

9077612
 06/01/2004 12:23 PM 150.00
 Book - 8995 Pg - 5034-5073
 GARY W. OTT
 RECORDER, SALT LAKE COUNTY, UTAH
 M & H NGMT
 948 E 7145 S STE C-102
 MIDVALE UT 84047
 BY: ZJM, DEPUTY - WI 40 P.

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
 RESTRICTION AND RESERVATION OF EASEMENT
 FOR HOMESTEAD VILLAGE
 A Planned Unit Development

THIS DECLARATION is made this 1st day of June 2004. This Declaration replaces the original Declaration of CC&R's recorded as Entry 6653636 on May 27, 1997 in the official records of the County Recorder of Salt Lake County, State of Utah.

RECITALS

A. VILLAGE COMMUNITIES L.C., developed certain real property (the "Property") located in Salt Lake County, State of Utah as more particularly described in that certain plat map entitled Homestead Village, a Village Community, a Planned Unit Development, recorded in the official records of the office of the County Recorder of Salt Lake County, State of Utah as Entry 6490425 on October 28th, 1997 (the "Plat Map").

B. VILLAGE COMMUNITIES L.C. recorded the original Declaration of CC&R's with the County Recorder, Salt Lake County, State of Utah on May 27, 1997.

C. VILLAGE COMMUNITIES L.C. pursuant to the provisions of the original Declaration of CC&R's, created a corporation under Utah Non-Profit Corporation and Co-operative Association Act (Refer to Article I Section 7) to which was to be delegated and assigned the powers of owning, maintaining and administering the common areas, private roadways and certain other improvement in the Property and administering and enforcing the CC&R's, and collecting and disbursing the assessments and charges thereafter created.

D. On January 21, 2004 VILLAGE COMMUNITIES L.C. in writing assigned all of its rights and obligations as they are contained in the original Declaration of CC&R's to the HOMESTEAD VILLAGE PROPERTY OWNERS ASSOCIATION (Exhibit "A").

Now therefore, the following restated and amended CC&R's shall govern the rights and obligations of the present and future Owners of the Lots and homes in Homestead Village and of the Association and its Board.

ARTICLE I

Definitions

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

specified:

Section 1. "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "Articles" shall mean the Articles of Incorporation of the Homestead Village Property Owners Association, a corporation formed under the Utah Non-Profit Corporation and Cooperative Association Act. Such Articles may be amended from time to time as prescribed in Article XII of the Articles of Incorporation.

Section 3. "Common Assessment" shall mean the charge against each Owner and his Lot, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing, managing and operating the Property, which charge is to be paid uniformly and equally by each Owner to the Association pursuant to the provisions of this Declaration.

Section 4. "Special Assessments" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

Section 5. "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the Improvements on the Common Area pursuant to the provisions of this Declaration.

Section 6. "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association for the repair, installation or construction of any Improvements which the Association may from time to time authorize on any portion of the Common Area or on any portion of the Lots or Improvements thereon which the Association has the responsibility to maintain pursuant to the provisions of this Declaration.

Section 7. "Association" shall mean Homestead Village Property Owners Association, a corporation formed under the Utah Non-Profit Corporation and Co-operative Association Act, its successors and assigns. Unless otherwise provided herein, the Board of the Association in its sole discretion shall exercise any and all rights and obligations of the Association prescribed in this document, the Articles of Incorporation, the By-Laws, and any and all Rules and Regulations.

Section 8. "Beneficiary" shall mean a mortgagee under a

mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

Section 9. "Board" shall mean the Governing Board of the Association, the members of which shall be elected in accordance with the By-Laws of the Association. The term "Members of the Governing Board" shall be synonymous with the term "Directors" and "Trustees" as the latter term is used in the Utah Non-Profit Corporation and Co-operative Association Act.

Section 10. "By-Laws" shall mean the By-Laws of the Association, which have been adopted by the Board, as such By-Laws may be amended from time to time.

Section 11. "Common Area" shall mean all the real property and improvements, including without limitation, any recreation facilities, landscaped areas, fences, gates, private roadways, curbs, gutters and walkways, recreational vehicle parking, visitor parking, and drainage systems which are owned by the Association for the common use and enjoyment of all the Owners. Common Area does not include any Lot.

Section 12. "Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, workman's compensation, errors and omissions, and trustees, directors and officers liability insurance, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefiting the Common Area and all recreational facilities thereon; the costs of fire, casualty, liability and other insurance covering the Property; and the cost of bonding of the officers and Trustees of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the cost of any other item or items designed by, or incurred by, the Association for any reason whatsoever at the discretion of the Board in connection with the Property for the benefit of all of the Owners.

Section 13. "Declarant" shall mean the Association.

Section 14. "Declaration" shall mean this instrument as it may be amended from time to time.

Section 15. "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

Section 16. "Dwelling Unit" shall mean and refer to a "Single Family Detached House" as that term is defined herein, located on a Lot designed and intended for use and occupancy as a residence by a single family.

Section 17. "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not so related, inclusive of their domestic servants, who maintain a common household in a residence on a Lot.

Section 18. "Improvement" shall mean all structures and appurtenances thereto of every type and kind, (and any alteration or addition thereto), including but not limited to buildings, out buildings, walkways, sidewalks, sprinkler systems, garages, carports, roads, driveways, parking areas, recreational vehicle parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, trees and shrubs, poles, or signs.

Section 19. "Property" shall mean and refer to all of the real property described in the aforesaid Plat Map, together with such portion of the real property described in any additional exhibit to be attached thereto with respect to which a Notice of Addition of Property has been recorded subjecting it to this Declaration and to the jurisdiction of the Association as provided herein.

