

When recorded return to:  
MSI, Inc.  
165 So. West Temple #300  
Salt Lake City, Utah 84101

7327553  
04/20/99 12:26 PM 50.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
REC BY: N ZELAYA DEPUTY - WI

DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
OAK MOUNTAIN CIRCLE SUBDIVISION,  
A PLANNED UNIT DEVELOPMENT

7327553

THIS DECLARATION is made and executed this 19 day of April, 1999, by MSI, Inc., a Utah Corporation (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of that certain tract of Property more particularly described in Article II of this Declaration.

B. Various improvements have been or will be made to the Property described in Article II of this Declaration so as to enable its use as a planned unit development containing certain Lots and Common Areas. Declarant desires to provide for the preservation of the values and amenities in said development and for the maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities in the Project, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purposes, Declarant has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a non-profit corporation, THE OAK MOUNTAIN CIRCLE OWNERS ASSOCIATION.

D. As more fully set forth in Article XI hereof, Declarant reserves the right to expand the Project to include certain additional real property and improvements thereto.

NOW, THEREFORE, for the foregoing purposes, Declarant hereby declares that the property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals") the following terms shall have the meanings indicated:

1. *Articles* or *Articles of Incorporation* shall mean and refer to the instrument entitled "Articles of Incorporation of the OAK MOUNTAIN CIRCLE Owners Association": which was filed for record in the office of the Department of Business Regulation for the State of Utah on or about the date that this Declaration was filed with the office of the County Recorder of Salt Lake County, Utah.

2. *Association* shall mean and refer to THE OAK MOUNTAIN CIRCLE OWNERS ASSOCIATION, the Utah nonprofit corporation which is created by the filing of the Articles.

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3. *Common Areas* or *Common Areas and Facilities* shall mean and refer to all portions of the Property owned by the Association for the common use and enjoyment of the Owners, and shall include:

- (a) All portions of the Property not specifically included with the individual Lots.
- (b) All Common Areas and Limited Common Areas designated as such on the Plat.
- (c) All installations, easements or rights of way for common benefit, equipment, and lines, if any, now or hereafter located on, over, or under the Common Areas and connected with or related to the furnishing of Project utility services such as water, sewage disposal, storm water drainage facilities, electricity, and telephone, and which are not owned by or dedicated to a governmental or quasi-governmental authority or public or private utility company and which are not reserved by Declarant.
- (d) The Private Streets within the Project.

4. *Declarant* shall mean and refer to MSI, INC., a Utah Corporation, and/or any successor to said Corporation which, by operation of law, through a voluntary conveyance, transfer, or assignment, or as a result of the foreclosure of an encumbrance granted by Declarant, comes to stand in the same relationship to the Project and/or the Additional Land as did its predecessor.

5. *Declaration* shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, as the same may be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof (and in particular in accordance with the provisions of Article XI hereof concerning supplements to this Declaration which are to occur in conjunction with each addition to the Project or a portion of the Additional Land).

6. *Eligible Insurer or Guarantor* shall mean and include an insurer or governmental guarantor of a Mortgage which has requested notice of certain matters from the Association in accordance with Paragraph 6 of Section 6 of Article XII of this Declaration.

7. *Eligible Mortgagee* shall mean and include a Mortgagee which has requested notice of certain matters from the Association in accordance with Paragraph 6 of Section 6 of Article XII of this Declaration.

8. *Limited Common Areas and Facilities or Limited Common Areas* shall mean and refer to those Common Areas designated in the Declaration or on the Plat as reserved for the use of a certain Lot or Lots to the exclusion of the other Lots.

9. *Living Unit* shall mean and refer to a house, similar structure or portion of a structure located on a Lot which is designed and intended for human occupancy.

10. *Lot* shall mean and refer to any of the separately numbered and individually described parcels of land shown on the Plat and intended for private use and ownership. The Plats as initially recorded in conjunction with this Declaration and prior to any amendment or supplement thereto contains 3 such Lots.

11. *Member* shall mean and refer to every person who holds membership in the Association.

12. *Mortgage* shall mean and include a first mortgage on any Lot or a first deed of trust on any Lot.

13. *Mortgagee* shall mean and include both a mortgagee under a first mortgage on any Lot and a beneficiary under a first deed of trust on any Lot.

14. *Open Space Area* shall mean and refer to all portions of the Common Areas, excluding the following: Limited Common Areas; the Project's Private Streets and parking areas; the Project's utility and drainage easements and facilities; landscaped or otherwise developed portions of the Common Areas approved by Salt Lake County.

15. *Owner* shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in any mortgage, deed of trust, or like instrument. The term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

16. *Plat* shall mean and refer to the following duly approved and recorded plat:

(a) The Plat filed herewith, entitled "OAK MOUNTAIN CIRCLE SUBDIVISION," executed and acknowledged by Declarant.

(b) Any plat(s) respecting all or any portions of the Additional Land, but only after the recordation of such plat(s) and only if and after the recordation in accordance with Article XI hereof of supplement(s) to the Declaration adding the real property covered by such plat(s) to the Project and subjecting such real property to the Declaration.

17. *Private Street* shall mean and refer to the Project's "private street" identified as such on the Plat; provided, however, that any portions of a "private street" which occupies part of a Lot shall consist only of such perpetual easements and rights of ingress and egress on, over, under, through and across the part of the Lot so occupied as may be necessary or convenient for the Association (in a manner not inconsistent with this Declaration) to construct, improve, and maintain the Project's "private streets", walkway, and sidewalks, all drainage structures and other related facilities, all improvements created or constructed by Declarant, and all other improvements occupying any such part of a Lot when all Project construction (including expansion) has been completed. Such perpetual easements and said rights shall benefit the entirety of the Project. (Article II of this Declaration contains additional easements and reservations in favor of the Declarant affecting the area located within the Private Streets.)

18. *Project* shall mean and refer to OAK MOUNTAIN CIRCLE SUBDIVISION, as shown on the Plat and governed by this Declaration.

19. *Property* shall mean and refer to the tract of real property described in Article II of this Declaration.

## II. PROPERTY DESCRIPTION

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

Lots 1, 2 & 3 Oak Mountain Circle Subdivision recorded in the office of Salt Lake County Recorder

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

EXCLUDING all presently existing or to be constructed or installed utility lines and related facilities which are now or hereafter owned by any governmental or quasi-governmental authority or by any public or private utility company, including (without limitation) all water pipes, lines, and related facilities now or hereafter located within the Project.

