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Ent 864519 Bk 1304 Pg 184
Date 17-Jun-2004 11:27AM Fee \$92.00
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Cache County, UT
For 4P PROPERTIES LLC

**DECLARATION OF PROTECTIVE EASEMENTS,
COVENANTS, CONDITIONS AND RESTRICTIONS
(Including Owner Association Bylaws)**

for

PARK AVENUE PLANNED UNIT DEVELOPMENT

An Expandable Planned Residential Unit Subdivision, Phase I

Logan, Cache County, Utah

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THIS DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made and executed this _____ day of May, 2004, by 4P PROPERTIES, LLC ("Declarant"), in its capacity as the owner and developer of PARK AVENUE PLANNED UNIT DEVELOPMENT, a planned residential unit development subdivision in Logan, Cache County, Utah.

ARTICLE I – SUBMISSION

The Declarant, owner in fee simple of the Property particularly described in Exhibit "A" attached hereto, located in Cache County, Utah (the "Property"), hereby submits the Property, together with the buildings and all improvements, easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the Property, to be known as PARK AVENUE PLANNED UNIT DEVELOPMENT, to the protective easements, covenants, conditions and restrictions described in this Declaration.

ARTICLE II – DEFINITIONS

When used in this Declaration and in the By-Laws, which are made a part of this Declaration and are attached hereto as Exhibit "B," the following terms shall have the meaning indicated.

2.01 "Association" means all of the Lot Owners in the PUD acting as the PARK AVENUE PUD Homeowners Association in accordance with the Declaration and By-Laws.

2.02 "Board of Trustees" or "Trustees" means the Board of Trustees of the PARK AVENUE PLANNED UNIT DEVELOPMENT as it exists at any given time.

2.03 "By-Laws" means and refer to the By-Laws of the Association as set forth in Exhibit B attached to this Declaration, as the same may be supplemented or amended from time to time.

2.04 "Common Areas" means and includes:

a. All portions of the PUD not specifically included within individual Lots or

deeded in fee to the City of Logan.

b. All common areas and facilities, open space, neighborhood park area, river walk and trail system, and storm water retention ponds designated as such in the Plat of the PUD.

c. All other parts of the PUD normally in common use, or necessary or convenient to the use, existence, maintenance, safety or management of the other common areas;

d. Generally all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration.

2.05 **“Common Expenses”** means all sums expended on behalf of all the Lot Owners and all sums that are required by the Board of Trustees to perform or exercise its functions, duties or rights under this Declaration, any Management Agreement for the operation of the PUD, and such Rules and Regulations as the Board of Trustees may, from time to time, make and adopt. By way of illustration but not limitation, Common Expense includes:

a. Expense of administration, maintenance, operation, repair, or replacement of those elements of the Common Areas in the PUD that must be replaced on a periodic basis, and to other reserves as may, from time to time, be established under this Declaration;

b. Expenses agreed upon by the Association and lawfully assessed against the Owners in accordance with this Declaration or the By-Laws;

c. Expenses declared Common Expenses by the provisions of the By-Laws or this Declaration; and

d. Any valid charge against the PUD as a whole.

2.06 **“Common Profits”** means the balance of income, rents, profits, and revenues from the Common Areas remaining after deduction of the Common Expenses.

2.07 **“Declaration”** means this instrument, as the same may be supplemented or amended from time to time.

2.08 **“Declarant”** means 4P PROPERTIES, LLC, a Utah limited liability company, its successors and assigns if such successors and assigns are Owners of all or any portion of the Property and are designated by the Declarant to perform the obligations or succeed to the rights of Declarant

under this Declaration.

2.09 "Lot" means any of the separately numbered, individually described lots within the PUD as designated on the Plat and intended for single family residential use.

2.10 "Lot Number" means the number that designates a Lot in the attached Exhibit "C" with respect to Phase 1. "Lot Number" shall also mean the number that designates a Lot in any future phases of the PUD.

2.11 "Lot Owner," "Home Owner," or "Owner" means the person who is the owner of record (as reflected in the Public Records) of a fee or undivided fee interest in any Lot and a Lot Percentage Interest in the Common Areas which is appurtenant thereto. If a Lot is the subject of an executory contract of sale, the contract purchaser shall, upon notice to the Board of Trustees by the Purchaser (unless the seller and purchaser have otherwise agreed and have informed the Board in writing of such agreement) be considered the Lot Owner for purposes of voting and Board membership.

2.12 "Majority of Owners" means the Owners of the Lots to which more than fifty percent (50%) of the votes in the Association appertain.

2.13 "Managing Agent" shall mean any person or entity appointed or employed as Managing Agent by the Association.

2.14 "Mortgage" means any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered. First mortgage refers to a mortgage that has a lien position prior to any other mortgage.

2.15 "Mortgagee" means any person named as a Mortgagee or beneficiary under (or holder of) a deed of trust or mortgage.

2.16 "Percentage Interest" means the percentage undivided interest of each Lot in the Common Areas as set forth in Article III, Section 5.

2.17 "Plat" means the Plat filed simultaneously herewith, consisting of one sheet, prepared and certified by Knighton & Crow, Inc., a Professional Utah Land Surveyor. Plat shall also mean any plats filed with any supplement hereto with respect to additional phases of the PUD.

2.18 "Property" means the land described in Exhibit "A," including Lots, Common Areas, streets, buildings, improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

2.19 "PUD" means the PARK AVENUE PLANNED UNIT DEVELOPMENT.

2.20 "Rules and Regulations" means those rules and regulations adopted from time to time by the Board of Trustees that are deemed necessary for the use and enjoyment of the PUD, provided they are not in conflict with this Declaration.

ARTICLE III – COVENANTS, CONDITIONS AND RESTRICTIONS

The Property is submitted subject to the following protective easements, covenants, conditions, and restrictions.

3.01 Description of Improvements. The improvements included in this PUD are now (or will be) located on the Property described in Exhibit "A" attached hereto.

3.02 Description of Legal Status of Lots. All Lots are residential Lots. All Lots shall be capable of being independently owned, encumbered, and conveyed.

3.03 Contents of Exhibit "C". Exhibit "C" to this Declaration furnishes the Lot Number, dimensions, and square footage of each Lot in Phase 1 of the PUD.

3.04 Use and Maintenance of Common Areas. The Common Areas contained in the PUD are described and identified in Section 2.04 of this Declaration. Neither the Percentage Interest nor the right of use of Common Areas shall be separated from the Lot to which it appertains; and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of use shall automatically accompany any transfer of the Lot to which they relate.

a. The use of the Common Areas shall be limited to Owners in residence and to their tenants in residence, and to Owners' guests, invitees and licensees. The use of the Common Areas shall be governed by this Declaration and the Rules and Regulations as initially established by the Declarant and as adopted and amended from time to time by the Board of Trustees.

b. The Association will be responsible for maintaining all common areas, including but not limited to cutting grass, trimming shrubs, watering landscaped areas, maintaining the Neighborhood Park, maintaining trails and walkways in Common Areas, maintaining facilities in Common Areas and the like.

3.05 Computation of Percentage Interests. Each Lot in the PUD shall include an undivided interest in the Common Areas. Each Lot Owner owns an equal, proportionate share of the Common Areas. The proportionate ownership in the Common Areas will be for all purposes, including, but not limited to, participation in Common Profits, and assessments for Common Expenses.

3.06 Association Membership. Membership in the Association is 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. The purposes, business and affairs of the Association shall be governed by the Board of Trustees as agent of the Association.

3.07 Easement of Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot or Lots, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of Lot encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot or Lots, an easement for such encroachments and for maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of facilities in the Common Areas, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the PUD or any part thereof.

3.08 Access for Repair of Common Areas. The Owners of the other Lots shall have the irrevocable right to be exercised by the Board of Trustees, as its agent, to have access to each Lot adjacent to Common Areas in those limited instances where the only feasible access to a Common Area is through a Lot for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Area or to another Lot or Lots. However, the Association will be responsible for paying for any damage caused to a Lot or property thereon because the Lot was used to access a Common Area.