Section 20. "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

Section 21. "Lot" shall mean and refer to any residential Lot or parcel of land shown upon any recorded subdivision plat of the Property, with the exception of the Common Area.

Section 22. "Manager" shall mean the person, firm, corporation or its agents retained or employed by the Association hereunder and delegated certain duties, powers and functions by the Association's Board.

Section 23. "Member" shall be an Owner.

Section 24. "Mortgage" shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage".

Section 25. "Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust.

Section 26. "Mortgagor" shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term Mortgagor shall be synonymous with the term "Trustor".

Section 27. "First Mortgagee" shall mean any lender which holds a Mortgage or Trust Deed which constitutes a first and prior lien vis and vis any other Mortgage or Trust Deed on the same real property. The term First Mortgagee will also include any beneficiary named in any such first and prior Trust Deed.

Section 28. "Notice of Hearing" shall mean written notice of a hearing before a quorum of the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at the Owner's expense.

Section 29. "Owner" shall mean and refer to the person or persons or other legal entity or entities holding fee simple interest of record to any Lot which is a part of the Property, including buyers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

Section 30. "Person" shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 31. "Record, Recorded, Filed and Recordation" shall mean, with respect to any document, the recordation of such document in the Office of the Salt Lake County Recorder, State of Utah.

Section 32. "Phase" shall mean a parcel of real property which has been divided or separated into Lots, shown on a recorded subdivision map.

Section 33. "Single Family Detached House" shall mean a building: (1) which is located on a Lot, (2) which is not attached to another building, (3) which is used as a dwelling for a single family, and (4) which has a yard on all four sides with the following minimums: front yard - 18 feet; rear yard - 15 feet; side yards - 4 feet and 4 feet each side; minimum distance between houses 8 feet (with all measurements taken from the foundation wall).

Section 34. "Transfer Assessment" shall mean a charge against a particular new Owner, and his Lot, to cover the cost to the Association of effectuating a transfer of membership upon the books of the Association, in an amount as set forth in Section 2 of Article III of this Declaration.

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

ARTICLE II

Owner's Property Rights

Section 1. Owner's Easements of Enjoyment. Each Owner shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, entrance gates and the recreational facilities thereof, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of this Article II.

(c) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities and recreational vehicle parking spaces, if any, situated upon a portion of the Common Area; provided, however, that none of the Common Area facilities, recreational facilities, parking spaces or other amenities in the Property shall be leased to the Owners or any other parties.

(d) The right of the Association in accordance with its Articles of Incorporation, By-Laws and this Declaration, with the vote of or written assent of two-thirds (2/3) of its Members, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and subject to the provisions of Articles XIII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal

property as security for money borrowed or debts incurred, provided that the rights of any Mortgagee shall be subordinated to the rights of the Owners.

(e) Except for the right of ingress and egress to an Owner's Lot, the Association shall have the right to suspend the voting rights and right to use the Common Area facilities by an Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or the right to use of the Common Area and Common Area facilities, shall be made only by the Board, after Notice of Hearing, and an opportunity for a hearing before a quorum of the Board.

(f) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless pursuant to an instrument signed by two-thirds (2/3) of the Class A Members of the Association.

(g) The right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area, in accordance with the original design, finish or standard of construction of such Improvement, or of the general improvements within the Property, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of seventy-five percent (75%) of the Class A Members of the Association.

(h) The right of the Association to replace destroyed trees, shrubs and ground cover upon any portion of the Property.

Section 2. Assignment of Use. Any Owner may assign, in accordance with the By-Laws, his right of enjoyment to the Common area and facilities to the members of his family, his tenants, lessees or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation by the Board.

Section 3. Easements for Parking. Temporary guest and other visitors and recreational vehicle parking shall be permitted within the Common Area. The Association's Board is empowered at its

discretion to establish "parking," "recreational vehicle parking" and "no parking" areas within the Common area, as well as to establish and enforce parking limitations and rules for Owners, guests, tenants, lessees, vendors and other visitors by all means lawful for such enforcement, including the removal of any violating vehicle by those empowered.

Section 4. Easements for Vehicular Traffic. In addition to the general easements or use of the Common Area reserved herein, each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private roads within the Property and parking rights, subject to the parking provisions set forth in Section 3 of this Article II.

Section 5. Easements for City and County Public Service Use. In addition to the foregoing easements over and across the property reserved herein, the Association reserves and covenants for itself and all future Owners within the Property, easements for city, county and federal public services, including, but not limited to, the right of the police to enter upon any part of the Common area for the purpose of enforcing the law.

Section 6. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him, from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his Lot or any other property in the Property.

Section 7. Taxes. Each Owner shall execute such instrument and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

ARTICLE III

Membership in Association

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor-in-interest of the Owner, and every Membership in the Association shall be appurtenant to and may not be separated from the fee simple title of such Lot. Ownership of such Lot shall be the sole qualification for

Membership in the Association.

Section 2. Transfer. The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase such Membership, shall be entitled to assign to such contract purchaser his right of enjoyment of the Common area and facilities as provided in Article II, Section 2, and such Member's voting proxy rights in the Association, but as between the Association and such Member, the Member may not delegate his Membership obligations.

Such assignment and/or proxy shall be in writing and shall be delivered to the Board before such contract purchaser may use the Common Area and facilities or vote, as the case may be. The contract seller shall remain liable for all charges and assessments attributable in his Lot until fee simple title to the Lot sold is conveyed. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee simple title thereto, the Board shall have the right to record the transfer upon the books of the Association.