ALL OF THE FOREGOING IS ALSO SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; the reservation unto Declarant of all oil, gas, ores and minerals situated in, upon or under the above-described parcels, together with the right to enter upon the surface thereof to drill, mine, remove or sell said oil, gas, ores and minerals and all other rights reasonably connected with or relative to such drilling, mining, removal or sale, any other mineral reservations of record and rights incident thereto, provided however, that the exercise of the aforesaid rights shall be limited in the following manner: (1) the rights shall exclude gravel pit operations, (2) Declarant may not come upon any lot which has been sold or (3) create any nuisance or violate any governmental law or regulation; all easements and rights-of-way of record, otherwise existing, or enforceable in law or equity; and any easements, rights-of-way, encroachments, shortages in area, or discrepancies shown on or revealed by the Plat, or otherwise existing or discoverable from an inspection of the above-described parcel of real property.

RESERVING UNTO DECLARANT: (i) such perpetual easements and rights of ingress and egress over, across, through, and under all portions of the above-described parcel of real property comprising Common Areas (including without limitation, Private Street) and all portions of each Lot located either within fifteen (15) feet of the front or rear or within ten (10) feet of either side of such Lot or the area between lots 2 and 3 designated as a set back for storm water drainage, as may be necessary or convenient for Declarant (in a reasonable manner not

inconsistent with this Declaration) to such roads, structures, facilities, and other improvements (including recreational improvements and utilities) designed for the use and enjoyment of all the Members as Declarant may determine in its sole discretion to be appropriate; and (ii) such perpetual easements and rights of ingress and egress over, across, through, and under all portions of the above-described parcel of real property comprising Common Areas (including, without limitation, Private Street) and all portions of each Lot located either within fifteen (15) feet of the front or rear or within ten (10) feet of either side of such Lot with no limits as to the extent of the burden which may be imposed thereon, as may be necessary or convenient to enable Declarant to develop and use any or all of the Additional Land (as determined in Declarant's sole discretion and regardless of whether or not the portion(s) of the Additional Land being so developed have been or will be added to the Project) and to provide for such needs of and services to the Additional Land as may be determined by Declarant in its sole discretion. The easements and rights set forth in the foregoing item (ii) shall include (without limitation) the right to hook into and use any utility line, pipe, conduit, Private Street or other facility serving the Project and to utilize and/or enlarge all storm water runoff retention areas, structures and Private Street located in the Project. Declarant shall have the right to assign, convey and/or transfer all or any portion of the easements and rights herein reserved to Salt Lake County, any other governmental or quasi-governmental body having jurisdiction over the Property, and any private or public utility company servicing the Project or any part of the Additional Land (whether or not such part has been or will be added to the Project).

### III. ASSOCIATION MEMBERS AND VOTING RIGHTS

1. *Membership.* Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

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

Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Lot shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Lot. Which of the multiple Owners of a single Lot shall cast the vote on the basis of the Lot is determined under Section 3 of this Article III.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which the interest required for membership in the Association is held. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following: After fee title the Lots initially contained in the Project have been conveyed by Declarant to purchasers; or (ii) The expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Lot.

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

4. *Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors.* The Association shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Lot which is owned by him; and (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Lot which is encumbered by the Mortgage held by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it, or at its option, the association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address

of an Owner shall be deemed to be the address of the Lot owned by such person unless the Association is otherwise advised.

#### IV. PROPERTY RIGHTS IN COMMON AREAS

1. *Easement of Enjoyment.* Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described in this Section to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot.

2. *Form for Conveyancing.* Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ contained within OAK MOUNTAIN CIRCLE SUBDIVISION, as said Lot is recorded in Salt Lake County, Utah on \_\_\_\_\_, 19\_\_\_\_, as Entry No. \_\_\_\_\_ and in the "Declaration of Covenants, Conditions, and Restrictions of OAK MOUNTAIN CIRCLE SUBDIVISION, recorded in Salt Lake County, Utah on \_\_\_\_\_, 19\_\_\_\_, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_. TOGETHER WITH a nonexclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Plat and said Declaration of Covenants, Conditions, and Restrictions. SUBJECT TO such perpetual easements and rights of ingress and egress on, over, under, through, and across the lot which are associated with the utilities and private streets in said development.

Whether or not the description employed in any such instrument is in the above specified form, however, this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the right and easement of use and enjoyment to the Common Areas, shall be separated from the Lot to which they appertain, and even though not specifically mentioned in the instrument of transfer, such nonexclusive right and easement of use and enjoyment to the Common Areas shall automatically accompany the transfer of the Lot to which they relate. Notwithstanding any inference that can be drawn from this Declaration to the contrary, the owner of each Lot shall be responsible for the payment of any and all charges, assessments and fees (including hookup fees) relating to culinary water of any source, and the Association shall not be liable for any part of such charges, assessments or fees.

3. *Transfer of Title.* Declarant agrees that it shall, at or prior to the time it conveys the first Lot to an Owner, convey by Warranty Deed to the Association good and marketable title to the Common Areas free and clear of all monetary liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

4. *Limitation on Easement.* A Member's nonexclusive right and easement of use and the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's voting rights and right to the use of the Common Areas (except the Private Streets shown on the Plat for access to his Lot) for any period during which an assessment on such Member's Lot remains unpaid, or for a period not exceeding sixty (60) days for any infraction of the provisions of this Declaration or of any rule or regulation promulgated by the Association:

(b) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(c) The right of the Association (without the consent of Owners, Members, Mortgagees, or any other persons or entities) to grant permits, licenses, and easements over, across, through and under the Common Areas to any governmental or quasi-governmental authority, to any public or private utility company, or to any other person or entity for the purpose of installing, maintaining, or providing utilities and related facilities or roads or for such other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and

(d) The right of Salt Lake County, any other governmental or quasi-governmental body having jurisdiction over the Property, and any private or public utility company serving the Project (Whether or not such part has been or will be added to the Project) to access and rights of ingress and egress over, across, through, or

under the Common Areas for purposes of providing police and fire protection, transporting school children, and providing any other governmental, municipal, or utility service to the Project.

5. *Charges for Use of Common Areas.* No leases, charges for use, rental agreements, licenses, or similar arrangements shall be employed or entered into with respect to any portion of the Common Areas and Facilities.

6. *Access to Lots.* Each Lot Owner's nonexclusive right and easement of use and enjoyment in and to the Common Areas shall include (without limitation) the right of ingress and egress to such Owner's Lot, which right shall be irrevocable, perpetual, and appurtenant to such Lot.

