on the Lots of the respective Lot Owners rather than in the Common Area. The Association shall be responsible for reasonable maintenance thereof as provided herein. Such fences shall not be considered to be Party Fences as herein used.

Section 11.02 General Rules of Law to Apply to Party Fences. The Lot Owners shall be at liberty to build fences, by agreement among themselves, on the Lot line between adjoining Lots, with the prior approval of the Architectural Committee. These fences shall be called "Party Fences" and shall be subject to this Article XI. To the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding Party Fences and liability for property damage due to negligence or wilful acts or omissions shall apply thereto. Each Lot Owner adjoining a Party Fence shall be an "Owner" of the fence for purposes of this Article XI.

Section 11.03 General Rules of Law to Apply to Party Walls. Each wall which is built as a part of the original construction of the Dwelling Units upon the Properties and placed on the dividing line between the Lots shall constitute a "Party Wall," and, to the extent not inconsistent with the provisions of this Article XI, the general rules of law regarding Party Walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto.

Each Lot Owner adjoining a Party Wall shall be an "Owner" of the wall for purposes of this Article XI.

Section 11.04 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Fence and Party Wall shall be shared by the Owners in proportion to their ownership thereof.

Section 11.05 Destruction by Fire or Other Casualty. If a Party Fence or a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

Section 11.06 Right to Contribution Runs with Land. The right of any Lot Owner to contribution from any other Lot Owner under this Article XI shall be appurtenant to the land and shall pass to such Lot Owner's successors-in-interest.

Section 11.07 Arbitration. In the event any dispute arises concerning a Party Fence or a Party Wall, or under the provisions of this Article XI, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE XII

DAMAGE OR DESTRUCTION TO COMMON AREA

Section 12.01 Damage or Destruction to Common Area. Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) If the Common Area is damaged or destroyed, and if the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within Ten Thousand Dollars (\$10,000.00) or less of being sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of Section 6.05 of this Declaration.

(c) If the insurance proceeds are insufficient by more than Ten Thousand Dollars (\$10,000.00) to effect total restoration to the Common Area, then by written consent or by vote a majority of the Total Votes of the Lots shall determine whether (1) to rebuild and restore in substantially the same manner as the Improvements existed prior to damage, and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots, (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Ten Thousand Dollars (\$10,000.00), and which is assessable equally to all Lot Owners but which is less expensive than replacing these Improvements in substantially the same manner as they existed prior to being damaged, or (3) subject to the provisions of Article XIV of this Declaration, to not rebuild and to distribute the available insurance proceeds equally to the Lot Owners and Mortgagees of the Lots as their respective interests may appear.

(d) Each Lot Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or wilful misconduct of said Lot Owner or of his Family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Lot Owner. In the case of joint ownership of a Lot, the liability of such Lot Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Common Assessments.

ARTICLE XIII

INSURANCE

Section 13.01 Hazard Insurance. The Association shall obtain and maintain hazard insurance coverage on the Common Area for 100 percent of its insurable value. The Common Area, for purposes of this paragraph, shall include, without limitation, all Common Area buildings and other improvements (except for those that are normally excluded from coverage, such as land, foundation, and excavation), fixtures and building service equipment that are considered part of the Common Area, and common personal property and supplies owned by the Association.

(a) Scope of Coverage. The hazard insurance coverage shall at least (i) provide for loss or damage settlement on the basis of 100% of the current replacement cost of the Common Area, (ii) protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement, and (iii) cover all other perils customarily covered for similar types of projects, including those covered by the standard "all risk" endorsement. The Association shall also obtain and maintain any additional coverage commonly required by private mortgage investors for projects similar in construction, location, and use.

(b) Special Endorsements. The hazard insurance coverage shall include the following endorsements if the city or county wherein the Properties are located has adopted a construction code provision that requires changes to undamaged portions of buildings even when only part of the Properties is destroyed or damaged by an insured hazard: Agreed Amount, Inflation Guard, Demolition Cost, Contingent Liability form Operation of Building Laws, Increased Cost of Construction.

(c) Deductibles. Deductibles may not exceed the lower of \$10,000 or one percent (1%) of the applicable amount of coverage. Funds for such deductibles shall be included in the Association's Common Area Reserve Fund and be so designated.

(d) Named Insured. The named insured under the hazard insurance coverage shall be the Association of Owners of the High Pointe Planned Unit Development for the use and benefit of the individual Lot Owners.