Upon any transfer, pledge, or alienation of a Lot, the Board shall have the right to charge a Transfer Assessment against any new Owner, and his Lot, equal in amount to two (2) times the then current monthly Common Assessment, to cover the cost to the Association of effectuating any such transfer of Membership upon the books of the Association and to perpetuate the reserve funds of the Association.

ARTICLE IV

Voting Rights

The Owner or Owners of each Lot shall be entitled to only one vote for that lot. When more than one person owns such interest in any Lot, (a "co-owner"), all such co-owners may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Lot is entitled. Such co-owners may from time to time designate in writing one of their number to vote.

Fractional votes shall not be allowed, and the vote for each Lot shall be exercised, if at all, as a unit. When no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection

from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners.

No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association or its Board in accordance with the voting percentages established herein, or by the By-Laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and By-Laws of the Association.

ARTICLE V

Duties and Powers of Association

The Association, acting through the Board, shall have the power and duty to:

(a) Maintain, repair and otherwise manage the Common Area and all facilities thereon, and replace those elements of the Common Area that must be replaced on a periodic basis, including but not limited to the improvements and landscaping thereon, in accordance with the provisions of Article VI of this Declaration.

(b) Maintain all roads, parking areas, sidewalks, curbs and gutters within the Common Area, and the emergency access easement, including cleaning, snow removal, sign maintenance, and periodic resurfacing or replacement of all Common Area roads, parking areas, sidewalks, curbs and gutters.

(c) Grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common area to serve the Common Area and the Lots.

(d) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the By-Laws.

(e) Employ or contract with a professional manager or management company to perform all or any part of the duties and responsibilities of the Association, and to delegate its powers to committees, officers and employees as permitted by law. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee upon ninety (90) days prior written notice. A non-professional manager may be designated only upon the

affirmative vote of seventy-five percent (75%) of the Members.

(f) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means, the provisions of this Declaration, or for the purpose of maintaining, repairing or replacing any item as required by this Declaration.

(g) Maintain and repair fences and gates as defined in Article IX, Sections 1 and 2.

(h) Maintain and repair original landscaping on Lots as defined in Article IX, Section 2.

(i) Maintain and repair all original sprinkling systems, both within the Common Area and upon all Lots, as defined in Article IX, Section 1.

(j) Exercise any and all powers required to accomplish the duties and functions required of the Association and provided for in this Declaration.

(k) Provide snow removal for driveways and sidewalks on all Lots up to the front door and garage door of the Dwelling Units located on the Lots.

(l) Maintain and repair the exterior of the roofs of Dwelling Units as is defined in Article IX, Section 2.

ARTICLE VI

Covenant to Pay Maintenance Assessments

Section 1. Creation of Lien and Personal Obligation to Pay Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association (1) annual Common Assessments for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, (4) Reconstruction Assessments, and (5) Transfer Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting first Mortgagees, the personal obligation for delinquent assessments shall pass to the successors

in interest of such Owner.

The Board shall establish "Maintenance Funds" in at least two (2) separate accounts into which shall be deposited all Common Assessments monies paid to the Association. One of the accounts (the "Operating Fund") shall include funds as the Board determines for replacement, painting, repairs and general operations of the Association, which would reasonably be expected to occur on an annual or more frequent basis. At least one of the accounts (the "Reserve Fund") shall include such funds as the Board determines shall constitute an adequate and reasonable reserve for longer term replacement and repairs by the Association, which would reasonably be expected to occur less frequently than on an annual basis. The Board shall not co-mingle any amounts deposited into any of the separate accounts.

Section 2. Purpose of Common Assessments. The Assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Owners and for the improvement and maintenance of the Common Area as provided herein.

Deposits to and disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. A portion of the Common Assessments shall also be for an adequate Reserve Fund to be used as appropriate for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a less frequent than annual basis. The Board shall make disbursements from the Reserve Fund only for the specific purposes specified in this Article VI.

Nothing in this Declaration shall be construed in such a way as to permit the Association's Board to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Property. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds accounts by the Association, so long as the amounts deposited into such accounts are allocated for specified purposes authorized by the Board and this Declaration.

Section 3. Damage to Common Area by Owners. Any maintenance, repairs or replacements completed by the Association arising out of or caused by the willful or negligent act of the Owner, his family, guests, invitees or lessees shall be done at said Owners' expense, or a Special Assessment therefore shall be made against his Lot.

Section 4. Basis of Maximum Common Assessment. Until

January 1st of the year immediately following the conveyance of the first Lot in the Property to any Owner, the maximum Common Assessment under Article VI shall be One Hundred Dollars (\$100.00) per Lot per month.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Common Assessment may be increased by the Board above the annual Common Assessment for the previous year, effective January 1st of each year, not more than the greater of: (1) ten percent (10%); or (2) the percentage by which the area Consumer Price Index for All Items, of the U.S. Bureau of Labor, has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the annual Common Assessment may be increased by the Members above the greater of ten percent (10%) or the percentage determined with respect to the Consumer Price Index referred to above by the vote or written assent of fifty-one percent (51%) of the Members of the Association who are in attendance or by proxy at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessment.

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

Section 5. Capital Improvement and Reconstruction Assessments. In addition to any Common Assessments, the Board may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to the year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Property, including fixtures and personal property related thereto. The total of any such assessment, which is in excess of Five Thousand Dollars (\$5,000.00) shall require the vote or written assent of fifty-one percent (51%) of the Members of the Association who are in attendance or by proxy at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessments.

Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 above shall be sent to all Members not less than

thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

Section 7. Equal Rate of Assessment. Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots; provided, however, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against particular Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests, invitees, visitors, lessees, tenants or agents.

The Board shall collect all Common Assessments on a regular monthly basis.

Section 8. Date of Commencement of Common Assessments; Due Date. All assessments provided for herein shall be paid in regular installments after the assessment is made. The annual Common Assessment shall commence as to particular Lots within each Phase of development, as provided for herein, on the day of the closing of the sale or conveyance of any particular Lot to any contract purchaser or Owner with a proper proration on any monthly assessment if the closing takes place on a day other than the first day of the month. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board shall fix the amount of the annual Common Assessment against each Lot at least thirty (30) days in advance of each Common Assessment period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of such change. The Board shall establish the due dates.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot shall be binding upon the Association as of the date of its issuance.

The Board shall cause to be prepared annually a balance sheet and operating statement reflecting income and expenditures of the Association at the close of each fiscal year, including deposits

and withdrawals from the Operating Fund, the Reserve Fund and any other separate Maintenance Funds the Board may establish, and shall cause a copy of each such statements to be distributed to each Member and to each First Mortgagee who has filed a written request for copies of the same with the Board.

At the end of any fiscal year of the Association, the Board may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Association may be retained by the Association and included in determination of the following year's Common Assessments.

At least sixty (60) days prior to the beginning of each fiscal year, the Board shall cause to be prepared a written, itemized estimate (budget) of the expenses to be incurred by the Association during such fiscal year in performing its functions under this Declaration. This Budget shall include a reasonable provision for contingencies and deposits into the Reserve Fund and accounting for any surplus from the prior year's Operating Fund. The Board approved budget will be presented to the Association Members at the Association Annual Meeting.

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Operating Fund, the Reserve Fund and any other Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed equally against the Owner of each Lot.

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

Notwithstanding anything contained in the Articles or By-Laws to the contrary, if prior to dissolution of the Association, the Association has not obtained tax exempt status from both the Federal and State Governments, then upon such dissolution of the Association, any amounts remaining in the Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective

contributions.

Section 9. Exempt Property. The following property subject to this Declaration shall be exempt from liens resulting from assessments herein:

- (a) All Properties dedicated to and accepted by a local public authority, and
- (b) The Common Area.

ARTICLE VII

Effect of Non-Payment of Assessments

Remedies of the Association

Section 1. Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a Common Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment not paid within thirty (30) days after the due date shall bear interest from the due date of such installment at the rate of eighteen percent (18%) per annum. If any installment of an assessment is not paid within thirty (30) days after it is due, the Owner responsible therefore may be required further by the Board to pay a late charge of Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater.

The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

If any installment of a Common Assessment is not paid within thirty (30) days after its due date, the Board shall mail an acceleration notice to the Owner and to each First Mortgagee of a Lot which has requested a copy of the notice. The notice shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, (3) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessment for the then current fiscal year and the sale of the Lot. The notice shall further inform the Owner of his right to cure after acceleration and to bring a court action to assert the non-existence of a default or any other defense of the Owner to acceleration and sale.

If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable without further demand and may enforce the collection of the full Common Assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 2. Notice of Assessment. No action shall be brought to enforce any assessment lien provided for herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid to the Owner of the Lot, and a copy thereof has been recorded by the Association in the office of the County Recorder in which the Property is located; said Notice of Assessment must recite a good and sufficient legal description of any such Lot, the record Owner or reputed Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid assessment at eighteen percent (18%) per annum, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association. Such Notice of Assessment shall be signed and acknowledged by an officer of the Association, and said lien shall be prior to any declaration of homestead recorded after the date on which this Declaration is recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure. Any such sale provided for above may be conducted by the Board, its attorneys or other persons authorized by the Board in accordance with the provisions of the Utah Code Annotated, 1953 as amended, applicable to the exercise of powers of foreclosure sale in Mortgages and powers of sale in Deeds of Trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default with respect to which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Owner of a fee, to be determined by the Association, but not to exceed an amount equal to the last monthly common assessment fee, to cover the costs of preparing and recording such release. A certificate executed and acknowledged by any two (2) Members of the Board stating the indebtedness secured by the lien upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed fifteen percent (15%) of

the last monthly common assessment fee.

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

Section 6. Subordination of the Lien to First Mortgage. The lien of assessment provided for herein shall be subordinate to the lien of any first Mortgage (meaning any recorded Mortgage with first priority or seniority over other Mortgages) made in good faith and for value and recorded prior to the date on which the assessment came due. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to the Mortgage foreclosure of first mortgage or deed in lien thereof shall extinguish the lien of such assessments as to the installments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner from personal liability for such assessment, nor such Lot from liability for any installments or assessments thereafter becoming due or from the lien thereof.

ARTICLE VIII

Architectural Control

Section 1. Members of Committee. The Architectural Committee shall consist of three (3) voting members, each of who must be Owners. Additional non-voting members may be appointed to the Architectural Committee. Members of the Architectural Committee shall be appointed by the Board and shall hold office until such time as they have resigned or have been removed or their successor has been appointed, as provided herein. The Board shall have the right to appoint and remove any or all members of the Architectural Committee.

Section 2. Review of Proposed Construction. Subject to Article X, Section 5, of this Declaration, no building, fence, wall, deck, patio cover, dog run, front storm door, satellite dish, fixture, landscaping, driveway or other Improvement shall be commenced, painted, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made by an Owner on his Lot until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee.