7. *Encroachments and Easements.* In the event that any portion of the Common Areas, a Limited Common Area, a Lot, and/or a Living Unit encroaches or comes to encroach on the Common Areas, another Limited Common Area, another Lot, and/or another Living Unit, as a result of construction, reconstruction, repair, shifting, settlement, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists. Without limiting the scope of the foregoing sentence, the drain field for a Living Unit may, if reasonably necessary or convenient and if the prior written consent of the Salt Lake City/County Health Department and the Declarant is obtained, encroach on the Common Areas or a portion of another Lot not located within five (5) feet of the Living Unit of such Lot, ten (10) feet from any water line on such Lot, or ten (10) feet from the septic tank or drain field on such Lot. An easement for maintaining any such encroachment shall exist under this paragraph, subject to the obligation to maintain such encroachment in a reasonable manner and to repair any damage caused to the servient property.

## V. ASSESSMENTS

1. *Personal obligation and lien for assessments.* Each Owner (including Declarant) shall, by acquiring or in any way becoming vested with an interest in a Lot, be deemed to covenant and agree to pay to the Association the annual and the special assessments described in this Article, together with the charges hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (i) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (ii) the personal obligation of each person who is an Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot.

2. *Purpose of Assessments.* Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; maintenance, operation, management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; snow removal from the Private Streets within the Project; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration of the Articles of Incorporation. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of the Common Areas and Facilities.

3. *Special Assessments.* From and after the date set for commencement of monthly assessments under Section 7 of this Article V, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (ii) the cost of any construction, reconstruction, repair, or replacement of an improvement, personal property, or fixtures upon the Common Areas. Any such special assessment must be assented to by a majority of the votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than fifty (50) days prior to the meeting date.

4. *Quorum Requirements.* The quorum required for any action authorized by Section 3 or 4 of this Article V or Section 5 of Article XII hereof shall be as follows: At the meeting called, the presence of Members or of proxies entitled to cast sixty-seven percent (67%) of all the votes of Members shall constitute a quorum.

5. *Uniform Rate of Assessment.* Both monthly and special assessments shall be fixed at a uniform

rate for all Lots upon which construction of a Living Unit has been commenced and shall be fixed at a different uniform rate for all Lots upon which such construction has not been commenced. The uniform rate for Lots upon which construction of a Living Unit has not been commenced shall equal two-thirds (2/3) of the uniform rate set for Lots upon which such construction has been commenced.

6. *Monthly Assessment Due Dates.* The monthly assessments provided for herein shall commence as to all Lots on the first day of the month following conveyance of the Common Areas to the Association. At least fifteen (15) days prior to such commencement date and at least (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned. The monthly assessments shall commence on Lots located on a portion of the Additional Land added to the Project on the first day of the month following conveyance of the Common Areas in such portion to the Association.

7. *Certificate Regarding Payment.* Upon the request of any Owner, prospective purchaser, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons (other than the Owner of the Lot concerned) who in good faith and value rely thereon.

8. *Effect of Nonpayment -- Remedies.* Regardless of the terms of any agreement to the contrary, the liability of the Owners of a Lot for the payment of any assessment relating to such Lot shall be joint and several, and any remedy for the collection of such assessment may be enforced against any or all Owners of the Lot concerned; provided, however, that the personal obligation of an Owner to pay assessments shall not pass to his successors in title unless assumed by them. If any assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum (or, in the event such rate at any time exceeds the maximum legal limit, interest shall accrue at such maximum legal rate) and the Association may bring an action either against any or all Owners who are personally liable therefor or to foreclose the lien against the Lot; provided, however, that the Association shall give the Owner(s) concerned twenty (20) days advance written notice of its intent to pursue one or more of its remedies hereunder. Any relief obtained by the Association (whether or not through judicial action) shall include reasonable attorneys fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. After institution of a foreclosure action by the Association against any Lot, the Association shall, without regard to the value of such Lot or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by such Lot.

## VI. OPERATION AND MAINTENANCE

1. *Maintenance by owners and sewage disposal and related costs.* Each lot and Living Unit shall be maintained by the Owner thereof in a clean and orderly condition and in such condition as does not detract from the appearance of the Property and as does not affect adversely the value or use of any other Lot, Living Unit, or the Common Areas. The Association shall have no obligation regarding maintenance or care which is required to be accomplished by the Owners. Each Lot Owner, and not the Association, shall be responsible to pay for utility services (including, without limitation, both hookup and installation fees and periodic charges) which are separately charged, billed, and/or metered to his Lot by governmental or quasi-governmental authorities or by public or private utility companies. In addition, each Owner shall pay the Association reasonable hookup and use fees for utility services provided to his Lot by the Association.

At the time this Declaration is recorded, the Declarant intends that each Living Unit will be served by a septic tank and drain field installed and maintained at the sole expense of the Owner of the Living Unit concerned. Nevertheless, in the event Declarant, or its successors or assigns, hereafter constructs a central sewage collection system to serve any portion of the Project, Declarant, at its sole option and discretion, may require any Living Unit thereafter constructed in such portion of the Project to hook to such system (rather than install a septic tank and drain field) and to reimburse Declarant, or such successors or assigns, prior to hookup for a pro rata share of all costs and expenses (including overhead and a reasonable profit) relating to the construction and development of such system, together with interest on such prorata share of such costs and expenses from the time incurred at a quarterly adjusted floating rate of two percentage points (2%) over the published prime rate in the Wall Street Journal. Such prorata share shall be determined by dividing all such costs and expenses by the number of Living Units that such system was designed and constructed to serve. In the alternative, Declarant may charge as a hook up fee to such

system an amount reasonably determined by Declarant to be the then current cost of constructing a septic tank and drain field to serve the Living Unit concerned.