(e) Miscellaneous. The Association shall represent the Lot Owners in any proceedings, negotiations, settlements, or agreements, and each Lot Owner hereby appoints the Association as its attorney-in-fact for all such purposes. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

Section 13.02 Insurance Obligations of Lot Owners. Each Lot Owner shall insure his entire Dwelling Unit and all other Improvements located on his Lot against loss or damage by fire or by any other casualty, under the standard form of fire and extended coverage, which coverage shall be at least equal to that commonly required by private institutional mortgage investors in the State of Utah, or under such other insurance as may be required by any First Mortgage against the Dwelling Unit. Such insurance policies shall not contain a deductible clause in excess of the greater of Five Hundred Dollars (\$500) or one percent (1%) of the face amount of the policy applicable to either fire or extended coverage or both. If any policy contains a fall-of-building clause, such clause must be waived. All such insurance shall provide, as a minimum, fire and extended coverage insurance on a 100% replacement cost basis of the Dwelling Unit and all other Improvements located on his Lot in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of the coverage must be sufficient so that in the event of any damage or loss to a Dwelling Unit of a type covered by insurance, the insurance proceeds shall provide at least the lesser of (1) compensation equal to the full amount of damage or loss; or (2) compensation to the First Mortgagee under the Mortgage equal to the full amount of the unpaid principal balance of the Mortgage. Each Lot Owner shall, within thirty (30) days after recordation of the conveyance of his Lot from Declarant and thereafter at least ten (10) days prior to the expiration, termination, cancellation or modification of any existing policy, furnish to the Association duplicate copies of policies or certificates thereof showing that such insurance is currently in force certified by the insurance company or by its duly authorized agent. All such policies shall contain a provision that the same shall not be cancelled or terminated except upon at least thirty (30) days written notice to the Association. All such policies shall contain "Agreed Amount" and "Inflation Guard" Endorsements, if obtainable, and shall

contain construction code endorsements if there is a construction code provision that requires changes to undamaged portions of the buildings even when only part of the project is destroyed by an insured hazard.

Section 13.03 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area, or other Improvements in the Properties insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owners, in accordance with the provisions of Section 6.05 of this Declaration. In the event of total destruction of all of the Improvements in the Properties, the proceeds of the insurance carried by the Association shall be divided proportionately among the Lot Owners, such proportion being based upon the original base sales price of each improved Lot at the time it was initially sold by Declarant as compared to the aggregate original base sales prices of all Lots, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to a Lot Owner whose Lot is so encumbered.

Section 13.04 Liability Insurance. The Association shall obtain a comprehensive general liability insurance policy covering all of the Common Area and any other areas under the supervision of the Association, including without limitation public ways and commercial areas within the Properties (even if they are leased to third-party lessees).

(a) The liability insurance shall provide coverage, without limitation, for the following: (i) bodily injury and property damage that results from the operation, maintenance or use of the Common Area; (ii) any legal liability that results from lawsuits related to employment contracts and worker's compensation claims in which the Association is a party; and (iii) all additional coverage commonly required by private mortgage investors for developments similar to the Properties in construction, location, and use, including the following coverage where applicable and available: contingent liability

from operation of building laws, comprehensive automobile liability, bailee's liability, garage keeper's liability, host liquor liability, and contractual and all-written contract liability.

(b) Amount of Coverage. Liability coverage shall be for at least One Million Dollars (\$1,000,000) per occurrence for personal injury, bodily injury and/or property damage.

(c) Severability of Interest. Such insurance shall contain a "Severability of Interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners.

Section 13.05 Fidelity Coverage. The Association shall obtain blanket fidelity bond coverage against dishonest or fraudulent acts committed by anyone, whether or not compensated, who either handles or is responsible for funds collected, held or administered by the Association (including, without limitation, the Association's Manager, agents, employees or volunteers of the Association). The fidelity bond must name the Association as the obligee and named insured, and must be written in an amount sufficient to provide protection which is in no event less than the greater of the following: the maximum amount of funds that will be in the custody of the Association or the Manager at any time while the bond is in force; or the sum of (i) three (3) months assessments on all Dwelling Units in the Properties, plus (ii) the Association's Reserve Fund. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. Such fidelity bond must provide for at least ten (10) days written notice before the bond can be cancelled or substantially modified for any reason, such notice to be given to the Association or insurance trustee and each Mortgage Servicer of a mortgage in any of the Properties owned by an Eligible Insurer or Guarantor. Premiums for such coverage should be paid by the Association as a Common expense.

