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 GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
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DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR
 ASHLEY DOWNS, a Planned Unit Development

THIS DECLARATION is made this 23rd day of October, 2003, by Rindlesbach Construction Employees Pension Plan and Profit Sharing, FBO Mark L. Rindlesbach, Trustee, being the record owner of the real property hereinafter described and affected hereby (hereinafter called the "Declarant").

R E C I T A L S

A. Declarant is the fee owner of the real property situated in Salt Lake County, State of Utah, more particularly described in Exhibit "A" to this Declaration, which real property shall be referred to as the "Covered Property" in this Declaration.

B. Concurrently with the recording of this Declaration in the Office of the County Recorder for Salt Lake County, Declarant is also recording a subdivision plat of the Covered Property, which plat subdivides the Covered Property as indicated thereon.

C. Declarant has deemed it desirable to establish covenants, conditions and restrictions upon the Covered Property and each and every portion thereof, which will constitute a general scheme for the improvement, development and management of the Project as a planned unit development, and for the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Covered Property.

D. It is desirable for the efficient management of the Project, and the preservation of the value, desirability and attractiveness of the Covered Property to create a corporation to which should be delegated and assigned the powers of managing the Covered Property, maintaining and administering the Common Areas and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Covered Property.

E. Ashley Downs Home Owners Association, a nonprofit corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

F. Declarant will hereafter hold and convey title to all of the Covered Property subject to the covenants, conditions and restrictions hereafter set forth.

DECLARATION

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of its interest as the same may from time to time appear in the Covered Property shall be held and conveyed subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of said interests in the Covered Property, and the owners of said interests, their successors and assigns. These covenants, conditions, restrictions and easements shall run with said interests and shall

be binding upon all parties having or acquiring any right or title in said interests or any part thereof, and shall inure to the benefit of each owner thereof and are imposed upon said interests and every part thereof as a servitude in favor of each and every of said interests as the dominant tenement or tenements.

ARTICLE I DEFINITIONS

Unless the context clearly indicates otherwise, the following terms used in this Declaration are defined as follows:

Section 1. "Architectural Committee" shall mean and refer to the committee provided for in the Article hereof entitled "Architectural Control."

Section 2. "Articles" and "By-laws" shall mean and refer to the Articles of Incorporation and By-laws of the Association as the same may from time to time be duly amended.

Section 3. "Assessments:" The following meanings shall be given to the assessments hereinafter defined:

"Regular Assessment" shall mean the amount which is to be paid by each Member to the Association for Common Expenses.

"Special Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, to reimburse the Association for costs incurred in bringing the Owner and his Lot into compliance with the provisions of this Declaration, the Articles, By-laws or Association Rules, or any other charge designated as a Special Assessment in this Declaration, the Articles, By-laws or the Association Rules, together with attorneys fees and other charges payable by such Owner, pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

"Reconstruction Assessment" shall mean a charge against each Member and his Lot representing a portion of the cost to the Association for reconstruction of any portion or portions of the Common Areas pursuant to the provisions of this Declaration.

"Capital Improvement Assessment" shall mean a charge against each Member and his Lot, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize pursuant to the provisions of this Declaration.

Section 4. "Association" shall mean and refer to Ashley Downs Home Owners Association, a nonprofit corporation, incorporated under the laws of the State of Utah, its successors and assigns.

Section 5. "Association Rules" shall mean rules adopted by the Association pursuant to the Article hereof entitled "Duties and Powers of the Association."

Section 6. "Board" shall mean the Board of Directors of the Association.

Section 7. "Common Areas" shall mean all real property and the improvements thereon, including, without limitation, any private storm drains, private streets, private utilities, easements and open space, owned or leased from time to time by the Association for the common use and enjoyment of the Members, which initially shall be the easements, private streets and open spaces conveyed by Declarant

to the Association on the subdivision plat recorded concurrently herewith. Declarant shall convey the Common Areas to the Association free of all liens and encumbrances except current real property taxes, if any (which taxes shall be prorated as of the date of conveyance), title exceptions of record and enforceable at law or in equity and the covenants, conditions, reservations and restrictions contained in this Declaration.

Section 8. "Common Expenses" shall mean and refer to the actual and estimated costs of:

- (a) maintenance, management, operation, repair and replacement of the Common Areas, and all other areas on the Covered Property which are maintained by the Association;
- (b) unpaid Special, Reconstruction and Capital Improvement Assessments;
- (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (d) the costs of utilities, trash pickup and disposal, landscaping and other services benefiting the Owners and their Lots to the extent such services are paid for by the Association;
- (e) the costs of fire, casualty, liability, workmen's compensation and other insurance covering the Common Areas;
- (f) the costs of any other insurance obtained by the Association;
- (g) reasonable reserves as deemed appropriate by the Board;
- (h) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas or portions thereof;
- (k) costs incurred by the Architectural Committee or other committees of the Association; and
- (l) the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, this Declaration, the Articles or the By-laws or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 9. "County" shall mean and refer to Salt Lake County, a political subdivision of the State of Utah.

Section 10. "Covered Property" shall mean and refer to all the real property described on Exhibit A hereto.

Section 11. "Dwelling" shall mean the residential dwelling unit together with garages and other structures on the same Lot.