2. *Operation and Maintenance by Association.* The Association shall provide for such maintenance and operation of the Common Areas (including, without limitation, utility lines and facilities owned or used by the Association) as may be reasonably necessary or desirable to make them appropriately usable in conjunction with the Lots and Living Units and to keep them clean, functional, attractive, and generally in good condition and repair. Included in such obligation to maintain and operate the Common Areas are the obligations to provide or cause to be provided garbage collection, security and snow removal services, to maintain street and other signs and lights located on the Common Areas, to maintain the Private Street and to provide revegetation of the Common Areas. In recognition of the flood control requirements of Salt Lake County, the Association shall maintain all storm water runoff and drainage structures and facilities, if any, located in the Project, including all manmade retention ponds, swales, swale flairs, bridges, pipes, check drains, spillways, culverts, and grouted riprap inlets and outlets. Said maintenance shall include all means necessary to prevent said areas and structures from holding or controlling less storm water runoff than the quantity for which they were designed. Nothing herein shall be construed as a waiver of any right of the Association to obtain contribution and/or reimbursement from any third-party (other than Declarant and other than owners and/or occupiers of the Additional Land) benefiting from the Association's maintenance of the Private Street shown on the Plats. In the event that Declarant is jointly using a utility line, drainage structure or similar facility to service property not included in the Project, the Association shall maintain and operate such line, structure, or facility and Declarant shall reimburse the Association only for such incremental costs of such maintenance and operation which directly result from the Declarant's use thereof.

3. *Professional Management.* Unless approval for self management is obtained pursuant to Paragraph (d) of Section 5 of Article XII hereof, the Association shall carry out through a professional manager those of its functions which are properly the subject of delegation. The professional manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement entered into prior to the termination of the Class B membership shall provide that the Association, with or without cause and without payment of any termination fee or being subject to any penalty, may terminate same upon not in excess of ninety (90) days written notice to the other party thereto.

4. *Association Access to Lots.* The Association shall have an irrevocable right of access to each Lot to make emergency repairs and to do other work reasonably necessary or useful for the proper maintenance or operation of the Project.

## VII. USE AND BUILDING RESTRICTIONS

1. *Use of Common Areas, Open Space Area.* The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions contained herein no automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts. All portions of the Open Space Area shall be and remain undisturbed open space with no building or structure constructed thereon without the prior written approval of Salt Lake County. The Open Space Area may be used only for hiking, jogging, picnicking and other recreational or agricultural uses consistent with the undisturbed natural state of the Open Space Area. Camping is not permitted at any time within any of the Common Areas.

2. *Use of Lots and Living Units.* All Lots and Living Units are restricted to use as single-family residential housing; provided, however, that a portion of a Living Unit can be used to conduct a business or profession if: (1) such use as is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (2) such use as is approved by the Architectural Control Committee (as said Committee is provided for hereafter) which approval shall not unreasonably be withheld; (3) such use as is approved by Declarant; and (4) such use as is of a type traditionally conducted in a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Lot, Living Unit, or the Common Areas, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas. No aluminum foil,



newspapers, or any other similar materials may be used to cover the windows in any Living Unit or other structure.

3. *Recreational Vehicles.* Boats, trailers, and campers shall be parked only within the Lot of the Owner concerned. When parked within a lot, such boats, trailers, campers, and similar vehicles shall be kept in an enclosed structure or screened from view.

4. *Animals.* No animals other than small household pets (dogs and cats) shall be kept or allowed on any Lot or within any part of the Common Areas. Whenever a permitted animal is allowed to leave a Lot it shall be either on a leash or in a cage. No animals of any kind shall be raised, bred, or kept for any commercial purpose. The Association shall promulgate reasonable rules and regulations concerning the use of, or damages to, the Common Areas by animals and the liability of individual Owners for such damage. Notwithstanding the foregoing, the Association shall have the right to prohibit maintenance of any animal which constitutes a nuisance to any other Lot owner.

5. *Nuisances.* No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property or to the occupants thereof.

6. *Unightly Articles.* No unsightly articles shall be permitted to remain on a Lot so as to be visible from any other Lot or the Common Areas. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container, and any such container shall be kept within an enclosed structure or appropriately screened from view. No metals, bulk materials, or scrap, or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or when appropriately screened from view.

7. *Signs.* No sign of any kind shall be displayed to the public view without the approval of the Architectural Control Committee, except such signs as may be erected by Declarant for permanent identification of the Project or used by Declarant in connection with the development and sale of Lots and except such signs of customary and reasonable dimensions as may be displayed on a Lot advertising a Lot or Living Unit for sale or lease. Except as aforesaid, display of any "for sale" or "for lease" sign more than two (2) feet by one and one-half (1 1/2) feet shall require the prior written approval of the Architectural Control Committee. A residential identification sign for a Lot is permitted but should not exceed two (2) square feet in surface area.

8. *No Hazardous Activities.* No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

9. *Motorbikes.* All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only on established streets and parking areas and are specifically prohibited from all other portions of the Common Areas.

10. *Weed Control.* After a Lot is initially sold, each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, Living Units, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land or the public health.

11. *Temporary and Other Structures.* Structures of a temporary nature, trailers, basement houses, mobile homes, modular homes, prefabricated housing, tents, or shacks shall not be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Lot, it being the intention hereof that all Living Units and other buildings erected on Lots or within the Property shall be new, permanent, on-site construction of good quality workmanship and materials.

12. *Drainage.* No Owner may interfere with the established drainage pattern over any part of the

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Project unless adequate provision is made for proper drainage and is approved in advance by the Architectural Control Committee. Established drainage shall mean and refer to the drainage which exists at the time the overall grading and development of the Project by Declarant is completed or which is shown on any plans of Declarant or plans approved by the Architectural Control Committee. Each lot owner shall maintain the drainage channel immediately inside the road in a manner which will keep it free of debris, preserve the capacity of the channel and preserve the water retention structures.

13. *Chimneys.* All wood or coal burning chimneys will be equipped with appropriate spark screens as approved by the Architectural Control Committee.

14. *Storage Tanks and Utility Lines.* All fuel tanks, water tanks, or similar storage facilities shall either be constructed as an integral part of a Living Unit or shall be installed or constructed under ground. All utility services, including but not limited to, phone lines, power lines, and water and sewer lines shall be located underground.

15. *No Further Subdividing.* No Lot or Common Areas may be further subdivided.

16. *Non-Buildable Zone.* No residential construction may occur in the area which is within 25 feet of the center line.

17. *Exception for Developer.* Notwithstanding the restrictions contained in this Article VII, for the twenty (20) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, or sales efforts, or to facilitate the improvement of the Common Areas, or the improvement and/or sale of all Lots owned by Declarant.

18. *Supplemental use Restrictions Upon Expansion.* In any supplement to this Declaration which is recorded in conjunction with the addition to the Project of a portion of the Additional Land, Declarant shall have the right in its sole discretion to specify use restrictions and standards applicable to such portion. In Declarant's sole discretion, the restrictions and standards so specified may be different than or in addition to the restrictions and standards set forth in the foregoing Sections of this Article.