Section 13.06 Other Insurance and General.

(a) Workmen's Compensation and Other Insurance. The Association may also obtain, through the Board, Workmen's Compensation Insurance and other liability insurance as it may deem desirable insuring each Lot Owner and the Association, Board and Manager, from liability in connection with the Common

Area, the premiums for which are Common Expenses included in the Common Assessments made against the Lot Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other Lot Owners.

(b) Annual Policy Review. All policies shall be reviewed at least annually by the Board and the limits increased at its discretion.

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

(d) No Assessments. Insurance policies must provide that no assessment may be made against any First Mortgagee or an Eligible Insurer or Guarantor and that any assessment made against others may not become a lien on a Lot or the Common Area superior to any First Mortgage on such Lot or the Common Area. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against any Lot Owner, his First Mortgagee or an Eligible Insurer or Guarantor; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent recovery by any Lot Owner, his First Mortgagee or an Eligible Insurer or Guarantor.

(e) Mortgagee Clause. All policies of insurance must contain or have attached the standard mortgagee clause commonly used by private institutional mortgage investors and name the Mortgage Servicer as mortgagee. Such mortgagee clause must provide that the insurance carrier shall notify in writing the Association or insurance trustee, and the Mortgage Servicer and each First Mortgagee at least ten (10) days in advance of the effective date of any reduction in, cancellation of, or other substantial change to the policy. Such mortgagee clause must

be endorsed to fully protect any Eligible Insurer or Guarantor or the interests of any Eligible Insurer or Guarantor where applicable. All premiums on insurance policies and fidelity bonds which the Association is required to obtain under this Article shall be paid by the Association as a Common Expense assessable to all of the Lot Owners.

(f) Eligible Insurer and Guarantor Insurance Requirements. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such hazard, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by Eligible Insurers and Guarantors, so long as there are any Mortgages on any of the Properties held or guaranteed by Eligible Insurers and Guarantors.

(g) Compliance with State Law. All policies and the coverage provided thereunder shall be consistent with local and state insurance laws.

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

(i) Loss Payable Clause. The "loss payable" clause in each policy shall show the Association as a trustee for each Lot Owner and each Mortgagee.

(j) Other Insurance Clause. Any "other insurance" clause in any policy shall specifically exclude policies obtained by the individual Lot Owners.

ARTICLE XIV

MORTGAGE PROTECTION

Section 14.01 First Mortgage Protection. Notwithstanding any and all provisions hereof to the contrary, in order to induce the Eligible Insurers and Guarantors to participate in

the financing of the sale of Lots within the Properties, this Article XIV is included herein (and to the extent the provisions of this Article XIV conflict with any other provisions of this Declaration, the provisions of this Article XIV shall control).

Section 14.02 Notice to Eligible First Mortgagees and Eligible Insurers and Guarantors. Each Eligible First Mortgagee and Eligible Insurer and Guarantor is entitled to written notification from the Association of the following:

(a) Any default in the performance of any obligation under this Declaration, the Articles, or the Bylaws of the Association, which default is not cured within sixty (60) days;

(b) Any condemnation or casualty loss that affects either a material portion of the Properties or the Dwelling Unit and Lot securing its Mortgage;

(c) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees;

(d) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Lot Owner of any Lot on which it holds a Mortgage;

(e) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(f) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees.

Section 14.03 No Limitations on Transfer. The Association shall not restrict the Lot Owners' right to sell, transfer or convey their Lots, whether by reserving to the Association a right of first refusal to purchase the Lots in the Properties, or otherwise.

Section 14.04 Liability for Common Assessment Liens. Any Assessment Lien that is recorded against a Lot by the Association shall be subordinate to a First Mortgage on such Lot if such First Mortgage was recorded in the office of the County Recorder of the county wherein the Properties are located prior to the date the delinquent Common Assessments or other charges secured by such Assessment Lien were due. An

Assessment Lien shall not be affected by the sale or transfer of the Lot against which it has been recorded unless such sale or transfer occurs as a result of the foreclosure of the First Mortgage on such Lot. Such foreclosure of the First Mortgage shall extinguish any Assessment Lien recorded against the Lot which secures any Common Assessments or other charges that were payable prior to the date of the foreclosure sale, but shall not relieve any subsequent Lot Owners of such Lot from paying any further Common Assessments and other charges assessed against the Lot by the Association.