3.09 Easement to Board of Trustees. The Board of Trustees shall have non-exclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions that it is obligated or permitted to perform under this Declaration.

3.10 Easement for Utility Services. There is hereby created a blanket easement upon, across, over, and under the property in the PUD for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to water, sewer, gas, telephones, electricity, and other utility services. This blanket easement extends to the City of Logan for the purpose of reading culinary water meters and maintaining the water line located within the PUD.

3.11 Easement for Use of Common Areas. Each Lot Owner and each person lawfully residing in a Lot located on any portion of the described land in the PUD is hereby granted a non-exclusive right and easement of enjoyment in common with others of the Common Areas of the PUD.

a. The right and easements of enjoyment created hereby shall be subject to

the following:

- (i) The right of the Declarant, prior to termination of the period of Declarant's control, to grant and reserve easements and right-of-ways through, under, over and across the Common Areas for the installation, maintenance, and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities; and
- (ii) The right of the Board of Trustees to adopt Rules and Regulations governing the use by the Owners of the Common Areas.

b. Any person having the right to use and enjoy the Common Areas may delegate such rights to the members of his family, tenants who reside in the PUD and to such other persons as may be permitted by the Board of Trustees.

c. Each person having the right to use the Common Areas and each person to whom such right has been delegated shall comply with the Rules and Regulations regarding such use, as such Rules and Regulations may be established and amended from time to time by the Board of Trustees. Such rights of use may be suspended upon failure of a Lot Owner to pay the Owner's assessment; however, such suspension may only occur following notice and an opportunity for a hearing pursuant to the notice and hearing procedures set forth in Section 3.12.

3.12 Hearings. Before the Association, or the Board of Trustees on behalf of the Association, may take adverse action against an Owner or Owner's tenant for failure to pay assessments, damage caused to Common Areas, violations of Rules and Regulations or similar matters, the Board of Trustees must provide the affected Owner or Owner's tenant an opportunity for a hearing in accordance with the procedures set forth in this Section 3.12.

a. Notice of Hearing. The Board of Trustees shall cause to be mailed, by certified mail, a Notice of Hearing, signed by a majority of the Board of Trustees and addressed to the Owner at Owner's last mailing address as it then appears on the records of the Board of Trustees. The Notice of Hearing shall include the following:

- (i) Description of Relief Sought. A brief description of the relief sought by the Board of Trustees on behalf of the Association (e.g., payment of assessments in arrears, compensation for damages allegedly caused by the Owner's negligence) in sufficient detail so as to give the Owner adequate notice of the charges against him or her;
- (ii) Time, date, and place of hearing. The Notice shall include the

time, date and place of the hearing. The Hearing shall be held on a weekday, unless waived in writing by the Owner and Board of Trustees, and shall not be set any sooner than thirty (30) days from the date the Notice is mailed to the Owner. The matter shall be heard in the evening, between the hours of 5:00 p.m. and 8:00 p.m., or as agreed upon by the Board of Trustees and the Owner. The Hearing shall be held in any convenient location within Cache County; and

(iii) Objection to Time or Date. The Notice shall inform the Owner that the Owner may object to the time and/or date of the Hearing upon a showing of a reasonable conflict. The objection shall be mailed, postage prepaid, to the Board of Trustees fifteen (15) days before the date of the Hearing. The objection shall also include at least three (3) dates (including times), subject to the limitations of subparagraph (ii) above, upon which Owner can attend a Hearing.

b. Alternative Dates. The Board of Trustees may accept one of Owner's suggested dates, which it must then confirm in writing, by certified mail, or set a new date pursuant to the procedures of subparagraph (ii) above. If Owner has a reasonable conflict with the new date set by the Board of Trustees, Owner may again object to either the time or date as allowed in subparagraph (iii) above. The procedures of subparagraphs (ii) and (iii) shall be followed until a time, date and place are selected convenient to the Board of Trustees and Owner.

c. Representation by Counsel. Owner is entitled to representation by counsel at the Hearing with the Board of Trustees. If Owner chooses to be represented by counsel, Owner shall first notify the Board of Trustees, in writing, fifteen (15) days prior to the date of the Hearing in order to give the Board of Trustees the opportunity to select its own counsel to represent it at the Hearing.

d. Hearing. At the Hearing, Owner shall be given a reasonable opportunity to efficiently and succinctly present his evidence.

e. Decision. The Board of Trustees shall render its written decision within thirty (30) days following the date of the Hearing. The written decision shall be mailed to the Owner at the Owner's last known address and shall be deemed a final decision in all respects.

f. Appeal of Decision. The decision of the Board of Trustees may only be appealed to the District Court in and for Cache County, Utah, within thirty (30) days following Owner's receipt of the Board of Trustees's written decision. The prevailing party on appeal shall be entitled to receive from the non-prevailing party, all reasonable attorney's fees and

costs incurred in the appeal.

g. **Collection.** Amounts owing by the Owner pursuant to the decision of the Board of Trustees shall be collected by way of assessment against the Owner's Lot.

3.13 **Lot Maintenance.** Each Lot Owner must maintain, at his or her own expense, the Owner's Lot (including the planting strip between the sidewalk and street) so as not to detract from the appearance of the PUD and so as not to affect adversely the value of any other Lot. Each Lot Owner must replace, at his or her own expense, any tree in the planting strip that dies or is severely damaged. Each Lot Owner must keep all structures on the Lot and related equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and must do all redecorating, painting, varnishing, landscaping and landscape maintenance that may at any time be necessary to maintain the good appearance of the Lot. The front yard of any Lots must be landscaped within nine (9) months from the beginning of construction upon such Lot. The back yard of any Lot must be landscaped within fifteen (15) months from the beginning of construction upon such Lot.

a. In the event of damage or destruction of any structure on a Lot, the Owner of the Lot on which such structure is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed structure in the PUD. The painting or repainting, remodeling, rebuilding or modification of any exterior portion of a structure must first be submitted to and approved by the Architectural Review Board under its procedures. No Owner of any Lot in the PUD may openly or wantonly neglect or fail to do everything possible to keep the Owner's Lot and all structures thereon in good and attractive condition and repair at all times.

3.14 **General Restrictions on Use of Lots and Common Areas.** Each of the Lots in the PUD is intended to be used for single family residential housing and is restricted to such use. The term "residential" excludes individual room letting or boarding and commercial and professional uses which are not the subject of a permit granted by the City of Logan pursuant to its then current home occupation ordinance.

a. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees without the prior written consent of the Board of Trustees. The Board of Trustees may, by Rules and Regulations, prohibit or limit the use of the Common Areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Lots or Common Areas. Nothing shall be kept or stored in any part of the Common Areas without the prior written consent of the Board of Trustees, except as specifically provided herein. Nothing may be altered, constructed in or removed from the Common Areas except with the prior written consent of the Board of Trustees.

b. Nothing shall be done or kept in any Lot or in the Common Areas or any part thereof that may result in the cancellation of the insurance on the PUD or any part thereof or increase the rate of insurance on the PUD or any part thereof over what the Board of Trustees, but for such activity, would pay without the prior written consent of the Board of Trustees. Nothing shall be done or kept in any Lot, in the Common Areas, or any part thereof that would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of the Common Areas or any part thereof may be committed by any Owner or any invitee of any Owner, and each Owner must indemnify and hold the Board of Trustees and the Owners harmless against all loss resulting from any such damage or waste caused by the Owner, the Owner's family or the Owner's invitees; provided, however, that any invitee of the Declarant shall not, under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity may be carried on in any Lot or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the PUD.

c. No Owner, Owner's family member, tenant, employee, invitee or other person on the Property may violate the Rules and Regulations for the use of the Lots and of the Common Areas as adopted from time to time by the Board of Trustees.

d. No Owner, by deed, plat or otherwise, may subdivide or in any manner cause the Ownership of Lot to be separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.