The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Architectural Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, or upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for the purpose of maintenance, and may require submission of additional plans and specifications or other information and agreements prior to approving or disapproving material submitted.

The Architectural Committee may also issue rules or guidelines setting forth procedures for the submissions of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may provide that the amount of such fee shall be uniform, or that it shall be determined in any other reasonable manner, such as by the reasonable costs of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed the amount of the last monthly common assessment fee. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the Architectural Committee of any required plans and specifications, the Architectural Committee may postpone its approval.

Section 3. Meeting of the Architectural Committee. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of a variance pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of any two (2) Members of the Committee taken without a meeting shall constitute an act of the Committee.

Section 4. No Waiver of Future Approvals. The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a

waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation for Members. The members of the Architectural Committee may receive reasonable compensation for services rendered, including reimbursement for expenses incurred by them in the performance of their duties hereunder, as determined by the Board from time to time.

Section 6. Inspection of Improvement. Inspection of any Improvement and the correction of defects therein shall proceed as follows:

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

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

(c) If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance, the Architectural Committee shall notify the Owner and Board in writing of such failure. Upon Notice and Hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated costs of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the non-complying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If the Owner does not promptly repay such expenses to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement.

(d) If for any reason the Architectural Committee fails

to notify the Owner of any noncompliance within sixty (60) days after receipt of said written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with said approved plans.

Section 7. Non-Liability of Architectural Committee

Members. Neither the Architectural Committee nor any member thereof, nor its duly authorized Committee Representative, shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee.

The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, solely on the basis of aesthetic consideration and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes, excepting that the Architectural Committee hereby waives the non-liability provision of this paragraph to the extent necessary to obtain insurance as provided for in Article XII hereof.

Section 8. Variances. The Board of Trustees of the Association, upon a favorable recommendation of the Architectural Committee, may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in a written document signed by at least two (2) officers or members of the Board of Trustees of the Association. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive any of the terms and provisions of this Declaration or any Supplement Declaration for any purpose except as to the particular portion of the Property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting misuse of the premises, including, but not limited to, zoning ordinances and lot set-back lines or requirements imposed by any governmental or municipal authority.

Notwithstanding anything herein to the contrary, all Lot owners shall have the right to construct a reasonable privacy screen or fence which is attached to the home on the Lot, subject to obtaining approval through the process set forth above, which approval shall not be unreasonably withheld. In considering the request for a variance with respect to a privacy screen or fence, the Board shall consider the configuration, size and materials and make sure that the interests of the other Lot owners and the Association are protected.

ARTICLE IX

Maintenance and Repair Obligation

Section 1. Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance and repair as provided in Section 2, of this Article IX, it shall be the duty of each Owner, at his sole cost and expense, and subject to the provisions of this Declaration regarding Architectural Committee approval, to install, maintain, repair, replace and restore areas of his Lot, including any Improvements thereon, in a timely, neat, sanitary and attractive condition. Owner is responsible for optional planting and upkeep of all bushes, shrubs, trees, flowers and vegetables in his Lot. The Owner is further responsible to assure that nothing in or on his Lot obstructs the distribution of water from sprinkling systems. An Owner may place a wooden tulip (available from the Association) in the front yard of his Lot to indicate the Owner's desire to weed and maintain its own front yard flower and shrub beds.

Areas subject to the exclusive control and responsibility of the Owner on his Lot shall be deemed to include, but not be limited to, backyard trees, shrubs, flowerbeds and any Improvements, the structure of the Owner's Dwelling Unit and all exterior and interior portions of the Owner's Dwelling Unit including driveways and walkways. In the event that any Owner shall permit any such area or Improvement, which is the responsibility of such Owner to maintain, to fall into disrepair or fail to so maintain such area or Improvement so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the costs thereof shall be charged to the Owner. Said costs shall constitute a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work and the costs and expenses of collection may be added, at the option of the

Board, to the amounts payable by each Owner as Common Assessments.

Section 2. Maintenance Obligations of Association. Subject to the duty of each Owner to provide for maintenance and repair as provided in Section 1, of this Article IX, the Association shall maintain in good order and repair all of the Common Area and any Improvement thereon, and all perimeter fences, gates, cinder block walls surrounding the Property, all fences in Common Areas, and all fences bordering Common Areas. Fences and gates separating two Lots shall not be the responsibility of the Association. The Association shall act as the arbiter in the event there is a dispute between two Lot Owners arising out of the replacement or repair of such fence or gate if damaged.

In addition to the maintenance and repairs set forth above, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the original trees, shrubs and grass on the Common Area and on front yards of Lots. Back yard lawns of Lots shall be maintained, mowed and replaced as necessary by the Association except for damage done by Owner or Owner's pets. (See Article X, Section 5). The Association shall maintain, reconstruct, replace and refinish any paved surface in the Common Area.

The Association shall assume financial responsibility for Dwelling Unit exterior roof replacement when, in the discretion of the Architectural Committee, normal wear, tear and deterioration of the exterior roof requires total exterior roof replacement on a Dwelling Unit. Architectural Committee approval with reference to color, quality of material and installation workmanship is required prior to any work commencing on exterior roof replacement. Roofing contractors must be licensed and bonded and approved by the Architectural Committee. To assure satisfactory installation per the Architectural Committee's approval, the Association may coordinate with the Owner to obtain competitive bids. The Architectural Committee will have complete control of the exterior roof replacement process. All of the foregoing obligations of the Association shall be discharged when and in such manner, as the Board shall determine in its judgment to be appropriate.