#### VIII. ARCHITECTURAL CONTROL

1. *Architectural Control Committee.* The Board of Trustees of the Association shall appoint a three-member Committee, the function of which shall be to insure that all Living Units and other improvements within the Lots harmonize with existing surroundings and structures and comply with the requirements set forth in this Article VIII (as said requirements may be supplemented in supplement(s) to this Declaration recorded in conjunction with the addition to the Project of portion(s) of the Additional Land). The Committee need not be composed of Owners. If such a Committee is not so appointed, a majority of the Board of Trustees of the Association itself shall perform the duties required of the Committee.

2. *Standard.* In deciding whether to approve or disapprove plans and specifications submitted to it the Committee shall use its best judgment to insure that all improvements and construction on Lots within the Property conform to and harmonize with existing surroundings and structures and comply with the requirements of this Article VIII (as said requirements may be supplemented in supplement(s) to this Declaration recorded in conjunction with the addition to the Project of portion(s) of the Additional land).

3. *Submission to Committee.* No Living Unit, accessory or addition to a Living Unit, other structure or building, or fence shall be constructed or maintained, and no grading or removal of natural vegetation shall occur, on a Lot unless approved in writing in advance by the Architectural Control Committee.

4. *Approval Procedure.* Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within (30) days after compliance with the requirements of paragraph (a) of this Section or thirty (30) days after approval by all appropriate governmental and quasi-governmental authorities, whichever is later. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted. Approval is conditioned upon compliance with the following procedure:

(a) The Owner concerned signing a notice indicating that he has read and understood this Declaration.

(b) If deemed appropriate by the Committee that the plans and specifications be reviewed by an architect, the Owner concerned shall deposit with the Architectural Control Committee a security deposit in the amount of Three Hundred Fifty Dollars (\$350.00) to insure compliance with the provisions of this Declaration. One Hundred Fifty Dollars (\$150.00) of such deposit shall be refundable if all provisions of this Declaration are complied with through the completion of the Living Unit or other structure or building concerned. Two Hundred Dollars (\$200.00) of said deposit shall be retained by the Architectural Control Committee to reimburse it for plan approval costs. The amount of said security deposit and the amount to be retained by the architectural Control Committee may be increased by the Board of Trustees of the Association without a vote of the Members or without amending this Declaration.

(c) The Owner concerned submitting a site layout plan showing: (1) the proposed Living Unit or other structure or building as it will be situated on the Lot; (2) the extent of all cutting, filling, grading, and other excavation proposed in conjunction with construction of the proposed Living Unit and the landscaping of the Lot; (3) the pre-construction and post-construction slope of each portion of the Lot and of the driveway serving the proposed Living Unit; (4) a drainage plan for disposition of storm water runoff from the Lot; (5) the relationship of the basement, above-ground of floors, and roof to the original and finish grades of the particular Lot; (6) the location of and specifications for the septic tank and drain field designed to serve the proposed Living Unit; (7) the location and type of all natural vegetation on the Lot and a landscaping and revegetation plan for the areas to be disturbed during construction and landscaping; (8) the location and design of any proposed fence on the Lot; and (9) a soil analysis by a qualified soils engineer verifying that the footings and foundations of the proposed Living Unit or other structure or building as it will be situated on the Lot and the location of and specifications for the septic tank and drain field designed to serve the proposed Living Unit comply with all applicable laws, rules, regulations and governmental standards and will accomplish the purposes for which they are designed.

(d) The Owner concerned submitting a complete set of architectural plans, including (without limitation), a cross section of the proposed walls of the home indicating type of support, insulation, and exterior finish.

(e) Any subsequent changes, improvements, or alterations in such plans must be submitted to the Committee for written approval.

5. *Living Unit Size.* The ground floor area of Living Units, exclusive of open porches and garages, shall not be less than 2,000 square feet for a one story Living Unit or less than 1,500 square feet for a Living Unit of more than one story. In so-called split entry or bi-level Living Units, the ground floor shall be defined as only two levels and not all multiple levels combined. The Architectural Control Committee may allow smaller plans if substantially changed circumstances justify it. Each Lot containing a Living Unit shall also contain an attached or detached garage for no fewer than two (2) nor more than four (4) cars. A detached building used for a garage may contain servants' quarters.

6. *Building Location.* The following minimum yard requirements and other restrictions shall apply to all Living Units and accessory buildings:

(a) Front Yard. No building shall be located on any Lot nearer than forty seven and one-half (47 1/2) feet to the front Lot line (which is the center of the Private Street situated on the front of the Lot) unless otherwise approved by the Architectural Control Committee.

(b) Side yard. No buildings shall be located on any Lot nearer than eight (8) feet to one side Lot line or twelve (12) feet to the other side Lot line.

(c) Rear Yard. No building shall be located on any Lot nearer than (30) feet to the rear Lot line.

(d) Open Space. No building shall be located on any Lot nearer than ten (10) feet to any portion of the Common Areas.

(e) Slope. No building shall be located on any portion of a Lot exceeding thirty percent

(30%) slope unless such location is approved both by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matter and by the Committee.

(f) Natural Vegetation. All buildings shall be located so as to reasonably preserve a significant portion of existing trees and scrub oak.

The Architectural Control Committee shall have the discretionary right to change or eliminate the front yard, side yard, rear yard, and open space setback requirements, the height requirement and the slope requirement for the purpose of enhancing a view, preventing the removal of trees, or otherwise substantially enhancing the location of improvements on a Lot.

7. *Living Unit Design and Construction.* In order to promote a harmonious community development and protect the character of the Project, the following design and construction guidelines will be complied with:

(a) Time of Construction. Construction of a Living Unit shall be completed within one (1) year of the time such construction is commenced.

(b) Styles. Living Unit styles, designs, alterations or additions will conform to standards determined by the Architectural Control Committee.

(c) Exterior Walls. Exterior construction materials for living units will be limited to stone or stone veneer, cement, stucco, brick or brick veneer with wood, aluminum or other trim materials.

(d) Roofs. All Living Unit roofs shall be of shake, tile, copper or asphalt shingle construction, unless the Architectural Control Committee specifically authorized otherwise in writing.

(e) Related Improvements. Location of all storage, utility or accessory buildings shall be to the rear of the Living Unit on the Lot concerned. Television, radio, or like antenna or disks shall located so as to be as inconspicuous as possible.