3.15 Restrictions on Lots and Structures.

a. Construction of houses, including garages and any other permanent structures attached to houses, in the PUD are subject to the following setback requirements: (i) Ten feet (10') setbacks for the front and back of the Lot; and (ii) Five feet (5') setbacks for both sides of the Lot.

b. All houses in the PUD must meet the following minimum standards:

(i) All houses must have a minimum size, exclusive of attic space, storage lofts, porches and garages, of nine hundred fifty (950) square feet of finished main floor living area, or six hundred (600) square feet of finished living area on each floor if the home is multilevel.

(ii) All houses must have a wainscot facade of brick or stone.

(iii) Garages are not considered to "living area" for the purposes of Section

3.15(b)(i) above.

(iv) All houses must be built above grade (no basements).

c. Complete plans for all permanent structures not originally constructed, erected or installed on a Lot before sale to the original Lot Owner must be submitted to and approved by the Architectural Design and Review Committee before any construction or installation may begin.

d. No exterior alterations to any structure may be made by the Owner without the prior written consent of the Architectural Design and Review Board.

e. In accordance with Logan City ordinances, no trees may be cut down or removed from the planting strip area without a permit from the city. Each Lot must maintain the same number of trees in the planting strip as provided in the Master Landscape Plan for the PUD. Replacement trees in the planting strip must have a minimum diameter of one and one-half inches (1 1/2") by caliper at planting.

3.16 Restrictions on Leases. Any lease of a Lot must be in writing and must provide that the terms of the lease are subject in all respects to provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. No Lot Owner may lease a Lot for an initial term of less than thirty (30) days. No Lot Owner may lease less than the entire Lot.

a. No Owner may lease a Lot without first obtaining the written approval of the Board of Trustees. Such approval may not be unreasonably withheld. In addition, a lease of a Lot in the PUD must expressly give the Association standing as a third-party beneficiary of the lease to enforce the terms of the lease agreement, including the provisions of this Declaration and the By-Laws. Upon request of the Board of Trustees, an Owner who is leasing a Lot or proposing to lease a Lot must provide a copy of the written lease agreement to the Board of Trustees.

b. For purposes of this Section, rent and lease have the same meaning.

3.17 Restrictions on Fences. No Lot may have a privacy fence surrounding any part of its front yard. Privacy fences are restricted to the side yard and backyard of a Lot. Such privacy fence must be made of vinyl or approved similar material (wood fences are not permitted), and the top of the fence must not exceed five feet (5') above ground level. For the purposes of this Section, the side yard and backyard of a Lot are that portion of the Lot beginning at the front corner on each side of the house and extending laterally to the boundary line for that side of the Lot and then extending along the side boundary line to the rear boundary line and across the rear boundary line.

a. Picket-style fences made of vinyl or a similar material that are no higher than three feet above ground level may be installed around the front yard of a lot, not including the planting strip. No fence may be installed around any part of a Lot until plans for same have been submitted to and approved by the Architectural Design and Review Board as provided in Article IV of this Declaration.

b. Any fence erected or installed on a Lot must comply with City of Logan ordinances and codes, including the requirement to obtain a building permit if applicable.

c. Lot Owners are encouraged, but not required, to install only vinyl picket-style fences.

3.18 Restrictions on Antennas. No private outside television or radio aerial or antenna, or other similar device for reception or transmission may extend more than ten (10) feet above the highest part of the roof of the house on the Lot.

3.19 Restrictions on Vehicles.

a. Motor vehicles and recreational vehicles may not be parked overnight on the street.

b. No recreational vehicles (boats, campers, trailers, motor homes, all terrain vehicles, personal watercraft or similar items) and no trailers may be parked on any portion of the Common Areas, street or the front of a Lot except for temporary (less than 48 hours) parking. All recreational vehicles and all trailers must be stored in a garage, side yard or backyard.

c. Immobilized vehicles or vehicles under repair must be stored in a garage.

3.20 Restrictions on Signs.

a. No signs whatsoever may be erected or maintained in the Common Areas without the prior written approval of the Board of Trustees, except:

(i) Such signs as may be required by legal proceedings;

(ii) Such signs as Declarant may erect or maintain incident to sale of Lots; and

(iii) One standard-sized "For Sale" sign, no larger than 400 square inches, relating to the sale of any Lot by a Lot Owner.

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- b. No illuminated signs are permitted anywhere in the PUD.
- c. Owners may post temporary signs no greater than 200 square inches on their Lots, except for one standard-sized "For Sale" sign, which may be no larger than 400 square inches, relating to the sale of any Lot by a Lot Owner.
- d. All signs or devices within the PUD must comply with City of Logan ordinances and codes.

3.21 Restrictions on Pets. No animals, livestock, or poultry of any kind will be permitted on any Lot or within any Lot except domesticated household pets.

- a. Pets may not run free in the PUD. Owners are responsible for keeping pets in a secured area or under control at all times. Owners must keep pets on a leash at all times when in the Neighborhood Park. Owners are responsible for cleaning up after their pets in all parts of the PUD.
- b. Owners or Owner's tenants in the PUD shall indemnify the Board of Trustees and hold it harmless against any loss or liability of any kind or character whatsoever arising from having any pet in the Project.

3.22 Status and General Authority of Board of Trustees. Notwithstanding anything herein contained to the contrary, PARK AVENUE PLANNED UNIT DEVELOPMENT shall be managed, operated, and maintained by the Board of Trustees exclusively as agent of the Association, and any act performed by the Board of Trustees under this Declaration or the By-Laws shall be deemed to be performed by the Board of Trustees for and on behalf of the Association as its agent. The Board of Trustees shall have the following authority and powers:

- a. The authority, without the vote or consent of the Owners, to transfer and convey utility and similar easements over, under, across, and through the Common Areas.
- b. The authority to execute and record, on behalf of all the Lot Owners, any amendment to the Declaration or Plat which has been approved by the consent necessary to authorize such amendment.
- c. The power to sue and be sued.
- d. The authority to enter into contracts which in any way concern the PUD, so long as any vote or consent of the Lot Owners necessitated by the subject matter of the agreement has been obtained.

e. The power and authority to convey or transfer any interest in real property authorized by the Owners having an interest therein.

f. The power and authority to purchase, otherwise acquire, and accept title to any interest in real property, so long as such action has been authorized by any vote or consent that is necessary under the circumstances.

g. The authority to license persons not otherwise entitled to use any of the recreational areas and facilities, to use the same from time to time as the Board of Trustees deems appropriate upon the payment of fees prescribed by it to help defray the cost of maintenance thereof.

h. The power and authority to borrow money, provided no indebtedness for borrowed funds shall exceed at any given time the sum of Five Thousand Dollars (\$5,000.00) without the prior approval of the Majority of Owners.

i. The authority to promulgate such reasonable Rules and Regulations, and procedures as may be necessary or desirable to aid the Board of Trustees in carrying out any of its functions or to insure that the PUD is maintained and used in a manner consistent with the interests of the Owners.

j. The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Board of Trustees to perform its functions as agent for the Association.

k. The power and authority to levy fines of \$250 or less, as determined by the Board of Trustees by majority vote, against Owners for intentional or repeated violations of this Declaration or the Rules and Regulations of the PUD. However, before such fines may be levied, Owners must be provided with notice and a right to a hearing as provided in Section 3.12.

Any instrument executed by the Board of Trustees that recites facts which, if true, would establish the Board of Trustees's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish such power and authority in favor of any person who in good faith and for value relies upon the instrument.

3.23 Composition and Initial Selection of Board of Trustees. Until the election of the Board of Trustees takes place at the first annual meeting of the Association as provided in Section 3.26 of this Declaration, the Board of Trustees shall consist of such persons as have been designated by the Declarant. From and after the first annual meeting of the Association, the Board of Trustees shall be composed of five persons, all

of whom shall be officers, directors, or designees of the Declarant, Owners or spouses of Owners, or Mortgagees (or designees of Mortgagees) of Lots. The Declarant shall have the right in its sole discretion to replace such members of the Board of Trustees as may be so selected and designated by it, and to select and designate their successors. In all other cases of vacancy, the remaining Board of Trustees members shall elect a replacement to sit on the Board of Trustees until the expiration date of the term for which the member being replaced was elected. Declarant may, by a written instrument duly recorded, waive its right to select the members of the Board of Trustees at any time prior to the termination of its right to select Board of Trustees members reserved under this Section 3.23.