Section 3. Damage and Destruction Affecting Dwelling Unit, Duty to Rebuild. If all of or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 4. Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Architectural Committee for permission to reconstruct, rebuild or

repair his Dwelling Unit in a manner, which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner shall result in a finished Dwelling Unit in harmony with the exterior design of other Dwelling Units on the Property. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes shall constitute approval thereof.

Section 5. Time Limitation. The Owner or Owners of any damaged Dwelling Unit, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

ARTICLE X

Use Restrictions

All real property within the Property shall be held, used and enjoyed pursuant to the following limitations and restrictions:

Section 1. Single Family Residences, Business or Commercial Activity. Each Lot shall be used as residence for a single family. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose, other than a home office permitted under applicable zoning ordinances, without the vote of seventy-five percent (75%) of the votes eligible to be cast by Members of the Association. Provided, further, however, the Association shall never be permitted to allow more than twenty-five percent (25%) of the lots to be used as a non-owner occupied residence. No outbuildings shall be constructed on any Lot.

Section 2. Nuisances. No noxious or offensive activity (including but not limited to the major repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the

Board shall have the right to determine in accordance with the By-Laws if any noise, odor or activity producing such noises, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, satellite dishes, radio or television antennas, evaporative coolers, permanent flag poles, or items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 3. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Lot, without the prior written consent of the Architectural Committee. All signs or billboards and the regulations promulgated for the regulation thereof shall conform to the requirements of the Salt Lake County, State of Utah ordinances.

Section 4. Common Area Facilities. Nothing may be altered or constructed on or removed from the Common Area except upon the written consent of the Association.

Section 5. Pets and Other Animals. No barn, coop, shed, sty or building of any type shall be constructed, kept, maintained or permitted for the purposes of housing pigs, cows, sheep, goats, horses, poultry, or other livestock at any place within the limits of the Property. Each Lot Owner may keep and shall maintain two (2) common household pets as the definition of common household pets may be determined by the Board, unless otherwise provided by the affirmative vote of seventy-five percent (75%) of the Members.

Section 6. Rubbish. No rubbish shall be stored or allowed to accumulate anywhere on the Property, except in sanitary containers and at such locations as the Board shall determine from time to time.

Section 7. Insurance Rates. Nothing shall be done or kept on the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 8. Front Window Treatment. No blinds, draperies, or other window coverings or treatments shall be

permitted with respect to Dwelling Unit windows which face any road, whether public or private, except those which are conservative in style and neutral in color or otherwise approved by the Architectural Committee.

ARTICLE XI

Damage or Destruction to Common Area

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

(a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and any Improvement thereon to be reconstructed substantially as it previously existed.

(b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such repair and reconstruction to be substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners in accordance with the provisions of Article VI, Section 5, of this Declaration.

(c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance, which may be sustained by reason of the negligence or willful misconduct of said Owner or of his tenants, family, lessees or guests, including minors and adults. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damaged caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall also be a Special Assessment against the Lot owned by Owner.

ARTICLE XII

Insurance

Section 1. Common Area. The Association shall keep any Improvement and all other insurable property on the Common Area insured against loss or damage by fire for the full insurance replacement costs thereof and including extended coverage for not

less than 100% of the replacement cost of insurable property, and shall obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association or by members of the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association, for the benefit of the Owners. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association shall be expenses payable by including the same in the Common Assessments made by the Association.

Section 2. Insurance Obligations of Owners. Unless the Association elects to insure each Dwelling Unit (in which case the individual Owner shall be responsible for any co-insurance or deductible with respect to any losses), each Owner shall insure his entire Dwelling Unit, including the structural portions of the Dwelling Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a Mortgagee of the Dwelling Unit. All such insurance shall be for the full replacement value of the Dwelling Unit with automatic inflation coverage. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days written notice to the Association.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area, or any Improvement thereon or any other portion of the Property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessment made against such Lot Owners, in accordance with the provisions of Article VI, Section 5, of this Declaration. In the event of total destruction of all of the Improvements on the Property, the proceeds of the insurance carried by the Association shall be divided equally among the Lot Owners, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

Section 4. Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, its officers, the Owners, the Manager, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

Section 5. Liability Insurance. At the Board's discretion, the Association shall obtain comprehensive public liability insurance including medical payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association, its Board or Officers or with respect to the Common Area including, at the Board's discretion, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional Mortgage investors for projects similar in construction, location and use.

Section 6. Miscellaneous.

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

(b) No Assessments. Policies are unacceptable where:
 (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Association or any Owner or any First Mortgagee or its successors and assigns; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association or any Owner or any First Mortgagee, or its successors and assigns, from collecting insurance

proceeds.

(c) Other Requirements. All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Property is located. The Mortgagee clause must provide that the insurance carrier shall notify the First Mortgagee named in such policies at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(d) Other Insurance and General. The Association may also obtain, through the Board, Worker's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, the Board, members of the Architectural Committee, and the Manager from liability in connection with the Common area, the premiums for which shall be expenses payable by the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements, which shall preclude the insurer from denying the claim of an Owner because of the negligent act of the Association or other Owners. The Board shall review all policies at least annually and the limits increased at its discretion.

ARTICLE XIII

Mortgage Protection Clause

Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Lots and Dwelling Units within the Property, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control);

Section 1. Written Notification of Default. Each First Mortgagee of a Mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the By-laws, which default is not cured within sixty (60) days after the Association learns of such default.