(f) Lighting. Outdoor lighting shall be so arranged as to reflect light away from adjacent Lots and away from the vision of passing motorists. Each Lot shall provide at least one source of outdoor lighting detached from the Living Unit.

(g) Landscaping. The manicured yard of each Lot shall be fully landscaped within one (1) year from occupancy of the Living Unit on said Lot.

8. *Fences.* All fences within the Project shall comply with the following requirements:

(a) Materials. Fences or walls shall be of wood, stone or brick. In addition, chain link fences with inserts so as to create a visual barrier (unless otherwise approved by the Architectural Control Committee) may be located within the side or rear yard but are excluded from the front yard. No fence or wall of wire mesh, slump block or unpainted concrete block shall be allowed. The Architectural Control Committee may in its discretion specify a standard style and color of fencing.

(b) Height. Fences, walls or hedges shall not exceed six (6) feet in height; provided, however, that no wall, fence or opaque hedge or screening materials (other than pre-construction natural vegetation) shall be maintained within: (1) a required front yard; (2) in any portion of a rear or side yard which is highly visible from a Private Street or other nonadjoining Lot because of the elevation or slope of the portion of the rear or side yard concerned unless specifically permitted by the Architectural Control Committee; or (3) on the Corner Lots in any portion of a triangle defined by the point of intersection of the edges of the two Private Streets located on the Lot and a point sixty (60) feet from such intersection along the edge of each such Private Street unless specifically permitted by the Architectural control Committee.

9. *Exception for Declarant.* Declarant shall be exempt from the approval requirement and approval procedure set forth in Sections 1 through 4, inclusive, of this Article with respect to Living Units or other improvements constructed within Lots by Declarant. Nevertheless, with respect to all such construction, Declarant shall comply with the standards and requirements of Sections 5 through 9, inclusive, of this Article, as the same may be amended, supplemented, or replaced in accordance with the foregoing Section 10 of this Article.

10. *No Liability for Damages.* The Committee shall not be held liable for damages by reason of any

action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

11. *County Approval.* No Living Unit, accessory or addition to a Living Unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns shall occur, on a lot until a permit or written approval therefor is obtained from Salt Lake County following submission to the County of the plans described in Paragraphs (c) and (d) of Section 4 of this Article VIII and such other information as the County may reasonably require. In granting such permit or approval the County may apply any of the standards of this Article VIII (including the standards set forth in any supplement to this Declaration in accordance with Section 10 of this Article VIII) it determines to have public significance. The granting of a permit or approval by the County with respect to any matter shall not bind or otherwise effect the power of the Committee to refuse to approve any such matter.

#### IX. ASSOCIATION INSURANCE

1. *Fidelity Bonds.* Unless waived in writing by each lot owner, the Association shall at all times maintain in force and pay the premiums for blanket fidelity bonds for all officers, directors, members, and employees of the Association and for all other persons handling or responsible for the funds of or administered by the Association. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, directors, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than a sum equal to three months aggregate assessments on all Lots plus reserve funds. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, directors, employees, and agents) shall be paid by the Association as a common expense; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association.

2. *Liability Insurance.* The Association shall maintain in force and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities, public ways in the Project, if any, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to, host liquor liability, contractual and all written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. Such policy shall, by its terms, provide for "severability of interest: or shall contain a specific endorsement to preclude the insurer's denial of an Owner's claim because of the negligent acts of the Association or any Member thereof, and shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days prior written notice to the Association.

3. *General Requirements Concerning Insurance.* Each insurance policy maintained pursuant to the foregoing Sections 1, 2, and 3 shall be in accordance with and consistent with local and State of Utah insurance law and shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Key Rating Guide of Class VI or better. No such policy shall be maintained where: (i) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (ii) the Policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds. The provisions of this Section 4 to limit the power or authority of the Association or any Owner to obtain and maintain insurance coverage,

in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or such Owner may deem appropriate from time to time.

#### X. DESTRUCTION OR CONDEMNATION OF COMMON AREAS

1. *Definitions.* The provisions of this Article X shall apply with respect to the destruction or condemnation of all or any part of the Common Areas. As used in this Article, each of the following terms shall have the meaning indicated:

(a) Destruction. "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Common Areas or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. "Partial Destruction: shall mean any other damage or destruction to the Common Areas or any part thereof.

(b) Condemnation. "Substantial Condemnation" shall exist whenever a complete taking of the Common Areas or a taking of part of the Common Areas has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. "Partial Condemnation: shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(c) Restoration. "restoration" in the case of any damage or destruction, shall mean restoration of the Common Areas in accordance with the Declaration, the Plat, and the original plans and specification for the Common Areas to a condition the same or substantially the same as the condition in which the Common Areas existed prior to the damage or destruction concerned; in the case of condemnation, shall mean restoration of the remaining portion of the Common Areas to an attractive, sound, and desirable condition. Any "Restoration" not in accordance with the Declaration, the Plat, and the original plans and specifications for the Common Areas shall require the consent of Eligible Mortgages holding Mortgages on at least fifty-one percent (51%) of the Lots which are then subject to Mortgages held by Eligible Mortgages.

(d) Restored Value. "Restored Value" shall mean the value of the Common Areas (excluding raw land value) after Restoration.

(e) Estimated Costs of Restoration. "Estimated Costs of Restoration" shall mean the estimated costs of restoration.

(f) Available Funds. "Available Funds" shall mean any proceeds of insurance, condemnation, awards, payments in lieu of condemnation, and any uncommitted funds of the Association, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of the insurance proceeds legally required to be paid to any party other than the Association or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee or a Lot for the condemnation or taking of the Lot in which they are interested.

2. *Determination by Board of Trustees of the Association.* Upon the occurrence of any damage or destruction to the Common Areas or any part thereof, or upon a complete or partial taking of the Common Areas under eminent domain or by grant or conveyance in lieu thereof, the Board of Trustees of the Association shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value. In making such determination the Board of Trustees of the Association may retain and rely upon one or more qualified appraisers or other professionals.