Section 14.05 Material Amendments to Declaration Articles, Bylaws. Any amendment of a material nature to this Declaration, the Articles or the Bylaws must be approved by (a) Lot Owners representing at least sixty-seven percent (67%) of the Total Votes of the Lots, and (b) Eligible First Mortgagees who represent at least fifty-one percent (51%) of the Total Votes of the Lots. A change to the Declaration, the Articles or the Bylaws that affects or results in any of the following shall constitute a material change:

- (1) Voting rights;
- (2) Assessments, Assessment Liens or subordination of Assessment Liens;
- (3) Reserves for maintenance, repair and replacement of the Common Area;
- (4) Responsibility for maintenance and repairs;
- (5) Reallocation of the rights granted under this Declaration to use the Common Area and the Limited Common Areas;
- (6) Boundaries of any Lot;
- (7) Convertibility of Lots to Common Areas or vice versa;
- (8) Expansion or contraction of the Properties, or the addition, annexation or withdrawal of property to or from the Properties;
- (9) Insurance or fidelity bonds;
- (10) The leasing of Lots or Dwelling Units;

(11) Imposition of any restrictions of a Lot Owner's right to sell or transfer his or her unit;

(12) Restoration or repair of the Properties (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration, the Articles or the Bylaws;

(13) Any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or

(14) Any provisions that expressly benefit First Mortgagees, or Eligible Insurers or Guarantors.

Section 14.06 Right to Make Payments. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any common property located within the Common Area, and said First Mortgagee may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property within the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 14.07 Priority of First Mortgagees. No provision contained in this Declaration or in the Articles or Bylaws of the Association or in any other Supplemental Declaration that the Association shall hereinafter make shall give a Lot Owner or any other party priority over any rights of a First Mortgagee pursuant to its Mortgage in the case of a distribution to such Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area.

Section 14.08 Right to Examine Books and Records. First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

Section 14.09 Declarant Contracts. Any agreement for professional management of the Properties, or any other contract providing for services of the Declarant, shall not exceed three (3) years. Any such agreement must provide for termination by the Declarant or the Association without cause or without payment of a termination fee on written notice of ninety (90) days or more.

Section 14.10 Satisfaction of Eligible Insurer or Guarantor Requirements. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of Eligible Insurers or Guarantors, or any similar entity so as to allow for the purchase, insurance or guaranty, as the case may be, by such Eligible Insurers or Guarantors of first Mortgages encumbering Lots in the Properties. Each Owner hereby agrees that it will benefit the Association and the membership of the Association as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units, if such Eligible Insurers or Guarantors approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

Section 14.11 Leasing Restrictions. Any lease or rental agreement must be in writing and be subject to the covenants, conditions and restrictions set forth in this Declaration, the Articles and the Bylaws. No Dwelling Unit may be leased or rented for a period of less than thirty (30) days.

Section 14.12 Amendment of Mortgagee Protection Provisions. Neither this Article XIV, Article XIII, nor Section 7.06 of this Declaration shall be amended without the approval of at least seventy-five percent (75%) of all First Mortgagees.

ARTICLE XV

CONDEMNATION

Section 15.01 Condemnation; Proceeds. Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least seventy-five percent (75%) of the Total Votes of the Lots) by any authority having the power of condemnation or eminent domain, each Lot Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association as Trustee for all Lot Owners to be disbursed as follows:

(a) if the taking involves a portion of the Common Area on which improvements have been constructed, then, unless

within sixty (60) days after such taking at least seventy-five (75%) percent of the Total Votes of the Lots shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article XII hereof regarding assessments for and the disbursement of funds required to repair or restore casualty damage or destruction shall apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XVI

ANNEXATION OF ADDITIONAL PROPERTY

Section 16.01 Additions.

(a) If Declarant, its successors, or assigns shall substantially complete, or shall cause to be substantially completed, the development of all or a portion or portions of the Annexed Property located in Bountiful City, County of Davis, State of Utah, and which is more particularly described on Exhibit "A" attached hereto, Declarant or its successors or assigns shall have the right from time to time to add such Annexed Property or any portion or portions thereof to the Properties and to bring such Annexed Property within the general plan and scheme of this Declaration without the approval of the Association, the Board, or Members, provided that such a right of Declarant and its successors and assigns shall terminate seven (7) years from date of recording this Declaration.