3.24 Managing Agent. The Board of Trustees may carry out any of its functions that are capable of delegation through a Managing Agent for the PUD. Any Managing Agent retained for such purpose must be an individual or entity experienced and qualified in the field of property management. The Managing Agent so engaged shall be responsible for managing the PUD for the benefit of the Lot Owners and shall, to the extent permitted by law and the terms of the agreement with the Board of Trustees, be authorized to perform any of the functions or acts required or permitted to be performed by the Board of Trustees itself. Any Management Agreement must be terminable for cause upon thirty (30) days notice and run for a reasonable period from one (1) to three (3) years (unless negotiated by the Declarant in which case the Management Agreement shall not exceed two (2) years), and be renewable by consent of the Association and the Board of Trustees.

3.25 Owners' Agreement to Pay Assessments. Each Owner of a Lot by the acceptance of a deed therefor, whether or not it be expressed in the deed, or by entering into a sale or purchase contract, shall be deemed to covenant and agree with each other and with the Board of Trustees to pay annual and special assessments made by the Board of Trustees for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time in the manner provided below.

a. Amount of Total Annual Assessments: The total annual assessments against all Lots shall be based upon the Board of Trustees's advance estimates of the Association's cash requirements to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things: expenses of management; grounds maintenance; taxes and special assessments (until the Lots are separately assessed as provided herein); premiums for all insurance which the Board of Trustees is required or permitted to maintain; common lighting; water charges; trash collection; repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a regular basis; wages for Board of Trustees employees; Managing Agent fees; legal and accounting fees; any deficit remaining from a previous period; the maintenance of a reasonable reserve fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owner under this Declaration.

b. Apportionment of Assessments: Expenses attributed to the Common Areas and to the PUD as a whole shall be apportioned among all the Lots equally. Both annual and special assessments must be fixed at a uniform rate for all Lots.

c. Notice of Annual Assessments and Time for Payment Thereof: Annual assessments shall be made on a calendar year basis. The Board of Trustees shall give written notice to each Owner as to the amount of the annual assessment with respect to the Owner's Lot not less than thirty (30) days nor more than ninety (90) days before the beginning of the next calendar year. Such assessments shall be due and payable in a single installment within thirty (30) days after written notice of the amount of the assessment shall have been given to the respective Owner of a Lot. Each assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Board of Trustees to give timely notice of any assessment as provided herein shall not effect the liability of the Owner of a Lot for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall be given.

d. Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Board of Trustees may, in any assessment year, levy a special assessment, payable over such a period as the Board of Trustees may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas of the PUD or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Board of Trustees to incur expenses, but shall be authorized by other Sections in this Declaration. Any amounts assessed under this paragraph shall be assessed to the Owners in proportion to their respective Percentage Interests in the Common Areas. Notice in writing of the amount of such special assessments and time for payment thereof shall be given promptly to the Owners and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12 %) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Notwithstanding anything to the contrary in this Declaration, additions or capital improvements to the Common Areas of the PUD which cost no more than Five Thousand Dollars (\$5,000.00) may be authorized by the Board of Trustees alone. Additions or capital improvements, the cost of which will exceed such amount must, prior to being constructed, be authorized by the Majority of the Owners. Any addition or capital improvement that would materially alter the nature of the PUD must, regardless of its cost and prior to being constructed, be authorized by vote of Lot Owners in person or by proxy of not less than sixty-seven percent (67%) of the Percentage Interest at a meeting of the Association, special or annual, at which a quorum is present.

e. Lien for Assessments. All sums assessed to any Lot under this Declaration,

together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for: (i) valid tax and special assessment liens on the Lot in favor of any governmental assessing authority; and (ii) a lien for all sums unpaid on the first Mortgage, or on any Mortgage to Declarant, duly recorded in the Official Records of Cache County, Utah, including all unpaid obligatory advances to be made under such Mortgage and all amounts advanced under such Mortgage and secured by a lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens shall be deemed to consent that such liens shall be inferior to future liens for assessments as provided herein whether or not such consent be specifically set forth in the instruments creating such liens.

(i) To evidence a lien for sums assessed under this Declaration, the Board of Trustees may prepare a written notice of the lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by the Board of Trustees and may be recorded in the Office of the County Recorder of Cache County, Utah.

No notice of lien shall be recorded until there is a delinquency in payment of the assessment. The lien described in this paragraph may be foreclosed in the same manner in which trust deeds on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of the filing of the notice of lien and all reasonable attorney's fees. All such costs, expenses, and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Board of Trustees any assessments against the Lot which shall become due during the period of foreclosure.

(ii) After the institution of the foreclosure proceedings, the Lot Owner must pay a reasonable rental for his use of the Lot and the Board of Trustees shall, without regard to the value of the Lot, be entitled to the appointment of a receiver to collect any rentals due from the Owner or any other person. The Board of Trustees shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner hereof.

(iii) A release of notice of lien shall be executed by the Board of Trustees and recorded in the Office of the County Recorder of Cache County, Utah, upon payment of all sums secured by a lien that has been made the subject of a recorded notice of lien. Any encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created hereunder, and upon such payment such encumbrancer shall be subrogated to all rights of the Board of Trustees with respect to such lien, including priority. The Board shall report to any encumbrancer of a Lot any unpaid assessments remaining unpaid for thirty (30) days after the same

shall become due, provided, however that such encumbrancer first shall have furnished the Board of Trustees written notice of such encumbrance.

f. Personal Obligation of Owner: The amount of any annual or special assessment against any Lot shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Board of Trustees without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiving the use and enjoyment of any Common Areas or by abandoning or selling his Lot.

g. Statement of Account: Upon payment of a reasonable fee or such other amount as may in the future be allowed by law, and upon written request of any Owner or Mortgagee, prospective Mortgagee or prospective purchaser of a Lot, the Board of Trustees shall issue a written statement setting forth: (i) the amount of the unpaid assessments, if any, with respect to such Lot; (ii) the amount of the current yearly assessment and the date that such assessment becomes or has become due; and (iii) credit for advanced payments or prepaid items, including, but not limited to, an Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Board of Trustees in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within twenty (20) days, all unpaid assessments that became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the twenty (20) day period provided herein and thereafter an additional written request is requested by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Lot.

h. Personal Liability of Purchaser for Assessment: Subject to the provisions of subparagraph (g), a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessments against the Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

i. No Assessments on Unsold Lots. Notwithstanding anything to the contrary in this Section 3.25, no assessments may be levied against unsold Lots owned by Declarant in the PUD.

3.26 Transition of Management. Notwithstanding anything to the contrary contained in Section 3.23:

a. Declarant may, at any time, relinquish its reserved right to select members

of the Board of Trustees and to transfer the management of the PUD to the Board of Trustees elected by Lot Owners. If and when the Declarant elects to do so, Declarant shall notify Owners in writing of the effective date of such transfer ("Transfer Date") at least forty-five (45) days before the transfer. Thereupon, Lot Owners shall call a meeting to elect the members of Board of Trustees to take office as of the Transfer Date. Declarant covenants to cooperate with Lot Owners in effecting orderly transition of management.

b. Declarant shall relinquish all special rights, expressed or implied, through which the Declarant may directly or indirectly control, direct, modify or veto any action of the Association, its Board of Trustees, or a majority of Lot Owners, and control of the Association shall pass to the Owners of Lots within the PUD not later than the earlier of the following:

- (i) 120 days after the date by which 75% of the Lots have been conveyed to Lot purchasers; or
- (ii) At the end of seven (7) years following the first conveyance of a Lot to a purchaser.

c. The requirements of Section 3.26 b. shall not affect Declarant's rights, as a Lot Owner, to exercise the votes allocated to Lots which Declarant owns.