3. *Restoration of Common Areas.* Restoration of the Common Areas shall be undertaken by the Association promptly without a vote of the owners in the event of Partial Destruction or Partial Condemnation, and shall also be undertaken in the event of Substantial Destruction of Substantial Condemnation unless the failure to make Restoration is consented to by Members collectively holding at least sixty-seven percent (67%) of the total votes of the Association and is further consented to by Eligible Mortgagees holding Mortgages on at least fifty-one percent (51%) of the Lots which are then subject to Mortgages held by Eligible Mortgagees. Within thirty (30) days after the Board of Trustees of the Association has determined that Substantial Destruction of Substantial Condemnation exists, the Association shall send to each Owner and Eligible Mortgagee a written description of the destruction or condemnation involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall notice a meeting of the Members in accordance with the applicable

provisions of this Declaration and the Articles to determine the preferences of the Members regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Association exceed the actual cost of Restoration when Restoration is undertaken, the excess shall be divided into as many equal shares as there are Lots in the Project with one of such shares being paid and distributed to the Owners of each Lot. Payment to any Owner whose Lot is the subject of a Mortgagee. In the event the actual cost of Restoration exceeds Available Funds, all of the Lots shall be equally assessed for the deficiency.

4. *Lack of Restoration.* Unless Restoration is accomplished in accordance with the foregoing Section 3, the Association shall take such action as is necessary to make the remaining Common Areas safe for the occupants and Owners of the Project and defray the costs thereof from Available Funds. In the event such Funds are insufficient for such purposes, the Owners of all Lots shall be equally assessed for the deficiency. Any remaining Available Funds shall be divided into as many equal shares as there are Lots in the Project with one of such shares being paid and distributed to the Owners of each such Lot. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

5. *Authority of Association to Represent Owners in Proceedings to Condemn or to Restore.* The Association, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding, the proceeds of any settlement related thereto, and the proceeds, of any insurance on the Common Areas shall be payable to the Association for the use and benefit of the Lot Owners and their Mortgagees as their interests may appear. The Association, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore the Common Areas whenever Restoration is undertaken as provided in Section 3 of this Article or when the Common Areas are made safe as provided in Section 4 of this Article. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate.

#### XI. [INTENTIONALLY OMITTED]

#### XII. MISCELLANEOUS

1. *Enforcement.* The Declarant, the Association, and any aggrieved Lot Owner shall have a right of action either, at law or in equity, against the Declarant, the Association, or any Lot Owner for any failure by such person or entity to comply with this declaration, the Plat, the Articles, or the provisions of any rules, regulations, agreements, instruments, supplements, amendments, or determinations contemplated by this Declaration, the Plat, or the Articles. Failure by the Declarant, the Association or any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. *Notices.* Any notice required or permitted to be given to any Owner, Member, Eligible Mortgagee, or Eligible Insurer or Guarantor under the provisions of this Declaration or the Articles shall be deemed to have been properly furnished if mailed postage prepaid to the person or entity which appears as the Member, Owner, Eligible Mortgagee, or Eligible Insurer or Guarantor of the Lot or Mortgage concerned, at the latest address for such person or entity appearing, in the applicable lists of the Association at the time of mailing.

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

4. *Unanimous Written Consent in Lieu of Vote.* In any case in which the Declaration requires for authorization or approval of a transaction or matter the accent or affirmative vote of a stated percentage of the votes of the Association, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Member entitled to cast a vote. The following additional provisions shall govern any application of this Section 4:

(a) All necessary consents must be obtained prior to the expiration of one hundred eighty (180) days after the first consent is given by any Member.

(b) Any change in ownership of a Lot which occurs after consent has been obtained from Member having an interest therein shall not be considered or taken into account for any purpose.

5. *Amendment.* Except as provided in and/or subject to the terms of items (a) through (d) below, a majority of the votes which Members present in person or represented by proxy are entitled to cast at a meeting of the Members of the Association shall be required and shall be sufficient to amend this Declaration, the Plat, or the Articles. Written notice setting forth the purpose of such meeting and the substance of the proposed amendment shall be sent to all Members at least ten (10) but not more than fifty (50) days prior to the meeting date. The quorum required at such meeting shall be as set forth in Section 5 of Article V of this Declaration. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

(a) Declarant shall have the right unilaterally to amend and supplement this Declaration in conjunction with its addition to the Project of each portion of the Additional Land, all in the manner and to the extent, but only in the manner and to the extent, provided for in the article XI of this Declaration.

(b) Until the Class B membership ceases, no amendment to the Plat, to Article VIII of this Declaration or to any provision of this Declaration or the Articles which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

(c) The vote of at least sixty-seven percent (67%) of the total votes in the Association and the consent of Eligible Mortgagees holding Mortgages on at least sixty-seven percent (67%) of the Lots which are then subject to Mortgages held by Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project as a planned unit development.

(d) The vote of at least sixty-seven percent (67%) of the total votes in the Association and the consent of Eligible Mortgagees holding Mortgages on at least sixty seven percent (67%) of the Lots which are then subject to Mortgages held by Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration, Plat, or the Articles which establishes, provides for, governs, or regulates any of the following: (i) voting; (ii) assessments, assessment liens or subordination of liens; (iii) reserves for maintenance, repair, and replacement of the Common Areas and Facilities; (iv) insurance for fidelity bonds; (v) rights to use the Common Areas and Facilities; (vi) responsibility for maintenance and repair of the several portions of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (viii) the boundaries of any Lot; (ix) the interests in the Common Areas and Facilities or Limited Common Areas; (x) convertability of Lots into Common Areas or of Common Areas into Lots; (xi) leasing of Lots; (xii) imposition of any rights of first refusal or similar restrictions on the right of a Lot Owner to sell, transfer, or otherwise convey his or her Lot; (xiii) any provisions which are for the express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (xiv) the requirement that the Project be professionally managed rather than self-managed. An addition or amendment shall not be considered material for purposes of this Paragraph (d) if it is for the purpose of correcting technical errors, or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration, the Plat, or the Articles (or to approve a decision of the Association with respect to the nature of Restoration under Paragraph (c) of Section 1 of Article X hereof or a decision not to undertake Restoration pursuant to Section 3 of Article X hereof) is mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association and who does not deliver to the Association a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

The vote and consent requirements set forth in the foregoing Paragraph (d) of this Section shall not be applicable to additions or amendments to this Declaration, the Plat, or the Articles which implement a decision concerning whether or not Restoration of the Common Areas should be undertaken or concerning the nature of such Restoration in accordance with the provisions of Sections 1 through 5 of Article X hereof in the event of Partial or Substantial Destruction or Condemnation, or which relate to the addition to the Project of any portion of the Additional land and Comply with Sections 1 through 3 of Article XI hereof. In addition, the granting by the Association of any permit, license, or easement for utility or similar purposes pursuant to the right and authority of the Association set forth in Paragraph (C) of Section 4 of Article IV hereof, shall not require an addition or



amendment to this Declaration, the Plat, or the Articles and shall not be restricted in any way by the provisions and requirements of this Section 5.