(b) For so long as and provided FHA or VA are insuring or guaranteeing loans on any portion of the Properties, or have agreed to insure or guarantee loans on any portion of the Properties, then a condition precedent to such annexation shall be that the FHA or VA determine that the

annexation is in accordance with the general plan heretofore approved by them.

Section 16.02 Title to Common Area. Prior to the conveyance of any Lot improved with a Dwelling Unit within the Annexed Property to an individual purchaser thereof, title to the Common Area, if any, within the Annexed Property shall be conveyed to the Association free and clear of any and all encumbrances and liens, subject to reservations, easements, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

Section 16.03 Supplemental Declaration. The additions authorized under Section 15.01 of this Declaration shall be made by filing of record a Supplemental Declaration with respect to such Annexed Property which shall be executed by Declarant or the owner thereof and shall extend the general plan and scheme of this Declaration to such Annexed Property. The filing of record of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexed Property described therein, and thereupon said Annexed Property shall become and constitute a part of the Properties, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration, and become subject to the functions, powers and jurisdiction of the Association; and the Lot Owners in the Annexed Property shall automatically become Members of the Association. Such Supplemental Declaration may contain such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property, or as Declarant may deem appropriate in the development of the Annexed Property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same shall pertain to the real property originally covered by this Declaration. No addition of territory shall substantially increase assessments or substantially increase the burden upon the Common Area facilities.

Section 16.04 Deannexation. Declarant may delete all or a portion of a Subdivision of Annexed Property from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all such Subdivision previously added to the Properties and provided that a Notice of Deletion of Territory is recorded in the Office of the Davis County Recorder in the same manner as the applicable Supplemental Declaration was recorded; provided, however, that consent in writing is first had and obtained from any First Mortgagee of any such Annexed Property or of any lending institution which has issued a commitment for a loan in connection with any such Annexed Property.

Section 16.05 FHA/VA Approval. As long as there is a Class B membership, and provided that the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") is insuring or guaranteeing loans, or has issued commitments to insure or guarantee loans, on a portion of the Properties, the following actions will require the approval of FHA or VA: annexation or deannexation of additional properties, dedication of Common Area, and amendment or termination of this Declaration.

Section 16.06 Vote Distribution. Owners and co-owners of the Lots created in any portion of the Annexed Property shall be entitled to the same vote distribution as are the owners and co-owners of all other Dwelling Units in the Properties as described in Section 4.02 hereof.

Section 16.07 Assessments. Common Assessments, Capital Improvement Assessments, and Reconstruction Assessments for each Lot in the Annexed Property shall be fixed at a rate equal to that of all other Lots in the Properties, as described in Section 6.07 hereof.

Section 16.08 Effective Date of Assessments and Voting Rights. The effective date for assigning assessments and granting voting rights to Lot Owners of Lots in the Annexed Property shall be or upon the conveyance by Declarant of the first Lot in any Subdivision that is annexed to the Properties.

Section 16.09 Quality of Construction. All Improvements that are hereafter constructed on any portion of the Annexed Property that is annexed to the Properties shall be consistent in terms of quality with the Improvements that are initially constructed within the Properties.

Section 16.10 Common Area Easements. Upon the filing of record of a Supplemental Declaration in connection with the addition of a Subdivision to the Properties, the Common Area, including both the Common Area included within the Properties prior to such annexation and any Common Area added to the Properties as a result of such annexation, shall become subject to each of the easements specified in Article II of this Declaration, and each of the Lot Owners, including the Lot Owners of Lots in such added Subdivision, shall have the same non-exclusive right to use and enjoy the Common Area as was initially reserved to the Lot Owners by the filing of record of this Declaration.

ARTICLE XVII

GENERAL PROVISIONS

Section 17.01 Enforcement. This Declaration, the Articles and the Bylaws may be enforced by the Association and any Lot Owner as follows:

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

(b) The result of every act or omission whereby any of the covenants contained in this Declaration or the Bylaws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Lot Owner, by the Association, or by its successors-in-interest.

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

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

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first Mortgage or Deed of Trust made in good faith and for value on any residential Lot or the Improvements thereon, provided, however, that any subsequent Lot Owner of such property shall be bound by said covenants, whether such Lot Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 17.02 Severability. Invalidation of any one of the covenants or restrictions in this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.03 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Lot Owner or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually; provided that this Declaration and the covenants and restrictions set forth herein may be terminated at any time upon (a) the affirmative vote at a special meeting of the Lot Owners duly called for such purpose or the written consent of at least seventy-five percent (75%) of the Total Votes of the Lots, and (b) the written approval of Eligible First Mortgagees representing at least sixty-seven percent (67%) of the votes of the Lots which are mortgaged.