Section 12. "Institutional Mortgagee" shall mean and refer to a Mortgagee, which is a bank, or savings

and loan association or established mortgage company, or other entity chartered under Federal or state laws, any corporation or insurance company, any Federal or state agency, or any other institution specified by the Board in a recorded instrument.

Section 13. "Lot" shall mean and refer to a lot shown on any recorded final subdivision map or plat of the Covered Property.

Section 14. "Member" shall mean and refer to every person or entity who qualifies for membership pursuant to the Article of this Declaration entitled "Membership."

Section 15. "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot.

Section 16. "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage. A "First Mortgagee" shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Lot.

Section 17. "Owner" shall mean and refer to one or more persons or entities who are alone or collectively the record owner of a fee simple title to a Lot, including the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

Section 18. "Project" shall mean and refer to all of the Covered Property, together with all of the Dwellings and other improvements constructed thereon as well as all of the persons living therein.

Section 19. "Structure" shall mean and refer to anything erected, constructed, placed or installed upon any Lot except for landscaping.

ARTICLE II MEMBERSHIP

Section 1. Membership. Every Owner, except the owner of the existing house located at 7919 S Caballero Drive, also currently referred to on the plat as lot #9, shall be a Member of the Association subject to the terms of this Declaration, the Articles, By-laws and Association Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles and the By-laws of the Association to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to and may not be separated from the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for membership; provided, however, a Member's voting rights or privileges in the Common Areas, or both, may be regulated or suspended as provided in this Declaration, the By-laws or the Association Rules. Not more than one membership shall exist based upon ownership of a single Lot.

Section 2. Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Lot and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his name to the transferee of such Owner's interest in such Lot, the Association shall have the right to record the transfer upon the books of the Association.

Section 3. Voting Rights. All voting rights shall be subject to the restrictions and limitations provided

herein and in the Articles, By-laws and Association Rules.

Section 4. Management of the Association. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of: (i) sixty (60) days after conveyance of 75% of the Lots to Owners other than Declarant, or (ii) four (4) years after the first conveyance of a Lot by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Not later than sixty (60) days after conveyance of 25% of the Lots to Owners other than Declarant, at least one member and not less than 25% of the members of the Board will be elected by Members other than Declarant. Not later than sixty (60) days after the conveyance of 50% of the Lots to Owners other than Declarant, not less than 33-1/3% of the members of the Board will be elected by Members other than Declarant. Not later than the termination of the period of Declarant's control as provided above, the Owners (including Declarant) shall elect a Board of at least five (5) members, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant and the Board shall elect the officers, with such Board members and officers to take office upon election.

Section 5. Approval of Members. Any provision of this Declaration or the By-laws which requires the vote or written assent of a specified majority of the voting power of the Association or any class or classes of membership shall be deemed satisfied by the vote of the specified majority at a meeting duly called and noticed pursuant to the provisions of the By-laws dealing with annual or special meetings of the Members or a writing or writings signed by all of the Members entitled to vote with respect to the subject matter thereof.

In any matter requiring the consent of the Members, but not specifically provided for in this Declaration or the Articles, By-laws, or any contract executed by the Association, a simple majority of the voting power of Members entitled to vote on such matter shall suffice.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Members of the Association, for each Lot owned by them, respectively, hereby covenant and agree to pay, and each Owner of any Lot by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Capital Improvement Assessments and Reconstruction Assessments, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The personal obligation shall not pass to the successors in title of an Owner unless expressly assumed by such successors.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively

for the purposes of promoting the health, safety and welfare of the Members and the management of the Project, enhancing the quality of life in the Project and the value of the Covered Property including, without limitation, the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas.

Section 3. Regular Assessments. The amount and time of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and By-laws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Not later than thirty (30) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the forthcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Member. Written notice of the annual Regular Assessments shall be sent to every Member. Each Member shall thereafter pay to the Association his Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Member, and the date or dates when due.

Section 4. Capital Improvement Assessments. In addition to the Regular Assessments, the Association may levy in any calendar year, the Capital Improvement Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas to the extent the same is not covered by the provisions affecting Reconstruction Assessments in the Article hereof entitled "Destruction of Improvements", including the necessary fixtures and personal property related thereto. All amounts collected as Capital Improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Said funds shall not be commingled with any other funds of the Association and shall be deemed a contribution to the capital account of the Association by the Members.

Section 5. Uniform Rate of Assessment. Regular, Reconstruction and Capital Improvement Assessments shall be fixed at an equal amount for each Lot and may be collected at intervals selected by the Board.

Section 6. Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Lot have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 7. Exempt Property. The following portions of the Covered Property shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by, or otherwise acquired by a public authority; and (b) the Common Areas. However, no land or improvements devoted to residential use shall be exempt from said Assessments.

Section 8. Special Assessments. Special Assessments shall be levied by the Board against a Lot to reimburse the Association for costs incurred in bringing an Owner and his or her Lot into compliance with the provisions of this Declaration, the Articles, the By-laws or Association Rules, or any other charges designated as a Special Assessment in this Declaration, the Articles, By-laws or Association Rules, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. In the event the Association undertakes to provide materials or services which benefit individual Lots and which can be accepted or not by individual Owners, such as tree trimming, such Owners in accepting such materials or services agree that the costs thereof shall be a Special Assessment.