3.27 Insurance Coverage.

a. The Board of Trustees shall secure, and at all times maintain a comprehensive policy of public liability insurance insuring the Association, the Board of Trustees, the Managing Agent, and the Lot Owners against any liability incident to ownership, use or operation of the Common Areas and public ways of the PUD or of any Lot that may arise among themselves, to the public or to any invitees or tenants of the PUD or of the Lot Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury and/or property damage. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of a negligent act of the Association or other Lot Owners. The scope of the coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

b. The Board of Trustees shall secure, and at all times maintain fidelity coverage to protect against dishonest acts on the part of Board of Trustees Members, Managing Agent, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which in no event shall be less than one and one-half times the insured's estimated annual operating expenses and revenues. In

connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

c. In addition to the insurance and bond coverage described above, the Board of Trustees shall secure and at all times maintain insurance against such risks as are, or hereafter may be, customarily insured against in connection with all planned residential Lot developments similar to the PUD in construction, nature or use.

d. Each insurance policy or fidelity bond maintained pursuant to this Declaration shall be written by an insurance carrier which is licensed to transact business in the State of Utah. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, bylaws, bond or policy, contributions may be required from, or assessments may be made against, a Lot Owner, a lienholder, the Association, a Lot, the Common Areas, or the Subdivision; (2) by the terms of the carrier's charter, bylaws, bond or policy, loss payments are contingent upon action by the carrier's Board of Trustees, policy holders, or Members; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance thereunder shall be brought into contribution with insurance purchased by the individual Lot Owners or their lienholders. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any act or neglect of the Lot Owners when such act or neglect is not within the control of the Association; (b) coverage shall not be prejudiced by any failure by the Association to comply with any warranty or condition with regard to any portion of the Subdivision over which the Association has no control; and (c) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty(30) days prior written notice to any and all insureds named therein, including any lienholder named as an insured. If due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under this Section 3.27 cannot reasonably be secured, with respect to such coverage the Association shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist. However, the Association may not self insure.

e. The Board of Trustees shall have the authority to adjust losses regarding the Common Areas.

f. Insurance secured and maintained by the Board of Trustees shall not be brought into contribution with insurance held by individual Lot Owners or their Mortgagee.

g. Each policy of insurance obtained by the Board of Trustees shall

provide:

- (i) A waiver (if available) of the insurer's subrogation rights with respect to the Board of Trustees, the Managing Agent, the Lot Owners, and their respective servants, agents and guests;
- (ii) That the policy cannot be canceled, suspended, or invalidated due to the conduct of any particular Lot Owner or Owners;
- (iii) That the policy cannot be canceled, suspended, or invalidated due to the conduct of any member, officer or employee of the Board of Trustees or the Managing Agent without a prior written demand that the defect be cured; and
- (iv) That any "no other insurance clause" therein shall not apply with respect to insurance held individually by the Lot Owners.

h. Every Lot Owner must obtain standard homeowner's insurance, at the Owner's own expense, covering damage to structures on the Lot and the negligent acts of the occupants of the Lot. Such homeowner's insurance must have the effect of decreasing the amount which may be realized under any policy maintained by the Board of Trustees.

i. The PUD is not located in an area identified by the Secretary of Housing and Urban Development as an area having specialized flood hazards. If at some future time the PUD should be declared to be in such flood area, a blanket policy of flood insurance on the PUD must be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Lots comprising the PUD or the maximum coverage limit available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

3.28 Certain Provisions Applicable to Declarant. Notwithstanding any other provision of this Declaration, for so long as Declarant continues to own any of the Lots, the following provisions will be deemed to be in full force and effect.

- a. Declarant specifically disclaims any intent to have made any warranty or representation in connection with the PUD or the Declaration, except as specifically set forth in this Declaration or in any agreement for sale of a Lot, and no person shall rely upon any warranty or representation not so specifically made.
- b. No amendment may be made to this Declaration without the written consent of Declarant so long as Declarant retains the ownership of two (2) or more Lots;

provided, however, that the obligation to acquire written consent of Declarant shall cease on a date two (2) years from the date of completion of all construction on all phases of the PUD.

c. Notwithstanding anything to the contrary in this Declaration, unless the Declarant has completed and sold all the Lots in the PUD, neither the Lot Owners who have purchased Lots from the Declarant nor the Board of Trustees may interfere with the completion of improvements and sale of the remaining Lots in the PUD. The Declarant reserves the right to use any Lots owned by the Declarant as models, management offices, or sales offices until such times as Declarant conveys title thereto to Lot Owners. Declarant reserves the right to relocate same from time to time within the PUD; upon relocation or sale of a model, management office or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the PUD such advertising signs which may be placed in any location on the PUD and may be relocated or removed all at the sole discretion of Declarant.

d. So long as Declarant retains the ownership of two (2) or more Lots, Declarant will have three votes for each Lot Declarant owns (as opposed to one vote per Lot for each of the other Lot Owners) on any matter requiring a vote of the Lot Owners; provided, however, that Declarant's rights as provided in this Subsection 3.28(d) shall cease on a date two (2) years from the date of completion of all construction on all phases of the PUD.

3.29 Amendment. For the first thirty years after the recording of this Declaration, the vote of at least sixty-seven percent (67%) of the Percentage Interest of the Lot Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend the Declaration, By-Laws, Plat, or other enabling documentation. Any such amendment so authorized by the Lot Owners shall be accomplished through the recordation of an instrument executed by the Board of Trustees. In such instrument, the Board of Trustees shall certify that the vote of the Lot Owners as required by this Section for amendment has been obtained. This right of amendment shall be subject to the following: Notwithstanding anything to the contrary contained in the Declaration, the Mortgagee protection provisions of Section 3.33(h) shall be applicable to amendments to the Percentage Interest in Common Areas provisions of Section 3.05; the insurance provisions Section 3.27; and the general protections provisions of Section 3.33.

3.30 Consent Equivalent to Vote. In those cases in which this Declaration requires the vote of a stated percentage of the PUD's ownership interest for the authorization or approval of a transaction, such requirements may be fully satisfied by obtaining with or without a meeting, consents in writing to such transaction from Lot Owners who collectively hold at least the necessary percentage of ownership interest.

3.31 Eminent Domain. If all or part of the Common Areas is taken, injured, or destroyed as a result of the exercise of eminent domain, each Lot Owner shall be entitled to notice thereof and to

participate in the proceedings incident thereto, but in any proceeding for the determination of damages, such damages shall be determined for such taking, injury, or destruction as a whole and not for each Lot Owner's interest therein. After such determination, each Lot Owner shall be entitled to a share in the damages in the same portion as the Owner's Percentage Interest in the Common Areas.

3.32 Service of Process. Shaun L Peck, whose address is 74 West 100 North, Logan, Utah 84321, is the person to receive service of process on behalf of the Declarant. The Board of Trustees shall, however, have the right to appoint a successor substitute process agent. Such successors or substitute agent and his or her address shall be specified by an appropriate instrument filed in the Office of the County Recorder of Cache County, Utah.

3.33 General Protections. Notwithstanding anything to the contrary in this Declaration:

a. An adequate reserve fund for repair, maintenance, and replacement of those elements of the Common Areas that must be replaced on a periodic basis must be established and funded as part of the annual assessments as provided in Section 3.25, rather than by special assessments.

b. Any lease of a Lot must be in writing and must provide that the terms of the lease shall be subject in all respects to provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. A Lessee and a Renter shall be treated the same. No Lot Owner may lease a Lot for an initial term of less than thirty days. No Lot Owner may lease less than the entire Lot.

d. The consent of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated shall be required to materially amend any provisions of the Declaration or By-Laws, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Rights of use of the Common Areas;
- (vi) Responsibility for maintenance and repair of the several portions of the PUD;

- (vii) Expansion or contraction of the Property;
- (viii) Boundaries of any Lot;
- (ix) The interests in the Common Areas;
- (x) Convertibility of Lots into Common Areas or of Common Areas into Lots;
- (xi) Leasing of Lots; or
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer or otherwise convey his or her Lot.

h. The Board of Trustees, on behalf of the Association, shall make available to all Lot Owners, lenders and the holders, insured and guarantors of the first mortgage on any Lot, current copies of the Declaration, By-Laws and other rules governing the PUD, and other books, records, and financial statements of the Association. The Board of Trustees shall also make available to prospective purchasers current copies of the Declaration, By-Laws, other rules governing the PUD, and the Association's most recent annual audited financial statement, if such is prepared. "Available" as used in this paragraph means available for inspection upon request, during normal business hours or under other reasonable circumstances.