Section 2. Right of First Refusal. Each First

Mortgagee of a Mortgage encumbering any Lot, which obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal." Any right of first refusal contained in the constituent documents of the Property, or hereinafter added shall not impair the rights of a First Mortgagee to (i) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or (ii) accept a deed or an assignment in lieu of foreclosure in the event of default of a Mortgagor, or (iii) interfere with the subsequent sale or lease of a Lot so acquired by the First Mortgagee.

Section 3. Non-Liability for Prior Unpaid Dues or Charges. Any First Mortgagee, or a purchaser who purchases a Lot from any First Mortgagee who obtains title to a Lot pursuant to a deed (or assignment) in lieu of foreclosure, or pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the First Mortgagee.

Section 4. First Mortgagee Approval. Unless at least one hundred percent (100%) of the First Mortgagees (based upon one (1) vote for each Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly, by the Association for the benefit of the Lots (the granting of an easement of public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause);

(b) Change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural control of the Lots or Dwelling Units, the maintenance of the Lots or Dwelling Units, or the maintenance of the Common Area;

(d) Fail to maintain fire and extended coverage on any insurable Improvement or property on the Common Area on a current replacement costs basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and

(e) Use hazard insurance proceeds for losses to any Improvement or property on the Common Area for other than the repair, replacement or reconstruction of such Improvement or property.

Section 5. Taxes and Charges in Default. First Mortgagees may, jointly and severally, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such portion of the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 6. First Mortgagee Priority. No provision of the Declaration, Articles or By-laws shall give an Owner, or any other party, priority over any rights of any First Mortgagee pursuant to its Mortgage in the case of a distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Area.

Section 7. Examination of Books and Records. First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

Section 8. First Mortgagees Written Notice of Amendments and Damage. Upon written request, all First Mortgagees shall be given (i) thirty (30) days written notice prior to the effective date of any proposed material amendment to the Declaration, the Articles or By-laws, and prior to the effective date of any termination of an agreement for professional management of the Property following a decision of the Owners to assume self-management of the Property; and (ii) immediate notice following any damage to the Common Area whenever the cost of the reconstruction exceeds Ten Thousand Dollars (\$10,000.00) and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Property.

Section 9. Reserve Fund for Common Area. Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis and are payable in regular installments rather than by Special Assessments.

Section 10. First Mortgagee Written Notice of Default by Owner. A First Mortgagee, upon request, is entitled to written notification from the Association of any default by an Owner with respect to any obligation under the constituent documents of the Property which is not cured within sixty (60) days.

Section 11. Agreement for Professional Management. Any

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

Section 12. Satisfaction of Guidelines. In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of the First Mortgages encumbering Lots and/or Dwelling Units. Each Owner hereby agrees that it will benefit the Association and the Members of the Association, as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

Section 13. Non-Owner Occupied Dwelling Units. No Owner may sell any Dwelling Unit constructed upon a Lot to a third party on a non-owner occupied basis without the prior written approval of the Board, which approval shall not be unreasonably withheld (provided that such approval shall not be given if granting such approval would result in more than twenty-five percent of the Dwelling Units being classified as non-owner occupied).

Section 14. Amendment to Article. Neither this Article XIII nor Section 6 of Article VII of this Declaration shall be amended without the approval of one hundred percent (100%) of the First Mortgagees.

ARTICLE XIV

General Provisions

Section 1. Enforcement. This Declaration, the Articles of Incorporation and the By-Laws may be enforced by the Association as follows:

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

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

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

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

(e) A breach of the covenants, condition or restrictions contained in this Declaration, the Articles or in the By-Laws shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value on any Lot or Dwelling Unit, provided, however, that any subsequent Owner of such Lot or Dwelling Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale, or otherwise.

Section 2. Severability. Invalidation of any one of these covenants 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. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 4. Amendments. This Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than fifty-one percent (51%) of the voting power of the Members, except with respect to matters dealt with herein which require a higher percentage for approval thereof;

provided, however, that the prior written approval of at least one hundred percent (100%) of all First Mortgagees must be obtained as provided in Section 12 of Article XIII above.

Section 5. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or part of the Property to the public, or for any public use.

Section 6. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

Section 7. Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners and Salt Lake County for the control, maintenance and repair of the utilities and storm drains of adjoining Lot Owners. The Association expressly reserves for the benefit of all of the real property in the Property, and Owners, reciprocal easements of access, ingress and egress over all Lots, and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, and for maintenance and repair of any Dwelling Unit or landscaping located on any Lot.

Such easements may be used by the Association, its successors, purchasers and all Owners, their guests, tenants, lessees and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provision for drainage with the approval of Salt Lake County in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage conveyed to a purchaser from Village Communities, former Declarant.

The Association further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, cable television facilities, and telephone lines, in accordance

with the provisions of this Declaration, and as otherwise provided by law. The Association, as well as Owners of Lots, and all others who shall come in contact with the Property, shall use reasonable restraints with regard to the Property when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and maintenance of all of the Property, and the use and enjoyment by an Owner of his Lot.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or by hand delivery to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 9. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by the Association or its agents or employees in connection with the Property or any portion of the Property, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof as a planned unit development, except as specifically and expressly set forth in this Declaration.

Section 10. Reservation of Certain Side Yard Use Easements. Easements for the benefit of certain Lots, as the same may be set forth in the plat map or in deeds conveying title to the said Lots shall be reserved for the benefit of the adjoining Lot Owner for maintenance and repair of the adjoining Lot Owner's Dwelling Unit or landscaping. In addition, such easements may be used by the adjoining Lot Owner, its successors and purchasers and all their guests, tenants, lessees and invitees, residing in or temporarily visiting the adjoining Lot, for pedestrian access and such other purposes reasonably necessary for the use and enjoyment of the adjoining Lot.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Homestead Village, A Village Community, A Planned Unit Development, has been executed as of the day and year first above written.