Section 9. Date of Commencement of Assessments. The Regular Assessments shall commence as of the effective date of this Declaration. Provided, however, that (i) in the event the amount budgeted to meet Common Expenses for the current year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate; and (ii) Declarant shall not be obligated to pay any Regular or Capital Improvement Assessments against Lots it owns. Such assessments shall not commence with regard to any Lot until the Declarant shall have sold such Lot to a third party.

Section 10. Maximum Regular Assessments. Notwithstanding the other provisions of this Article:

(a) The Regular Assessment as of the date of recording of this Declaration shall be _____ Dollars (\$ _____) per month. The Regular Assessment shall be subject to modification as provided in Section 3 of this Article III.

(b) To the extent the costs of capital improvements during any year shall exceed the sum of Five Thousand Dollars (\$5,000.00), a Capital Improvement Assessment shall have the written assent or vote of a majority of each class of Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members in accordance with the procedures from time to time established in the By-laws for the calling of special meetings of Members. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining said annual capital improvement limitation.

Section 11. No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

Section 12. Control of Common Areas. As provided in the Article hereof entitled "Definitions", the Common Areas shall be conveyed to the Association. However, notwithstanding the foregoing, the Declarant its subcontractors, agents and employees shall have the right to come on the Common Areas.

Section 13. Reserves. Upon the initial transfer of record of the Lot from the Declarant (or successor Declarant or designated Declarant) to the Lot Owner (other than to Builder, a successor Declarant or designated Declarant), the purchaser is required to pay a sum equal to two (2) full months of the Regular Assessment due on his or her Lot as his or her initial contribution to the working capital (Reserves) of the Association. This Working Capital Assessment is not an advance payment of the monthly Regular Assessment or any other Assessment established herein; such Working Capital Assessment is allocated to a working capital fund to meet unforeseen expenditures and operating expenses or to purchase any additional equipment or services. All amounts collected as reserves, whether pursuant to the preceding sentences of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

ARTICLE IV NONPAYMENT OF ASSESSMENTS

Section 1. Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge of Fifteen Dollars (\$15.00) shall be levied and

the Assessment shall bear interest from the delinquency date, at the rate of eighteen percent (18%) per annum. The Association may, at its option, and without waiving the right to foreclose its lien against the Lot, bring an action at law against the Member personally obligated to pay the same, and/or upon compliance with the notice provisions set forth in Section 2 of this Article, to foreclose the lien against the Lot. If action is commenced, there shall be added to the amount of such Assessment the late charge, interest, the costs of preparing and filing the complaint in such action, and attorneys' fees incurred in connection with the commencement of such action and in the event a judgment is obtained, such judgment shall include said late charge, interest and a reasonable attorney's fee, together with the costs of action. Each Member vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosure against such Member or other Members for the collection of such delinquent Assessments.

Section 2. Notice of Lien. No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the owner of said Lot, and a copy thereof is recorded by the Association in the office of the County Recorder in Salt Lake County; said notice of claim of lien must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which shall include interest on the unpaid Assessment at the rate of eighteen percent (18%) per annum, a late charge pursuant to this Declaration, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant.

Section 3. Foreclosure Sale. Said Assessment lien may be enforced by sale by the Association, its attorney or any other person authorized to make the sale after failure of the Owner to make the payments specified in the notice of claim of lien within said thirty (30) day period. Any such sale provided for above is to be conducted in accordance with the provisions of the statutes of the State of Utah as said statutes may from time to time be amended, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot, using Association funds, or funds borrowed for such purpose, at the sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely payment, or other satisfaction, of (i) all delinquent Assessments specified in the notice of claim of lien, (ii) all other Assessments which have become due and payable with respect to the Lot as to which such notice of claim of lien was recorded and (iii) interest, late charges and attorneys' fees pursuant to this Declaration and the notice of claim of lien which have accrued, officers of the Association or any other persons designated by the Board are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The Assessment Lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments, as above provided.

ARTICLE V ARCHITECTURAL CONTROL

Section 1. Appointment of Architectural Committee. The Board shall appoint an Architectural Committee consisting of not less than three (3) persons who need not be Members. The Board shall retain

the right to appoint, augment or replace members of the Architectural Committee.

Section 2. General Provisions.

- (a) The Architectural Committee may establish reasonable rules and may assess a reasonable fee for submission of plans in connection with review of plans and specification including, without limitation, the number of sets of plans to be submitted.
- (b) Unless any such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. The Architectural Committee may also employ such architects, engineers and other consultants as it deems necessary to carry out its responsibilities.
- (c) Plans and specifications shall be submitted to the principal office of the Association as designated by the Board pursuant to the By-laws.
- (d) The establishment of the Architectural Committee and the systems herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over the Dwellings or Lots as may otherwise be specified in this Declaration, in the By-laws or in any Association Rules.

Section 3. Approval and Conformity of Plans. The Architectural Committee shall, from time to time, adopt and promulgate Architectural Standards. The Architectural Standards shall include among other things those restrictions and limitations upon the Owners set forth below:

- (a) If the Architectural Standards so provide, no building, fence, wall or other Structure shall be commenced, erected or maintained upon the Covered Property, nor shall any landscaping be commenced, installed or maintained upon the Covered Property, nor shall there be any addition to or change in the exterior of any Dwelling, Structure or other improvement or landscaping, unless plans and specifications therefore have been submitted to and approved by the Architectural Committee;
- (b) Time limitations for the completion of any architectural improvements for which approval is required pursuant to the Architectural Standards; and
- (c) The conformity of completed architectural improvements to plans and specifications approved by the Architectural Committee and to the Architectural Standards.