3.34 Duty of Owner to Pay Taxes on Lot. It is understood that each Lot (and its Percentage Interest in the Common Areas) in the PUD is subject to a separate assessment and taxation by each taxing authority and special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof, no taxes will be assessed or levied against the PUD as such, except for certain personal properties thereof. Accordingly, each Lot Owner will pay and discharge any and all taxes and assessments that may be assessed against his or her Lot.

3.35 Covenants to Run With Land: Compliance. This Declaration all its provisions 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 the Declarant and all parties who hereafter acquire any interest in a Lot or in the PUD, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot, their family members, guests, invitees and other persons shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration, the By-Laws, and the provisions of any Rules and Regulations, agreements, instrument, and determinations contemplated by this Declaration, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Board of Trustees on behalf of all Lot Owners, or, in a proper case, by an aggrieved Lot Owner. By acquiring any interest in a Lot or in the PUD, the party acquiring such interest consents to, and agrees to be

bound by, each and every provision of this Declaration.

3.36 Conveyancing of Lot; Leases.

a. Any Lot Owner who sells, leases, or otherwise disposes of his Lot must submit to the Board of Trustees pertinent information regarding the transferee or new occupant within one week of any transfer of title or possession on a form furnished by the Board of Trustees.

b. Before selling, leasing or otherwise disposing of a Lot, an Owner must provide a copy of this Declaration, the By-Laws and the current Rules and Regulations to the person(s) proposing to purchase, lease or otherwise assume control of a Lot.

c. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ as identified in the PARK AVENUE Planned Unit Development Subdivision, recorded in the office of the Cache County Recorder as Entry _____, Map Filing No. _____, SUBJECT TO the Declaration of Protective Easements, Covenants, Conditions and Restrictions of PARK AVENUE Planned Unit Development Subdivision recorded in the office of the Cache County Recorder as Entry _____, Book _____, at Page _____ (as such Declaration may have been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in such Declaration of Protective Easements, Covenants, Conditions and Restrictions (as such Declaration may have been amended or supplemented).

d. Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

ARTICLE IV – ARCHITECTURAL AND DESIGN REVIEW

4.01 Original Construction. Declarant intends to develop the Lots and construct houses in accordance with applicable municipal approvals, planning and zoning approvals and permits, development agreements and construction plans and specifications (together called "design guidelines"). All original construction by Declarant under the design guidelines, as they may be amended from time to time, are hereby approved.

4.02 Architectural and Design Review Committee. The Board of Trustees must appoint a

three-member Architectural and Design Review Committee (as used in this Article IV, the "Committee"), the function of which will be to ensure that all improvements and landscaping within the PUD harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board of Trustees itself, or certain appointed members thereof, will perform the duties required of the Committee.

4.03 Submission to Committee. Except for structures constructed, erected or installed by Declarant, no house or other permanent structure on a Lot may be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any house or any part thereof (except glass surfaces) shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

4.04 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, construction, landscaping, and alterations on Lots within the PUD conform to and harmonize with the design guidelines and with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and, if the plans and specifications therefor meet such criteria, the Committee must approve the same.

4.05 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within 45 days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 15 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

4.06 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

4.07 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made under this Article IV.

4.08 Declarant's Obligations. Declarant hereby covenants in favor of each Owner (a) that all

Lots to be erected by it and all improvements of the Common Areas to be accomplished by it in the PUD will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is recorded in the Public Records, all Lots and Common Areas of the PUD will be located approximately in the locations shown on the Plat.

ARTICLE V – MISCELLANEOUS PROVISIONS

5.01 Indemnification of Board of Trustees. Each member of the Board of Trustees shall be indemnified and held harmless by the Association against all costs, expenses and fees reasonably incurred by the member in connection with any proceeding to which the member may become involved by reason of being or having been a member of the Board of Trustees. This indemnification shall not extend to nor cover actions on the part of any member of the Board of Trustees who intentionally or knowingly violates local, state or federal laws or who clearly acts in bad faith.

5.02 Expansion of the PUD. The Property is all of the land upon which the PUD will be developed. Multiple phases of development of the PUD are contemplated. However, all additional phases will be developed in conformity with this Declaration.

5.03 Invalidity. The invalidity of any provisions of this Declaration, or any portion thereof, shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

5.04 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

5.05 Singular and Plural; Masculine and Feminine. The use of the singular in this Declaration refers to the plural, and vice versa, whenever the context so requires. The use of the masculine gender in this Declaration refers to the feminine, and vice versa, whenever the context so requires.

5.06 Headings. The headings appearing at the beginning of the paragraphs of this declaration are only for convenience of reference and are not intended to describe, interpret, define, limit, extend, or otherwise affect the content, meaning, or intent of this Declaration or any paragraph or provisions hereof.

5.07 Conflicts. This Declaration is set forth to comply with the requirements of applicable law. In event of any conflict between this Declaration and any provision of Utah state or local law, the provisions of the latter shall control.

5.08 Effective Date. This Declaration shall take effect upon recording in the Office

of the County Recorder of Cache County, Utah. This Declaration shall run with and bind the Property for a term of thirty (30) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of sixty-seven percent (67%) of all Owners and Mortgagees.

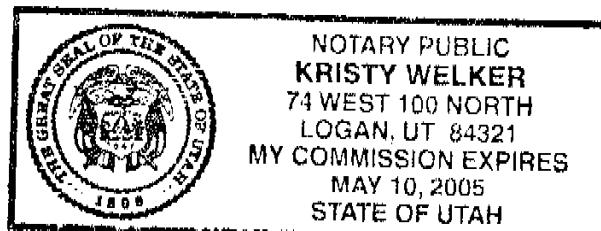
IN WITNESS WHEREOF, the undersigned, as executed this instrument on this 11th day of June, 2004.

Declarant
4P PROPERTIES, LLC:

By:

Ralph L. Peck
Its: Manager

On the 11 day of June, 2004, personally appeared before me, Ralph L. Peck, who, being duly sworn, stated that he is a Manager of 4P PROPERTIES, LLC; that the foregoing instrument was signed on behalf of the company; and that he is vested with authority to execute this instrument on behalf of the company.



Kathy Welch
Notary Public

Ent 864519 Bk 1304 Pg 214

EXHIBIT "A" - LEGAL DESCRIPTION

Part of the Southwest Quarter of Section 4, Township 11 North, Range 1 East Salt Lake Base being the West four tenths of Lot 5, Block 6, Plat B, LOGAN ISLAND SURVEY described as follows:

Beginning in the East line of Park Avenue being the Southwest corner of Lot 6 of said Block 6 and running thence North, along the East line of said Park Avenue and along an existing fence, 51.00 feet to the true point of beginning; and thence South 89°04'41" East (East by record) along an existing fence, 132.00 feet; thence North 01°01'40" East (North by record) 148.00 feet; thence South 89°04'41" East (East by record), 284.26 feet to the West line of Oregon Short Line Railroad right-of-way and to an existing fence line; thence South 06°30'00" East (Southeasterly by record) along the West line of said right-of-way and along said existing fence, 206.49 feet to the South line of said lot; thence North 88°20'00" West (West by record) 50.51 feet; thence South 06°30'00" East along the West line of the said Oregon Short Line right-of-way and along an existing fence; 665.31 feet to an existing fence running East and West; thence North 88°29'59" East along the said existing fence line, 479.98 feet to the West of Park Avenue; thence North 10°01'40" East along the West line of said Park Avenue and an existing fence line, 711.00 feet to the true point of beginning.