Section 17.04 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 17.05 Amendments. Subject to any rights of VA or FHA hereunder, this Declaration may be amended only upon obtaining the affirmative vote or written consent of Lot Owners representing not less than sixty-seven percent (67%) of the Total Votes of the Lots, and upon obtaining the affirmative written consent of Eligible First Mortgagees representing at least fifty-one percent (51%) of the Total Votes of the Lots.

Section 17.06 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 17.07 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties or any portion thereof.

Section 17.08 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery of such notice is made by mail, the notice shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 17.09 No Representations or Warranties. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTIES OR ANY PORTION OF THE PROPERTIES, OR ANY IMPROVEMENT THEREON, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF AS A PLANNED DEVELOPMENT, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION AND EXCEPT AS MAY BE FILED BY THE DECLARANT FROM TIME TO TIME WITH VA, FHA OR THE CITY OF BOUNTIFUL.

Declarant has executed this Declaration on the date first above written.

VICOR CONSTRUCTION, INC.,
a Utah corporation

By: [Signature]
Its: PRESIDENT

Attest:
[Signature]
Secretary

STATE OF UTAH)
 : SS.
COUNTY OF SALT LAKE)

On the 24th day of December, 1984, personally appeared before me, Marvin Blossch and Linda Blossch, who being by me duly sworn, did say that they are the President and Secretary, respectively, of VICOR CONSTRUCTION, INC., a Utah corporation, the corporation that executed the above and foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors and said Marvin Blossch and Linda Blossch acknowledged to me that said corporation executed the same.

[Signature]
NOTARY PUBLIC

My Commission Expires:
2-29-88

Residing At:
Centerville, Utah

GCN01951

EXHIBIT "A"

DESCRIPTION OF ANNEXED PROPERTY

**ARTICLES OF INCORPORATION
OF THE
ASSOCIATION OF OWNERS
OF THE
HIGH POINTE PLANNED UNIT DEVELOPMENT
A Utah Nonprofit Corporation**

**ARTICLES OF INCORPORATION
OF THE
ASSOCIATION OF OWNERS OF THE
HIGH POINTE PLANNED UNIT DEVELOPMENT**

In compliance with the requirements of the Utah Nonprofit Corporation and Co-operative Association Act, the undersigned, a resident of Davis County, State of Utah, being of full age, has this day voluntarily formed a corporation not for profit, and does hereby certify:

ARTICLE I

NAME

The name of the corporation is Association of Owners of the High Pointe Planned Unit Development (hereafter referred to as the "Association").

ARTICLE III

PRINCIPAL OFFICE

The principal office of the Association is located at 1199 South Main, Centerville, Utah 84011.

ARTICLE III

REGISTERED AGENT

Marvin Blosch, whose address is 2363 South Wood Hollow Way, Bountiful, Utah 84010, is hereby appointed the initial registered agent of this Association.

ARTICLE IV

PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate pecuniary gain or profit to its members and the specific purposes for which it is

formed are to provide for maintenance, preservation, replacement and architectural control of the Dwelling Units Lots and Common Area within that certain real property (the "Properties") located in Bountiful, Davis County, Utah, which is more particularly described as follows:

[property description]

and to promote the health, safety and welfare of the residents within the properties and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose to:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for High Pointe, a Utah planned unit development (hereinafter referred to as the "Declaration"), applicable to the Properties and recorded or to be recorded in the Office of the County Recorder of Davis County, Utah and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;
- (b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Properties of the Association;
- (c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (d) Borrow money, and with the assent of two-thirds (2/3) of each class of members, mortgage, pledge, encumber by deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of each class of members, agreeing to such dedication, sale or transfer;

(f) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of each class of members;

(g) Annex to the Properties additional real property and the Improvements and Common Area created thereon, provided such annexation is done in compliance with the terms and conditions set forth in the Declaration with respect to annexation; and

(h) Have and exercise any and all powers, rights and privileges which a corporation organized under the Utah Nonprofit Corporation and Co-operative Association Act by law may now or hereafter have or exercise.