In addition, the Architectural Standards may include such other limitations and restrictions as the Board in its reasonable discretion shall adopt including, without limitation, the regulation of the following: construction, reconstruction, exterior addition, change or alteration to or the maintenance of any building, structure, wall, fence, landscaping, drainage, or grade, including, without limitation, the nature, kind, shape, height, materials, exterior color and surface and location of such Dwelling or Structure.

Plans and specifications are not approved for engineering design, and by approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications.

Section 4. Appeal. In the event plans and specifications submitted to an Architectural Committee are disapproved thereby, the party or parties making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Committee. Within thirty (30) days following receipt of the request for appeal, the Board shall render its written decision.

Section 5. Non-Applicability to the Declarant. The provisions of this Article shall not apply to any Lot owned by the Declarant prior to its first conveyance to a member of the public.

Section 6. Minimum Dwelling Size. Dwellings, not included garage square footage, shall contain the minimum square footage:

- (a) A Rambler One-Story home shall be not less than 2,000 square feet.
- (b) A Two-Story home shall have not less than 1,500 square feet on the main floor, and not less than 3,000 square feet of finished living area.

ARTICLE VI DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and By-laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) enforce the provisions of this Declaration, the Articles and the By-laws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation of the Association Rules as provided in the By-laws and Section 2 of this Article, which shall include the establishment of a system of fines or penalties enforceable as Special Assessments, also as provided for in the By-laws;
- (b) acquire, maintain and otherwise manage all of the Common Areas and all facilities, improvements and landscaping thereon, and all personal property acquired by the Association;
- (c) pay any real and personal property taxes and other charges assessed against the Common Areas unless the same are separately assessed to the Owners.
- (d) obtain, for the benefit of the Common Areas, all water, electric, refuse collections and other services, if any.
- (e) grant easements where necessary for vehicular and pedestrian ingress and egress, utilities and sewer facilities over the Common Areas for the benefit of individual Lots within the Covered Property and/or to serve the Covered Property as provided in the Article hereof entitled "Rights in the Common Areas";
- (f) contract for and maintain such policy or policies of insurance as may be required by the Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

- (g) delegate its powers to committees, officers, or employees as provided in the By-laws, employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association.
- (h) establish and maintain a working capital and contingency fund in an amount to be determined by the Board.
- (i) maintain architectural control over the property and appoint Architectural Committees in connection therewith, pursuant to the Article hereof entitled "Architectural Control";
- (j) have the power of entry upon any Lot where necessary in connection with inspection, construction, maintenance or repair for the benefit of the Common Areas, or the Owners.
- (k) provide snowplowing service for the benefit of the Owners and their Lots.
- (l) acquire real property easements, or other interests in real property by lease or purchase for the benefit of individual Lots within the Covered Property, offices or other facilities that may be necessary or convenient for the management of the Common Areas, the administration of the affairs of the association or for the benefit of the Members or any of them.
- (m) have the power to establish in cooperation with applicable governmental authorities a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration, all or any portion of the Common Areas to said district.

Section 2. Association Rules. The Board shall also have the power pursuant to the procedures set forth in the By-laws to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-laws. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the By-laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the By-laws to the extent of any such inconsistency.

Section 3. Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and By-laws, provided, however, no such delegation, whether to a professional management company, the Architectural Committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

ARTICLE VII

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Association. Without limiting the generality of the statement of

duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Lots, Common Areas or other land in such manner and at such times as the Board shall prescribe:

- (a) maintain all private walkways or other pedestrian paths located on the Common Areas, if any.
- (b) maintain all access easements and private streets within the Covered Property.
- (c) maintain, repair, restore, replace and make necessary improvements to the Common Areas;
- (d) maintain all drainage facilities and easements located on the Common Areas, if any.
- (e) cause the appropriate public utility to maintain any utility easements located on the Common Areas.
- (f) maintain all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote or written consent of a majority of the voting power of the Members.

Section 2. Repair and Maintenance by Owner. Except as the Association shall be obligated to repair and maintain as may be provided in this Declaration, every Owner shall:

- (a) maintain the exterior of his Dwelling, walls, fences and roof of his dwelling in good condition and repair; and
- (b) install and thereafter maintain in attractive and viable condition all landscaping in accordance with the provisions of this Article.

Section 3. Standards for Maintenance and Installation.

- (a) Maintenance of the exterior of Dwellings, walls, fences and roofs shall be accomplished in accordance with the Architectural Standards and, if required by the Architectural Standards, only after approval of the Architectural Committee; and
- (b) all portions of a Lot which are disturbed either in the course of construction of a Dwelling or Structure or as a result of any other activities, but which remain unimproved with a Dwelling or Structure, shall either be landscaped by the Owner thereof or returned as nearly as reasonably possible to their previous natural state before any significant erosion or other soil damage occurs and in any event on or before a date six (6) months from the completion of said construction or other activity, all in accordance with plans and specifications which have been previously submitted to and approved by the Architectural Committee. Thereafter, the Owner shall maintain the landscaping in a clean, safe and attractive condition according to any rules promulgated by the Board.