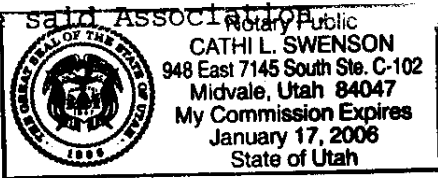
DECLARANT:

HOMESTEAD VILLAGE PROPERTY OWNERS ASSOCIATION

By Peter G. Gendreau, President

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

On this 14th day of April, 2004, personally appeared before me Peter R. Gendreau, being by me duly sworn and the said individual did say that he is a duly appointed Officer of the Homestead Village Property Owners Association, and that the within and foregoing Declaration was signed in behalf of the said Association.



Cathi L. Swenson
NOTARY PUBLIC
Residing at: Salt Lake City, UT.

My Commission Expires: Jan. 17, 2006

Exhibit ("A")

ASSIGNMENT OF RIGHTS AND OBLIGATIONS

THIS ASSIGNMENT (hereinafter the "Assignment") is made and entered into this 21st day of January, 2004 by and between **VILLAGE COMMUNITIES, L.C.**, a Utah limited liability company (hereinafter "Assignor"), and **HOMESTEAD VILLAGE, A VILLAGE COMMUNITY, PROPERTY OWNERS ASSOCIATION**, a Utah non-profit corporation (hereinafter "Assignee"), on the following terms and conditions:

R E C I T A L S

A. Assignor is the declarant (hereinafter "Declarant") named in that certain Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Homestead Village, A Village Community, A Planned Unit Development (hereinafter "CC&R's") which was recorded in the official records of the County Recorder of Salt Lake County, State of Utah, as Entry 6653636, on May 27, 1997, with respect to certain real property described in the CC&R's which is located in Salt Lake County, Utah.

B. Assignor desires to assign its rights and obligations as Declarant under the CC&R's, and Assignee desires to assume Assignor's obligations thereunder, all on the terms hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and in consideration of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Assignment.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's rights as Declarant pursuant to the CC&R's.
2. **Assumption.** Assignee hereby accepts the foregoing assignment and agrees to assume and perform all obligations and liabilities of Declarant under the CC&R's arising from and after the date hereof.
3. **Assignee as Declarant.** Assignee acknowledges that it is the intent of the parties that Assignee be the Declarant as that term is used in the CC&R's and that Assignor shall hereafter have no further rights or responsibilities with respect to the CC&R's or the property subject thereto.
4. **Release.** Effective as of the date hereof, Assignor shall be relieved of those obligations under the CC&R's expressly assigned to and assumed by Assignee pursuant to this Assignment.
5. **Successors and Assigns.** This Assignment shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.
6. **Governing Law.** This Assignment shall be governed by, interpreted under, and construed and enforced in accordance with the internal laws of the State of Utah, without reference to choice of law or conflict of law provisions.
7. **Counterparts.** This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument with the same effect as if all parties had signed the same signature page.
8. **Further Assurances.** Each party will, whenever and as often as it shall be requested so to do by the other, cause to be executed, acknowledged or delivered any and all such further

instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Assignment.

9. **Construction.** The language in all parts of this Assignment shall be in all cases construed simply according to its fair meaning and not strictly against the party who drafted such language. Section and paragraph headings of this Assignment are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Assignment.

10. **Recitals Incorporated.** The Recitals to this Assignment are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the day and year first above written.

VILLAGE COMMUNITIES, L.C.,
A Utah Limited Liability Company

By: (s) L. Kelly Sheppard, Its Managing Partner *L Kelly*

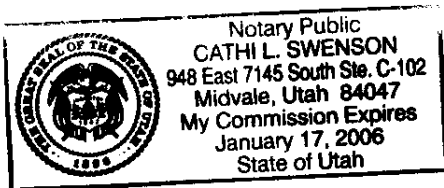
HOMESTEAD VILLAGE, A VILLAGE COMMUNITY, PROPERTY OWNERS ASSOCIATION *Peter R. Genereaux*

By: (s) Peter R. Genereaux, Its President

ACKNOWLEDGMENT

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

On 27th May, 2004, personally appeared before me, a Notary Public, L. Kelly Sheppard, the Managing Partner of VILLAGE COMMUNITIES, L.C. personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of VILLAGE COMMUNITIES, L.C.



WITNESS my hand and official Seal.

Cathi L. Swenson
Notary Public in and for said State

39

My commission expires: Jan. 17, 2006

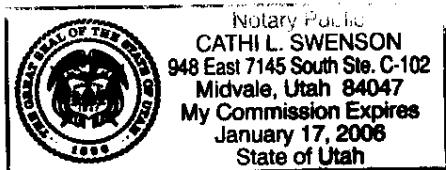
[SEAL]

ACKNOWLEDGMENT

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

On 17th of May, 2004, personally appeared before me, a Notary Public, Peter Gencereux, the President of **HOMESTEAD VILLAGE, A VILLAGE COMMUNITY, PROPERTY OWNERS ASSOCIATION**, personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that he/she executed the above instrument on behalf of **HOMESTEAD VILLAGE, A VILLAGE COMMUNITY, PROPERTY OWNERS ASSOCIATION**.

WITNESS my hand and official Seal.



Cathi L. Swenson
Notary Public in and for said State

My commission expires: Jan 17, 2006

[SEAL]