ARTICLE V

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

ARTICLE VI

VOTING RIGHTS

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Lot Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as a majority of the members owning such Lot shall determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earliest occurrence of any one of the following events:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;

(b) Six (6) years from the date of recording the Declaration; or

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

ARTICLE VII

BOARD OF TRUSTEES

The affairs of this Association shall be managed by a Board of five (5) Trustees, who need not be members of the Association. The number of trustees may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of trustees until the selection of their successors are:

<u>Name</u>	<u>Address</u>
Marvin Blosch	2363 South Wood Hollow Way, Bountiful, Utah 84010
Linda Blosch	2363 South Wood Hollow Way, Bountiful, Utah 84010
Jon Blosch	347 West 3500 South Bountiful, Utah 84010

At the first annual meeting the members shall elect one trustee for a term of one year and two trustees for a term of two years and at each annual meeting thereafter the members shall elect one or two trustees, as the case may be, for a term of two years.

ARTICLE VIII

DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE IX

DURATION

The Association shall exist perpetually.

ARTICLE X

AMENDMENTS

Amendment of these Articles shall require the assent of at least seventy-five percent (75%) of the total allocated votes in the Association, and the affirmative consent of First Mortgagees representing at least fifty-one percent (51%) of the votes of Dwelling Units subject to Mortgages.

ARTICLE XI

INCORPORATOR

The name and address of the incorporator of the Association are as follows:

Marvin Blosch

2363 South Wood Hollow Way
Bountiful, Utah 84010

ARTICLE XII

FHA/VA APPROVAL

As long as there is a Class B membership and to the extent that any Mortgage on any of the Lots is guaranteed by the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of the Common Area, dedication of the Common Area, dissolution and amendment of these Articles.

ARTICLE XIII

DEFINITIONS

Except as otherwise provided herein or as may be required by context, all terms defined in Article I of the Declaration of Covenants, Conditions and Restrictions and Reservations for Easements for High Pointe, a Utah planned unit development (hereinafter referred to as the "Declaration"), shall have such defined meanings when used in these Bylaws.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Utah, I, the undersigned, as incorporator of this Association, have executed these Articles of Incorporation this 24th day of December, 1984.


Marvin Blosch

VERIFICATION

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

On the 24th day of December, 1984, personally appeared before me Marvin Bloch, who being by me duly sworn did say that he is the incorporator of the Association of Owners of the High Pointe Planned Unit Development, that he signed the foregoing Articles of Incorporation of Association of Owners of the High Pointe Planned Unit Development, as incorporator of such nonprofit corporation, and that the statements therein contained are true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of December, 1984.

Tom A. King
NOTARY PUBLIC

My Commission Expires:
2-29-88

Residing At:
Centerville, Utah

GCN01521

BYLAWS
OF
THE ASSOCIATION OF OWNERS
OF THE HIGH POINTE PLANNED UNIT DEVELOPMENT
A Utah Nonprofit Corporation

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BYLAWS
OF THE
ASSOCIATION OF OWNERS OF THE
HIGH POINT PLANNED UNIT DEVELOPMENT

ARTICLE I

NAME AND LOCATION

Section 1.01 Name and Location. The name of the corporation is Association of Owners of the High Pointe Planned Unit Development, a Utah nonprofit corporation (hereinafter referred to as the "Association"). The principal office of the corporation shall be located at 1199 South Main, Centerville, Utah 84014, but meetings of members and directors may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Trustees.

ARTICLE II

DEFINITIONS

Section 2.01 Definitions. Except as otherwise provided herein or as may be required by context, all terms defined in Article I of the Declaration of Covenants, Conditions and Restrictions and Reservations for Easements for High Pointe, a Utah planned unit development (hereinafter referred to as the "Declaration"), shall have such defined meanings when used in these Bylaws.

ARTICLE III

MEETINGS OF MEMBERS

Section 3.01 Annual Meetings. The first annual meeting of the Members shall be held on February 15, 1985, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 o'clock p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

Section 3.02 Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

Section 3.03 Notice of Meetings. Written notice of each meeting of the Members shall be given by or at the direction of the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.04 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 3.05 Proxies. At all meetings of the Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE IV

BOARD OF TRUSTEES, SELECTION, TERM OF OFFICE

Section 4.01 Number. The affairs of the Association shall be managed by a Board of three (3) trustees, who need not be Members of the Association.