Section 4. Exterior Requirements. No structure shall be built with less than 100% of the Dwelling (excluding windows and doors) of either brick, stone, or stucco unless otherwise approved by the Architectural Committee. Wood exteriors will be reviewed by the Committee on a case by case basis. No aluminum siding will be permitted, provided that aluminum and vinyl materials will be allowed for soffit and fascia areas. The use of metal soffit and fascia is encouraged. Swamp coolers or evaporative coolers

shall not be permitted. Exposed cement foundation height shall average not more than 18" (inches) above finished grade on all sides. (sewer depth permitting). Wainscoat is acceptable.

Section 5. Roofing Design. Roof pitches must be within a range of 8/12 to a 12/12 slope. All roofs shall be pitched. All roofing materials must be of architectural grade asphalt shingles or better, i.e., shake, tile etc., as approved by the Committee. All roof metal such as flashing, vent stacks, gutters, and chimney caps shall be made of anodized aluminum, copper or galvanized metal painted to match the adjoining roof color.

Section 6. Fences. Fencing shall be permitted in the Covered Property only in accordance with applicable city ordinances and must be decorative in nature. All fencing materials shall consist of one or more of the following materials: stone, brick, block, concrete pre-cast, vinyl or rod iron. No fences may be constructed without the prior approval of the Committee, which may include in its approval criteria considerations of style, material, height, and effect on neighboring properties. The maximum height of any fence shall be six feet (6'). Fencing of front yards shall not be permitted; side yards may be fenced up to a point which is no closer than the midpoint of the length of the Dwelling from the street upon which the Dwelling is located. Barbed wire, field fence on posts or wood fencing is prohibited.

Section 7. Balconies and Decks. Any balcony or deck that is more than twenty-four inches above the natural grade must be constructed in compliance with the following: All railings must have at least four horizontal members. All posts or pillars supporting any deck must be between eight and sixteen inches in width. The area under the deck must be either landscaped or screened from view so that the view from adjoining Lots or streets is not of the unfinished underside of the deck. The area under any deck shall not be used for storage or equipment, firewood, building materials, or similar material. The underside of any deck more than three feet above grade must either be completely screened with vertical lattice or siding, or exposed (as in the case of second story deck or balcony), finished and painted or stained.

Section 8. Yard Light, Mail Box, Address Enclosure. An enclosure containing a lighted mail box shall be provided and installed by the homeowner to match the Dwelling masonry exterior material. The light in the mail box shall be wired with a photo electric cell so that it will be on during all night hours and must be maintained in good operating order.

Section 9. Secondary Water. Declarant has purchased water shares for each lot from the Richards Irrigation Company. To utilize the Secondary Water the lot owner must purchase ½ of a water share for ½ acre or 1 water share for 1 acre from the Declarant. Upon doing so the Declarant will transfer title of the water share to the lot owner. The lot owner will then pay an annual fee to the Richards Irrigation Company for the use of the secondary water.

Section 10. Right of Association to Maintain and Install. In the event any Owner fails to maintain the exterior of his Dwelling or the walls, fences and roof thereof, or to install and thereafter maintain landscaping on his Lot in accordance with this Article, the Association may cause such maintenance and installation to be accomplished as hereinafter set forth.

- (a) Upon finding by the Board of a deficiency in such maintenance or installation, the Board shall give notice of deficiency to the responsible Owner, which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose.
- (b) Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

- (c) Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to question adverse witnesses. If the Board or Committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner.
- (d) If the deficiency continues to exist after the time limitation imposed by a final decision of the Board, the Board may cause such maintenance or installation to be accomplished.
- (e) In the event the Board elects to cause such maintenance or installation to be accomplished, the following shall apply:
 - (i) The responsible Owner shall have no more than ten (10) days following the receipt of written notice of such election from the Board to select a day or days upon which such maintenance or installation work shall be accomplished, which date shall be not less than fifteen (15) days nor more than forty-five (45) days following receipt of notice from the Board;
 - (ii) If said Owner does not select such day or days within said ten (10) day period, the Board may select a day or days upon which such work may be accomplished which shall be not less than twenty-five (25) nor more than fifty-five (55) days from the last day of said ten (10) day period; and
- (f) If the Association pays for all or any portion of such maintenance or installation, such amount shall be a Special Assessment to the affected Owner and Lot.

ARTICLE VIII **INSURANCE**

Section 1. Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

- (a) A comprehensive policy of public liability insurance covering the Common Areas for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as shall customarily be covered 'with respect to similar planned unit developments in the area of the Covered Property, and shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners. The limits of liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence.
- (b) A policy of fire and casualty insurance with extended coverage for the full replacement value of the buildings or other improvements, if any, situated on the Common Areas, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and persons upon the Covered Property with the permission of a Member, such insurance to afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost

of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as shall customarily be covered with respect to similar planned unit developments in the area of the Covered Property.

- (c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation or from any definition of "employee" or similar expression.
- (d) "Directors' and Officers' Errors and Omissions. The Association shall purchase insurance to protect itself and to indemnify any Director or Officer, past or present against expenses actually and reasonably incurred by him/her in connection with the defense of any action, suit or proceeding, civil or criminal, in which he/she is made a party by reason of being or having been such Director or Officer, except in relation to matters as to which he/she shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Association; or to obtain such fuller protection and indemnification for Directors and Officers as the law of Utah permits. The policy or policies shall be in an amount to be at least \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate, or such other greater amounts as reasonably determined by the Association."