6. *Mortgagee Protection.* The lien of claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before that date such assessments or charges become due. In the event that the State of Utah should enact the Uniform Planned Community Act or any other statute applicable to planned unit developments with a provision that would allow such assessments or charges, including special assessments, to have a limited priority over a Mortgage recorded before such assessments or charges became due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid assessments or charges to survive foreclosure or exercise of a power of sale, all such assessments and charges, including made due and payable to the Association on a monthly basis and the lien for any fees, late charges, fines, or interest that may be levied by the Association in connection with such unpaid assessments or charges shall be deemed subordinate to the Mortgage on the Lot upon which such assessments or charges are levied.

The lien or claim against a Lot for such unpaid assessments or charges shall not be affected by any sale or transfer of such Lot, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such lot of the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid assessments or charges which are extinguished in accordance with the foregoing sentence may be reallocated and assessed to all Lots as common expenses of the Association. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot from the lien of, any assessments or charges becoming due thereafter.

The Association shall make available to Lot Owners, to lenders, and to holders, insurers, or guarantors of any mortgage current copies of this Declaration, the Plat, the Articles, any rules concerning the Project, and the books, records, and financial statements of the Association. "Available," as used in this Paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

Until the Class B membership ceases, any agreement for professional management of the Project and any contract or lease which is entered into by the Association or to which the Association is a party shall provide that the Association, with or without cause and without payment of any termination fee or being subject to any penalty, may terminate same upon not in excess of ninety (90) days written notice to the other party thereto.

Upon written request to the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder insurer or guarantor and the Lot number of address of the Lot encumbered by the Mortgage held or insured by such holder, insurer or Guarantor (as the case may be), shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or charges owed by an Owner or a Lot subject to a Mortgage held, insured, or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Sections 1 and 3 of Article X and the immediately foregoing Section 5 of this Article.

The right of a Lot Owner to sell, transfer, or otherwise convey his or her Lot shall not be subject to any right of first refusal or similar restriction.

All leases or rental agreements for Lots shall be in writing and specifically subject to the provisions,

restrictions and requirements of this Declaration, the Plat, and the Articles. No Lot may be leased or rented for a period of less than thirty (30) days. The Association shall not create or enforce any other restriction relating to the term of a lease or rental agreement of any Lot in the Project.

7. *Indemnification.*

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Trustee or officer of the Association against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he believed to be in and not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he believed to be in and not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, shall not, of itself, create a presumption that the person had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that said person is or was a Trustee or officer of the Association against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he believed to be in and not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association, unless and only the extent that the court in which such action or suit was brought shall determine upon application that, despite the education of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) The following provisions shall govern and apply to the right of indemnification set forth in this Section 7.

(i) Any person seeking indemnification from the Association under Paragraph (a) of this Section as a result of being made a party to or being threatened to be made a party to any action, suit, or proceeding shall, within a reasonable time and before taking any significant or material action with respect to such action, suit or proceeding, notify the Association in writing with respect thereto and provide to the Association the opportunity to reasonably participate in such person's defense thereto and any settlement thereof. Failure to comply with the requirements of this Subparagraph (i) shall bar any claim of such person for indemnification by the Association.

(ii) To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Paragraph (a) or (b) of this Section, or in defense of any claim, issue, or other matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Paragraph (a) or (b) shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Paragraph (a) or (b). Such determination shall be made either by the Board of Trustees of the Association by the affirmative vote of at least a majority of the disinterested Trustees, or by the Members by the affirmative vote of at least a majority of the total votes of the Association at any meeting duly called for such purpose.

(iii) Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in Paragraphs (a) and (b) may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a determination by the Board of Trustees of the Association by the affirmative vote of at least a majority of the disinterested Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the

Association as authorized by Paragraphs (a) and (b).

(iv) The indemnification provided for by Paragraphs (a) and (b) shall not be deemed exclusive of any other rights to which those persons indemnified may be entitled under any agreements, by a vote of disinterested Members or Trustees, or otherwise, as to action in such persons' official capacity. The indemnification authorized by Paragraphs (a) and (b) shall apply to all present and future Trustees and officers of the Association and shall continue as to such persons who cease to be Trustees or officers of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

(v) The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee or officer of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

8. *Protection of Storm Water Retention Areas and Structures.* Declarant, Owners, or Mortgagees shall not have the authority to change, by any vote, or by alienation, transfer sale, or otherwise, the use of the areas and structures designed to control or retain storm water runoff unless the consent of the Flood Control Division of Salt Lake County has first been obtained in writing.

9. *Declarant's Rights Assignable.* All of the rights of Declarant under this Declaration may be assigned, transferred, or encumbered either by operation of law or through a voluntary conveyance, transfer, encumbrance, or assignment.

10. *Interpretation.* The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

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

12. *Effective Date.* This Declaration, any amendment or supplement hereto, and any amendment to the Plat shall take effect upon its being filed for record in the Office of the County Recorder of Salt Lake County, Utah.

EXECUTED by Declarant on this 19 day of April, 1999.

"Declarant":

MSI, Inc.

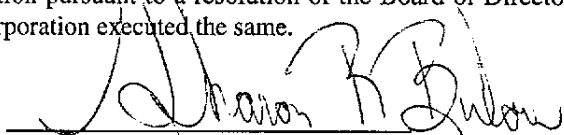
By [Signature]  
Its President

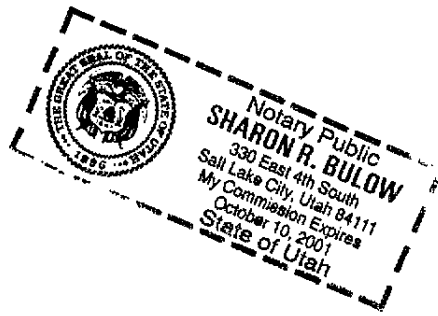
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STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On this 19 day of April, 1999, personally appeared before me Joseph Sorenson, who being by me duly sworn, did say that he is the President of MSI, Inc. that the foregoing Declaration of Covenants, Conditions, and Restrictions was signed on behalf on said Corporation pursuant to a resolution of the Board of Directors of said corporation, and did acknowledge to me that said Corporation executed the same.

My Commission Expires: 10/10/01

  
NOTARY PUBLIC  
Residing at: SLC, Utah



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