Section 4.02 Term of Office. At the first annual meeting the Members shall elect one trustee for a term of one year and two trustees for a term of two years; and at each annual

meeting thereafter the Members shall elect one or two trustees, as the case may be, for a term of two years.

Section 4.03 Removal. Any trustee may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a trustee, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4.04 Compensation. No trustee shall receive compensation for any service he may render to the Association. However, any trustee may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 4.05 Action Taken Without a Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the trustees. Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE V

NOMINATION AND ELECTION OF TRUSTEES

Section 5.01 Nomination. Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members of non-members.

Section 5.02 Election. Election to the Board shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the

Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VI

MEETINGS OF THE BOARD

Section 6.01 Regular Meetings. Regular meetings of the Board shall be held monthly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 6.02 Special Meetings. Special meetings of the Board shall be held when called by the president of the Association, or by any two trustees, after not less than three (3) days notice to each trustee.

Section 6.03 Quorum. A majority of the number of trustees shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the trustees present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD

Section 7.01 Powers. The Board shall have power to:

(a) Adopt and publish rules and regulations governing the use of the Common Area and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after Notice and Hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations;

(c) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not

reserved to the membership by other provisions of these Bylaws, the Articles, or the Declaration;

(d) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; and

(e) Employ a manager, an independent contractor, or such other employees as the Board deems necessary, and to prescribe their duties.

Section 7.02 Duties. It shall be the duty of the Board to:

(a) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

(b) Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) As more fully provided in the Declaration, to:

(1) fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each annual Common Assessment period;

(2) send written notice of each assessment to every Lot Owner subject thereto at least thirty (30) days in advance of each assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Lot Owner personally obligated to pay the same.

(d) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been

paid, such certificate shall be conclusive evidence of such payment;

(e) Procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause the Common Area to be maintained.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 8.01 Enumeration of Officers. The officers of the Association shall be a president and vice-president, who shall at all times be members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 8.02 Electiva of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 8.03 Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 8.04 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 8.05 Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.06 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.07 Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 8.04 of these Bylaws.

Section 8.08 President. The president shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

Section 8.09 Vice-President. The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Section 8.10 Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as may be required by the Board.

Section 8.11 Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association, and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and shall deliver a copy of each to the Members.

ARTICLE IX

COMMITTEES

Section 9.01 Committees. The Association shall appoint an Architectural Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE X

BOOKS AND RECORDS

Section 10.01 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

Section 11.01 Assessments. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual Common Assessments, Capital Improvement Assessments, Special Assessments and Reconstruction Assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of fifteen percent (15%) per annum, and the Association may bring an action at law against the Lot Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Lot Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

ARTICLE XII

CORPORATE SEAL

Section 12.01 Corporate Seal. The Association shall have a seal in circular form having within its circumference the words: Association of Owners of the High Pointe Planned Unit Development, a Utah nonprofit corporation.

ARTICLE XIII

AMENDMENTS

Section 13.01 Amendment to Bylaws. These Bylaws may be amended at a regular or special meeting of the Members by a vote of at least sixty-seven percent (67%) of the total allocated votes in the Association, and the affirmative consent of First Mortgagees representing at least fifty-one percent (51%) of the votes of Dwelling Units subject to Mortgages held by First Mortgagees, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 13.02 Conflict Between Articles, Bylaws and Declaration. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIV

MISCELLANEOUS

Section 14.01 Miscellaneous. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all of the trustees of Association of Owners of the High Pointe Planned Unit Development, a Utah nonprofit corporation, have hereunto set our hands this 24th day of December, 1984.


Marvin Blossch


Linda Blossch


Jon Blossch

GCN01531

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of the Association of Owners of the High Pointe Planned Unit Development, a Utah nonprofit corporation, and

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Trustees thereof, held on the _____ day of _____, 1984.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 21st day of December, 1984.

Linda Bloch
Secretary

ACKNOWLEDGMENT

STATE OF UTAH)
: SS.
COUNTY OF SALT LAKE)

On the 24th day of December, 1984, personally appeared me Marvin Blosch, Linda Blosch and Jon Blosch the signers of the within and foregoing Bylaws of the ASSOCIATION of OWNERS of the HIGH POINTE PLANNED UNIT DEVELOPMENT, a Utah nonprofit corporation, who duly acknowledged to me that he executed the same.

Tom A. Kingman
NOTARY PUBLIC

My Commission Expires:
2-29-88

Residing At:
Centerville, Utah