Section 2. Waiver By Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3. Other Insurance; Annual Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Common Areas in light of increased construction costs, inflation, practice in the area in which the Covered Property is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 4. Premiums and Proceeds. Insurance premiums for any such insurance coverage obtained by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in the Article hereof entitled "Destruction of Improvements." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and the Members.

Section 5. Abandonment of Replacement Cost Insurance. Unless at least seventy-five percent (75%) of the Institutional Mortgagees based on one (1) vote for each First Mortgage have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent (100%) current replacement cost basis.

Section 6. Payment of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas, unless such taxes or charges are separately assessed against the Owners, in which case the rights of First Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any First Mortgagee which requests the same to be executed by the Association.

ARTICLE IX
DESTRUCTION OF IMPROVEMENTS

In the event of partial or total destruction of improvements upon the Common Areas, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose interest may be protected by said policies.

ARTICLE X
EMINENT DOMAIN

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemning authority in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking, the Board may in its sole discretion retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Members. The rights of an Owner and the Mortgagee of his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

ARTICLE XI
USE RESTRICTIONS

Section 1. Single Family Residential. All Lots shall be known and described as residential Lots and shall be used for no purpose other than residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Dwelling, which shall be either an attached or detached single family residential Dwelling. A Dwelling, whether attached or detached, not including the garage square footage, shall contain no less than the following minimum square footage:

- (a) A Rambler One-Story home shall not be less than 2,000 square feet.
- (b) A Two-Story home shall not have less than 1,500 square feet on the main floor, and not less than 3,000 square feet of finished living area.

Section 2. No Further Subdivision. No further subdivision of any lot shall be permitted at any time,

whether by physically subdividing a lot or by dividing up ownership into different time periods.

Section 3. Commercial Use. Subject to the Section entitled "Construction and Sales" of the Article hereof entitled "Easements," a Lot shall be used for residential purposes only, including all ancillary uses permitted by applicable zoning ordinances. No room or rooms in any building may be rented or leased to any person, provided, however, that nothing contained herein shall be construed as preventing the renting or leasing of an entire Unit, but only for periods in excess of 30 days. No business or profession may be conducted in a residence constructed on a Lot which involves the solicitation or invitation of the general public.

Section 4. Signs. No sign or billboard of any kind shall be displayed to the public view on any portion of the Covered Property except such signs as may be used by the Declarant or its sales agents in connection with the development of the Covered Property and sale of the Lots; provided, however, that a Member may display in his Lot a sign advertising its sale or lease by him so long as such shall comply with any customary and reasonable standards promulgated by the Board as to the size, color, shape or other qualifications for permitted signs.

Section 5. Nuisance. No noxious or offensive trade or activity shall be carried on upon any Lot, or any part of the Covered Property nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood, or which shall, in any way, interfere with the quiet enjoyment of each of the Owners of his respective Dwelling, or which shall in any way increase the rate of insurance.

Section 6. Temporary Structures. No used or second-hand structure, no building of a temporary character, no mobile home, trailer, camper, recreational vehicle, basement, tent, shack, garage, barn or other out-building shall hereafter be used on any Lot at any time, either temporarily or permanently.

Section 7. Vehicles. No automobile, truck, pickup, motorbike, motorcycle, trail bike, tractor, golf cart, mobile home, trailer, camper, recreational vehicle, snowmobile, all-terrain vehicle, boat or similar equipment shall hereafter be permitted to remain upon any Lot, unless placed or maintained within an enclosed garage or within a fenced side yard or back yard, nor permitted to be parked other than temporarily, on any street, alley, or Common Areas within the Covered Property. Temporary parking shall mean parking of vehicles belonging to guests of Owners, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes. The Board may adopt rules for the regulation of the admission and parking of vehicles within the Covered Property, including the assessment of charges to Owners who violate or whose invitees violate, such rules. Any charges so assessed shall be Special Assessments.

Section 8. Animals. No animals, horses, livestock or poultry of any kind, shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on the Lots, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. Notwithstanding the foregoing, no animals may be kept on the Lots which in the good faith judgment of the Board or a committee selected by the Board for this purpose, result in an annoyance or are obnoxious to residents in the vicinity.

Section 9. Unsightly Items. All weeds, rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining streets, all other Lots, alleys or Common Areas. Any fence or screen required by this Section shall comply with any standards promulgated by the Board as to size,

color or other qualifications for permitted fences or screens.

Section 10. Swimming Pools or Tennis Courts. Swimming pools, tennis courts or other similar structures shall not be constructed on any portion of the Covered Property without prior approval of the Architectural Committee.

Section 11. No Violation of County Ordinances. Nothing herein shall give any Owner the right to violate ordinances of Salt Lake County, and where any activity allowed herein is proscribed by said ordinances, said ordinances shall have priority.

ARTICLE XII RIGHTS IN THE COMMON AREAS

Section 1. Members' Right of Enjoyment. Every Member shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Lot, subject to the following provisions:

- (a) The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas.
- (b) The right of the Association, subject to the approval rights of Mortgagees pursuant to the Article hereof entitled "Rights of Lenders," to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas to a special tax assessment district or to applicable municipal authorities, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance.
- (c) The right of the Association to establish a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsection (b) above, all or any portion of the Common Areas to said district.
- (d) The right of the Association to grant easements where necessary for vehicular and pedestrian ingress and egress, utilities and sewer facilities over the Common Areas for the benefit of individual Lots within the Covered Property and/or to serve the Covered Property.