EXHIBIT "B"

BY-LAWS GOVERNING PARK AVENUE PLANNED UNIT DEVELOPMENT

A Planned Residential Unit Development

ARTICLE I – Board of Trustees

Section 1.1 General Responsibility. The business and property comprising PARK AVENUE PLANNED UNIT DEVELOPMENT (the “PUD”) shall be managed by a Board of Trustees consisting of three (3) Home Owners (or Owner’s designee if Owner is an entity) or Owner’s spouses to be selected by the PARK AVENUE PUD Homeowners Association, Inc. (the “Association”), which is all of the Home Owners in the PUD acting as a group in accordance with the Declaration and these By-Laws. The Board of Trustees has all the powers, duties, and responsibilities as are now or may hereafter be provided by law, the Declaration filed contemporaneously herewith, and any amendments subsequently filed thereto, and these By-laws as the same may from time to time be altered or amended; provided, however, subject to the limitations of Section 3.24 of the Declaration, the Board of Trustees may engage the services of a Managing Agent and fix and pay reasonable fees or compensation therefore; and delegate duties and functions thereto; provided further, that until (i) One Hundred Twenty Days (120) days after the date by which seventy-five percent (75%) of the Lots have been conveyed to Lot Purchasers, or (ii) at the end of seven (7) years following the first conveyance of a Lot to a purchaser, whichever occurs first, each Home Owner by accepting a deed to any Lot irrevocably consents that Continental Development, Inc. may act as the Managing Agent for the PUD and shall have all the rights, powers, duties and responsibilities conferred upon the Board of Trustees and Managing Agent under the Declaration and these By-laws. The engagement of a Managing Agent shall be a financial decision and subject to the limitations contained in Section 3.24 of the Declaration.

Section 1.2 Operation and Maintenance. The Board of Trustees shall be responsible for the control, operation and management of the PUD, in accordance with applicable law, the Declaration whereby the PUD is established, these By-Laws, and such administrative, management and operational Rules and Regulations as the Board of Trustees or Home Owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Board of Trustees. The Board of Trustees shall, in this connection, provide for the proper and reasonable control, operation and management of the PUD and of the maintenance and repair of the Common Areas and facilities appurtenant thereto. The operation of the PUD may be conducted for the Board of Trustees by a professional agent or agents, having requisite skills in planned residential unit operations and maintenance.

Section 1.3 Board of Trustees Vacancies. In case of any vacancy in the Board of Trustees, the remaining members thereof may elect a successor to hold office until the next meeting of the Home

Owners Association.

Section 1.4 Officers. The Board of Trustees shall appoint or elect from among its membership a chair, a vice chair, secretary, and a treasurer, who shall hold office at the pleasure of the Board of Trustees. The chair of the Board of Trustees, or in the chair's absence, the vice chair, shall preside at all meetings of the Board of Trustees and at all Home Owners Association meetings. The secretary shall take and keep minutes of all meetings. The Secretary shall perform such other services as the Board of Trustees may impose. The treasurer shall have the custody and control of the funds of the Board of Trustees, subject to the action of the Board of Trustees, and shall, when requested by the chair to do so, report the state of finances of the Board of Trustees at each annual Home Owners Association meeting and at any Board of Trustees meeting. The treasurer may perform such other services as the Board of Trustees may require.

Section 1.5 Regular Meetings. A regular meeting of the Board of Trustees must be held immediately after the adjournment of each annual Home Owners Association meeting at the place at which such Home Owners Association meeting was held. Regular meetings, other than the annual meeting, will be held at regular intervals and at such places and at such times as the Board of Trustees may from time to time by resolution designate. Notice must be given of regular meetings of the Board of Trustees as provided in Section 3.1 of these By-Laws.

Section 1.6 Special Meetings. Special meetings of the Board of Trustees shall be held whenever called by the chair, vice-chair, or by a majority of the Board of Trustees. Written notice of such special meeting shall be given not less than 24 hours in advance of the meeting; provided, however, that by unanimous consent of the Board of Trustees, special meetings may be held without call or notice of any time or place.

Section 1.7 Quorum. A quorum for the transaction of business at any meeting of the Board of Trustees shall consist of the majority of the Board of Trustees then in office.

Section 1.8 Special Committees. The Board of Trustees, by resolution, may designate one or more special committees, each special committee to consist of two (2) or more of the Home Owners, which exercise the powers in such resolution set forth. Such special committee(s) shall have such name or names as may be determined from time to time by the Board of Trustees. Such special committees shall keep regular minutes of their proceedings and report the same to the Board of Trustees when required. The chair of the Board of Trustees may appoint persons to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

Section 1.9 Additional Facilities. The Board of Trustees has the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the interest of the members, for conducting the business of the Board of Trustees.

ARTICLE II – MEETING OF HOME OWNERS ASSOCIATION

Section 2.1 Annual Meeting. The annual meeting of the Home Owners Association shall be held at 7:00 o'clock p.m. on the fourth Thursday of January each year, at such place as shall be stated in the notice of meeting or in a duly executed waiver of notice; provided, however, that whenever such date falls upon a legal holiday, the meeting shall be held on the next succeeding business day, and provided, further, that the Board of Trustees may, by resolution, fix the date of the annual meeting at such other date as it shall deem appropriate. At such meeting the Home Owners shall elect members of the Board of Trustees for two (2) year terms, which terms shall commence as of February 1; provided, however, that at the first election two (2) of the five Board of Trustees members shall be elected for terms of not more than one (1) year, which terms shall commence upon election and shall expire on the next February 1 after such election, and three (3) of the Board of Trustees members shall be elected for not more than two (2) years, which terms shall commence upon election and shall expire on the second February 1 after such election; provided, further, that the term of any duly elected appointed Board of Trustees member shall not expire until his or her successor is elected and qualifies.

Section 2.2 Voting. At any meeting of the Home Owners Association, each Home Owner shall be entitled to cast one vote for each Lot owned. However, as provided in Subsection 3.28(d) of the Declaration, the Declarant will have three votes for each Lot as long as Declarant owns two or more Lots in the PUD.

a. Any Home Owner may attend and vote at such meeting in person, or by an agent duly appointed by an instrument in writing signed by the Home Owner and filed with the Board of Trustees or the Managing Agent. Any designation of an agent to act for a Home Owner may be revoked at any time by written notice to the Board of Trustees or Managing Agent, and shall be deemed revoked when the Board of Trustees or the Managing Agent shall receive actual notice of the death or judicially declared incompetence of such Owner or of the conveyance of such Owner of his or her Lot. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Home Owners Association, but it shall be necessary for those present to act unanimously in order to cast the votes to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons. Declarant shall be entitled to vote with respect to any Lot owned by Declarant.

b. If a notice of default is recorded by any mortgagee who holds a mortgage which is a first lien on a Lot against the Owner of the Lot covered by the mortgage, then until the default is cured, the right of the Owner of such Lot to vote shall be transferred to the mortgagee recording the notice of default. Mortgagee shall mean any creditor that holds a first note, a Trust Deed or a Uniform Real Estate Contract on the Lot.

Section 2.3 Meeting. The presence at any Home Owners Association meeting having a

majority of the total votes constitutes a quorum. If a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners in accordance with the provisions of Section 4 hereof, and at that meeting the presence of Owners holding in excess of thirty percent (30%) of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present though less than a quorum, may give notice to all the Owners in accordance with Section 3.2 of these By-Laws of an adjourned meeting, and at that meeting whatever owners are present shall constitute a quorum. Unless otherwise expressly provided in this Declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of a majority of the voting power of the Owners present and voting provided that a quorum is present as provided for above.

Section 2.4 Special Meeting. Special meetings of the Owners may be called at any time for the purpose of considering matters which, by the terms of the Declaration, require the approval of all or some of the Owners, or for any other reasonable purpose.

Section 2.5 Calls and Notices of Meetings. The calls and notices of all meetings of the Home Owners shall conform to the provisions of Article III of these By-laws.