Section 2. Waiver of Use. No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas, or the abandonment of his Lot.

ARTICLE XIII EASEMENTS

Section 1. Owners' Rights and Duties: Utilities and Cable Television. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

- (a) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Covered Property, the Owners of any Lot served by said connections, lines or facilities shall have the right to enter upon the Lots owned by others, or to have utility companies enter upon the Lots owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Lot caused by such entry as promptly as possible after completion of work thereon.
- (b) Wherever sanitary sewer house connections, water house connections, electricity, gas, telephone or cable television lines or drainage facilities are installed within the Covered Property, which connections serve more than one (1) Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections which service his Lot.

Section 2. Utilities. Easements over the Covered Property for the installation and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps or plats of the Covered Property are hereby reserved by the Declarant, together with the right to grant and transfer the same.

Section 3. Construction and Sales. There is hereby reserved to the Declarant, including, without limitation, its sales agents and representatives and prospective purchasers of Lots together with the right in the Declarant to grant and transfer the same, over the Common Areas as the same may from time to time exist, easements for construction, display and exhibit purposes in connection with the erection and sale of Lots and Dwellings within the Covered Property; provided, however, that such use shall not be for a period beyond the sale by the Declarant of all Lots within the last phase to be developed on the Covered Property, and provided further that no such use by the Declarant and others shall otherwise restrict the Members in the reasonable use and enjoyment of the Common Areas.

Section 4. Repair and Maintenance. There is hereby reserved to the Declarant, together with the right to grant and transfer the same to the Association, an easement for the purposes as provided in the Article of this Declaration entitled "Repair and Maintenance," including, without limitation, maintaining the drainage facilities and easements, and inspecting each Lot at any reasonable time for compliance with said Article.

Section 5. Nature of Easements. Any easements reserved to the Declarant herein, when transferred to an Owner or the Association in the same instrument conveying a Lot or Common Areas to such Owner or the Association, as the case may be, shall be appurtenant to such Owner's interest in said Lot or the Association's interest in the Common Areas, as applicable.

Section 6. Transfer of Easements. As to the easements reserved to the Declarant, together with the right to grant and transfer the same to Owners, the Declarant shall convey said easements to the Owners in the same instrument conveying the interest required to be an Owner by specific description or by reference in said instrument. If such description is not contained in said instrument through inadvertence, mistake or any other cause, such easements shall nevertheless be conveyed to each Owner by such instrument.

ARTICLE XIV
RIGHTS OF LENDERS

Section 1. Filing Notice; Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Lot within the Covered Property. Such notice need not state which Lot or Lots are encumbered by such Mortgage, but shall state whether such Mortgagee is a First Mortgagee. Wherever the approval of all or a specified percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage only of those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

Section 2. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Lot, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Lot, except as otherwise provided in this Article.

Section 3. Curing Defaults. A Mortgagee or the immediate transferee of such Mortgagee, who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is noncurable or not feasible to cure shall be final and binding on all Mortgagees.

Section 4. Resale. It is intended that any loan to facilitate the resale of any Lot after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 5. Relationship With Assessments Liens.

- (a) The lien provided for in the Article hereof entitled "Nonpayment of Assessments" for the payment of Assessments shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due.
- (b) If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the

lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

- (c) Any Mortgagee who obtains title to a Lot by reason of any of the Events of Foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrue prior to the time such Mortgagee or purchaser takes title to the Lot, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Lots within the Covered Property.
- (d) Nothing in this Section shall be construed to release any Owner from his obligation to pay for any Assessment levied pursuant to this Declaration.

Section 6. Seventy-Five Percent Vote of Institutional Mortgage. Except upon the prior written approval of at least seventy-five percent (75%) of Institutional Mortgagees, based on one (1) vote for each First Mortgage held, neither the Association nor the Members shall be entitled to do any of the following:

- (a) Dissolve the Association or abandon or terminate the maintenance of the Common Areas by the Association; or
- (b) Amend a material provision of this Declaration, the By-laws or the Articles, and without limiting the generality of the foregoing, the provisions of this Article, or any other rights granted specifically to the Mortgagees pursuant to any other provision of this Declaration; or
- (c) Abandon, partition, sell, alienate, subdivide, release, transfer, hypothecate or otherwise encumber the Common Areas; provided, however, the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas shall not require such approval.

Section 7. Other Rights of Institutional Mortgagees. Any Institutional Mortgagee, or its mortgage servicing contractor, shall, upon written request to the Association, be entitled to:

- (a) Inspect the books and records of the Association during normal business hours; and
- (b) Receive the annual financial statement of the Association ninety (90) days following the end of the Association's fiscal year; and
- (c) Receive written notice of all annual and special meetings of the Members or of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend all such meetings in order to, among other things, draw attention to violations of this Declaration which have not been corrected or made the subject of remedial action by the Association; provided, however, nothing contained in this Section shall give an Institutional Mortgagee the right to call a meeting of the Board or of the Members for any purpose or to vote at any such meeting; and
- (d) Receive written notification from the Association of any default in the performance of the obligations imposed by this Declaration by the Owner whose Lot is encumbered by such

Institutional Mortgage, which default has not been cured within sixty (60) days of a request therefor by the Association; provided, however, the Association shall only be obligated to provide such notice to Institutional Mortgagees whose written request therefor to the Association specifies the Lot or Lots to which such request relates.

Section 8. Mortgagees Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan encumbering a Lot.

Section 9. Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 10. Voting Rights of Institutional Mortgagees. In the event of a default by the Owner of any Lot in any payment due under the terms of any Institutional Mortgage or the promissory note secured thereby, the Institutional Mortgagee or his representative shall have the right, upon giving written notice to such defaulting Owner and the Association and placing of record a notice of default, to exercise the voting rights of such defaulting Owner attributable to such Lot at any regular or special meeting of the Members held during such time as such default may continue. Any such Owner's voting rights shall be restored to him at such time as such default is cured.

Section 11. Notice of Destruction or Taking. In the event that the Common Areas, or any portion thereof, are substantially damaged or are made the subject of any condemnation proceeding in eminent domain or are otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee affected by such destruction, taking or threatened taking. As used herein, "substantially damaged" shall mean exceeding Ten Thousand Dollars (\$10,000). If requested in writing by an Institutional Mortgagee, the Association shall evidence its obligations under this Section in a written agreement in favor of such First Mortgagee.

ARTICLE XV PARTY WALL

Section 1. Definition. For purposes of this Article XV, "Party Wall" shall mean and refer to any wall which is part of the original construction of the residences upon the Covered Property and is placed on, or immediately adjacent to the lot line.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article XV, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the Party Wall in proportion to such use.

Section 4. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Weatherproofing. Notwithstanding any other provisions of this Article XV, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article XV shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

Section 7. Arbitration. In the event of any dispute arising concerning a Party Wall, under the provision of this Article XV, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by an Owner, the Board of the Association shall select an arbitrator for the refusing party. The parties to the arbitration shall share the costs thereof, but each party shall pay its own attorneys' fees.

ARTICLE XVI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens and Association Rules, the Association shall have the exclusive right to enforcement thereof. The Association or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles or By-laws and any amendments thereto.

Failure by the Association or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the By-laws, in any certain instance or on any particular occasion shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for a successive period of ten (10) years, unless an instrument, signed by a majority of the then Members has been recorded, at least one (1) year prior to the end of any such period agreeing to change said covenants, conditions and restrictions in whole or in part.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Covered Property and the Common Areas. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees and/or First Mortgagees pursuant to the Articles hereof entitled "Insurance" and "Rights of Lenders," or otherwise this Declaration may be amended only by the affirmative written assent or vote of not less than sixty-six and two-thirds percent (66-2/3%) of the voting

power of the Members, and, further, this amendment provision shall not be amended to allow amendments by the written consent or vote of less than sixty-six and two-thirds percent (66-2/3%) of the voting power of the Members; provided, however, any amendment or modification of the Articles hereof entitled "Covenant for Maintenance Assessments," "Nonpayment of Assessments," "Architectural Control," "Repair and Maintenance" and "Use Restrictions" shall additionally require the prior written approval of not less than seventy-five percent (75%) of the Class A Members. An amendment or modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided, and recorded in the Official Records of Salt Lake County, Utah.

Section 6. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 7. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

Section 8. Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Special Assessment with respect to the Lot involved in the action.

Section 9. Notices. Any notice to be given to an Owner or a Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

(a) Notice to an Owner shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address shall have been furnished, then to the street address of such Owner's Lot. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivery on all such co-Owners.

(b) Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice or, if no such address is furnished, to any office of the Mortgagee in Salt Lake County, Utah, or, if no such office is located in said County, to any office of such Mortgagee.


Section 10. Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy and enjoyment of the Covered Property and each and every Lot and portion thereof. Declarant make no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

Section 11. Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner

We hereby, accept and agree to build homes according to the Covenants, Conditions & Restriction's (CC&R's) for the Ashley Downs subdivision, a planned unit development.


IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions has been executed the day and year first herein above written.

Home Builder: McMullin Homes
Bruce McMullion

By: 
Its: _____

STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 28th day of October 2003, by Bruce McMullion, as President of McMullin Homes.


Notary Public
My Commission Expires: 3-1-04

Residing at Sandy, UT

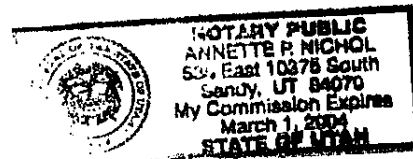


EXHIBIT "A"

Lots 1 through 9, inclusive, ASHLEY DOWNS and Amending Lot 26 of CABALLERO RANCHES, according to the official plat thereof, as recorded in the office of the Salt Lake County Recorder.

Together with an Easement for ingress and egress, public utilities and emergency vehicle access over and across the Private Road as shown on the recorded plat.

Parcel Identification No. 22-33-203-020 (Lot 1)

Parcel Identification No. 22-33-203-021 (Lot 2)

Parcel Identification No. 22-33-203-022 (Lot 3)

Parcel Identification No. 22-33-203-023 (Lot 4)

Parcel Identification No. 22-33-203-019 (Lot 5)

Parcel Identification No. 22-33-203-018 (Lot 6)

Parcel Identification No. 22-33-203-017 (Lot 7)

Parcel Identification No. 22-33-203-015 (Lot 8)

Parcel Identification No. 22-33-203-016 (Lot 9)

ITS#03595 1ST AMD