Section 2.6 Waiver of Irregularities. All inaccuracies and/or irregularities in calls, notices of meeting and in the matter of voting, and method of ascertaining those present, shall be deemed waived if no objection is made at the meeting.

ARTICLE III – CALLS AND NOTICES OF MEETINGS

Section 3.1 Annual Meeting of Home Owners. At least five (5) days, inclusive of the date of meeting, before the date of any annual meeting of the Home Owners, the secretary must cause a written notice setting forth the time and place to be delivered personally or deposited in the mail, with postage prepaid, addressed to each Home Owner at his last post office address as it then appears on the records of the Board of Trustees.

Section 3.2 Special Meetings of Home Owners. Special meetings of the Home Owners may be called by the Board of Trustees, or by one-third (1/3) in number of the Home Owners. Special meetings shall be called by:

- i) Written notice, signed by a majority of the Board of Trustees, and notice of such meeting shall be delivered to each Home Owner in writing at least 48 hours before the time fixed for the meeting; or
- ii) Written notice, signed by Owners having one-third (1/3) of the total votes in the Association and delivered to each Home Owner not less than five (5) days before the date fixed for such special meeting.

a. All notices provided under this Section 3.2 must advise each Home Owner as to the time, place and general purpose of the meeting and must be delivered personally, or mailed, postage prepaid, to each Home Owner at the Owner's last post office address as it appears on the books of the Board of Trustees.

b Whenever all of the members of the Association meet in person, such meeting shall be valid for all purposes without call or notice, or waiver of call or notice. No call or notice of any meeting of members shall be necessary if waiver of call and notice is signed by all of the members of the Association who are present.

ARTICLE IV – ADMINISTRATIVE RULES AND REGULATIONS

The Board of Trustees has the power to adopt and establish by resolution such building, management, and operational rules as the Board of Trustees may deem necessary for the maintenance, operation, management and control of the PUD, and the Board of Trustees may, from time to time by resolution, alter, amend and repeal such rules. When a copy of the rules has been furnished to the Owners, they shall be taken to be a part of these By-Laws. Home Owners must at all times obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Home Owners and/or occupants of the PUD. Rules and regulations may be altered or amended or abolished at a meeting of Home Owners properly called and properly voted.

ARTICLE V – PAYMENT OF EXPENSES

Section 5.1 Assessments. Each Home Owner must pay the Association the Owner's pro-rata portion of the cash requirements deemed necessary by the Board of Trustees to manage and operate the PARK AVENUE PLANNED UNIT DEVELOPMENT upon the terms, at the times, and in the manner provided in these By-Laws or in the Declaration without any deduction on account of any setoff or claim which the Owner may have against the Board of Trustees, and if the Owner shall fail to pay any installment within one (1) month from the time when the same becomes due, the Owner shall pay interest thereon at the rate of twelve percent (12%) per annum from the date when such installment shall become due to the date of the payment thereof.

(a) The cash requirements above referred to for each year, or portion of the year, are hereby defined, and shall be deemed to be such aggregate such as the Board of Trustees from time to time shall determine, in its judgment, is to be paid by all the Home Owners of PARK AVENUE PLANNED UNIT DEVELOPMENT then in existence to enable the Board of Trustees to pay all estimated expenses and outlays of the Board of Trustees to the close of each year, growing out of or connected with the maintenance and operation of such land, buildings, and improvements, which sum may include, among other things, the cost of management, special assessments, fire, casualty, and public liability insurance premiums,

common lighting and heating, and pool expenses, landscaping and care of grounds, repairs and renovations to common areas and facilities, garbage collections, wages, water charges, sewer fees, legal and accounting fees, management fees, expenses and liabilities incurred by the Board of Trustees under or by reason of the Declaration and these By-laws, the payment of any deficit remaining from a previous period, the creation of a reasonable contingency or other reserve or surplus fund, as well as all other costs and expenses relating to PARK AVENUE PLANNED UNIT DEVELOPMENT. The Board of Trustees may, from time to time, up to the close of the year for which such cash requirements have been so fixed or determined, increase or diminish the amount previously fixed or determined for such year. The Board of Trustees may include, in the cash requirements for any year, any liabilities or items of expense which accrued or became payable in a previous year, or which might have been included in the case requirements for a previous year, but were not included therein; and also any sums which the Board of Trustees may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or which thereafter accrue although not payable in that year.

(b) The pro-rata portion payable by the Home Owner in and for each year or portion of year shall be a sum within the limits and on the conditions hereinabove provided bearing to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, the ratio of the Owner's Lot to the total of all Lots, and such assessments, together with any additional sums accruing under the Declaration and these By-laws shall be payable yearly in advance, or in such payments and installments as required by the Board of Trustees, and at such times as provided by the Board of Trustees.

(c) The Board of Trustees shall have discretionary powers to prescribe the manner of maintaining and operating PARK AVENUE PLANNED UNIT DEVELOPMENT and to determine the cash requirements of the Board of Trustees to be paid as described above by the Home Owners under the Declaration and these By-laws. Every such reasonable determination by the Board of Trustees, within the bounds of the Declaration, and these By-laws, shall, as against the Owner, be deemed necessary and properly made for such purpose.

(d) First mortgagees of all Lots shall have the right to examine the books and records of the Home Owners Association.

(e) If a Home Owner shall at any time let or sublet the Lot, and shall default for a period of one (1) month in the payment of any management assessments, the Board of Trustees may, at its option and so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Lot the rent due or becoming due from such tenant or subtenant to the Owner up to an amount sufficient to pay all sums due from the Owner to the Board of Trustees, and any such payments of such rent to the Board of Trustees shall be sufficient payment and discharge of such tenant or sub-tenant as between such tenant or subtenant and the Owner to the extent of the amount so paid. At least five (5) days before

demanding payment from a tenant or subtenant of a Lot under this Subsection 1(e), the Board of Trustees must provide written notice to the Lot Owner, at the address on record with the Board of Trustees, of its intent to make such a demand upon the tenant or subtenant.

Section 5.2 No Waiver. The omission of the Board of Trustees, before the expiration of any year, to timely fix the management assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the covenants, conditions, or restrictions of the Declaration and these By-laws, or a release of the owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. The assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE VI – RIGHT OF ENTRY

Section 6.1 By the Board of Trustees. The Board of Trustees and its duly authorized agents shall have the right to enter any and all of the Lots in the PUD in case of an emergency originating in or threatening such Lot or any other part of the PUD, whether the Owner or occupant thereof is present at the time or not. The Board of Trustees and its duly authorized agents shall also have the right to enter any and all of the Lots at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and facilities of the PUD.

Section 6.2 By Home Owner. All Home Owners and their duly authorized agents and representatives shall have the right to enter any of the Lots contained within the PUD for the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations, or repairs are necessary to prevent damage or threatened damage to other Lots in the PUD; and provided, further, that the Home Owner affected by such entry shall first be notified thereof if available and if time permits.

ARTICLE VII – REIMBURSEMENT FOR DAMAGES

Each Home Owner shall promptly perform or cause to be performed all maintenance and repair work within any of said Lots owned by him which, if omitted, will adversely affect the building in which said Lot is located in its entirety, or any part of the PUD, and shall be liable in damages for any failure on his part to do so. Each member shall also reimburse the Board of Trustees for the full value of any repairs or replacements to the Common Areas and facilities made necessary through the negligence or fault, as established by the procedure set out in Article III, Section 9 of the Declaration, of such Home Owner or such Home Owner's tenants.

ARTICLE VIII – AMENDMENTS

These By-Laws may only be altered, amended, or repealed in accordance with Section 3.29 of

the Declaration and by the affirmative vote of sixty-seven percent (67%) of the Percentage Interest of the Home Owners in person or represented by proxy at any regular meeting of such Home Owners, or at any special meeting if notice of the proposed alteration or repeal be contained in the notice of such special meeting.

PARK AVENUE PUD HOMEOWNERS ASSOCIATION, INC.

By: _____

Ent 864519 Bk 1304 Pg 223

EXHIBIT "C" - Plat Phase 1

Ent 864519 Bk 1304 Pg 224