

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF
QUAIL HOLLOW
PLANNED RESIDENTIAL UNIT DEVELOPMENT**

THIS DECLARATION is made and executed this 14 day of May, 2003, by Mt. Joy, L.L.C., a Utah Limited Liability Company (the "Declarant").

RECITALS:

A. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and the Owners thereof, Declarant hereby subjects the Property to the covenants, restrictions, easements, charges and liens set forth in this Declaration, which shall be recorded in the official records of Morgan County, State of Utah. (Certain capitalized terms used in these Recitals are hereinafter defined in Article I)

B. Declarant has deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas, collect and disburse the assessments and charges provided for in the Declaration and otherwise administer and enforce the provisions of the Declaration. For such purposes, Declarant shall cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, the Quail Hollow Homeowners Association (the "Association").

C. Declarant intends to develop the Property in two (2) phases, Phase I and Phase II. Phase I of the Property has been fully platted and recorded, such that the areas constituting Lots, Limited Common Areas and Common Areas are specifically designated; Phase II, however, has been generally platted into Lots, Limited Common Areas and Common Areas, but the Plat thereof is subject to further adjustment and amendment prior to recording as may be deemed appropriate or necessary by Declarant or in response to requirements of governmental entities having jurisdiction.

NOW, THEREFORE, for the foregoing purposes, the Declarant declares that the Property shall be subject to this Declaration and that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

DEFINITIONS

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

06-Quail 1-01
to 06-Quail 1-65

E 092137 B 193 P 0373
Date 15-MAY-2003 10:52am
Fee: 143.00 Cash
BRENDA NELSON, Recorder
Filed By BDN
For MORGAN INTERMOUNTAIN
MORGAN COUNTY

1.01 Architectural Committee shall mean the Board or the Architectural Committee established by the Board as provided in Article X of this Declaration.

1.02 Association shall mean the QUAIL HOLLOW HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation.

1.03 Board shall mean and refer to the Board of Directors of the Association defined above.

1.04 Common Areas shall mean all areas of the Property so designated in the Phase I Plat and the Phase II Plat, as either may be amended from time to time, and which are intended ultimately to be owned by the Association for the common use and enjoyment of the Owners, including all improvements constructed or to be constructed thereon and all easements appurtenant thereto. The Phase I Plat is attached hereto as Exhibit "A" and made a part hereof, while the proposed Phase II Plat is attached hereto as Exhibit "B" and made a part hereof.

1.05 Conveyance shall mean and refer to the actual conveyance of fee title to any Lot to any Owner by a warranty deed or similar document conveying title and shall not mean the mere execution of an installment sales contract or security for financing purposes.

1.06 Culinary Water shall mean water delivered to a Lot and the Living Unit thereon to be used for culinary purposes through the Culinary Water system owned by the Association.

1.07 Declarant shall mean and refer to Mt. Joy, L.L.C., a Utah Limited Liability Company, and its successors and assigns.

1.08 Declaration shall mean this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF QUAIL HOLLOW PLANNED RESIDENTIAL UNIT DEVELOPMENT, which shall be filed for record in the office of the County Recorder of Morgan County, Utah.

1.09 Development shall mean and refer to the Property and any approved additions thereto, together with all Living Units and other structures and improvements constructed or to be constructed thereon, described in the Declaration.

1.10 Limited Common Areas shall mean and refer to those areas designated as such on the Phase I Plat and the Phase II Plat and declared in the Declaration to be reserved for the use of the Owner(s) of a certain Lot to the exclusion of the Owners of any other Lots or the Association.

1.11 Living Unit shall mean and refer to a residential structure and improvements used in conjunction therewith, designed and constructed or to be constructed by Declarant as part of a Lot, and which shall be used and occupied as a single family residence. Each Living Unit shall become part of the Lot upon which it is constructed.

1.12 Lot or Lots shall mean and refer to any one or more of the separately numbered and individually described parcels of land shown and designated on the Phase I Plat and the proposed Phase II Plat, as either Plat may hereafter be revised or amended, and which shall include the Living Unit or Units constructed or to be constructed thereon. Lots shall be privately owned, and each Lot shall be used and occupied by a single family.

1.13 Managing Agent shall mean any person or entity appointed or employed as Managing Agent pursuant to Section 4.02(c) of Article IV of this Declaration.

1.14 Member shall mean and refer to every Owner (as defined herein) of a Lot in either Phase I or Phase II (as defined herein). All Owners shall automatically be Members of the Association.

1.15 Mortgage shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any property by a mortgage, deed of trust or trust deed.

1.16 Mortgagee shall mean any mortgagee of a mortgage and any trustee or beneficiary of a deed of trust or trust deed.

1.17 Owner shall mean any person or legal entity who is the owner of record (as reflected by the records in the office of the County Recorder of Morgan County, Utah) of a fee or undivided fee interest in any Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record. Notwithstanding any applicable theory relating to mortgages, deeds of trust, or like instruments, no mortgagee, beneficiary or trustee under a deed of trust, or other secured party, shall be an Owner unless and until such party acquires fee title pursuant to foreclosure or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it.

1.18 Phase I shall mean all of that portion of the Property described and shown on the Phase I Plat attached hereto as Exhibit "A." The official Phase I Plat has been recorded by Declarant in the official records of Morgan County, State of Utah, as "QUAIL HOLLOW PHASE I PLANNED RESIDENTIAL UNIT DEVELOPMENT," as more particularly set forth in Section 1.21 below.

1.19 Phase II shall mean all of that portion of the Property described and shown on the proposed Phase II Plat attached hereto as Exhibit "B", as it may be amended prior to recording. The official Phase II Plat shall be recorded by Declarant at such later time as final approval has been obtained and shall be designated as "QUAIL HOLLOW PHASE II PLANNED RESIDENTIAL UNIT DEVELOPMENT."

1.20 Plat or Plats shall mean and refer to either or both of the subdivision plats covering the Property, the first being entitled "QUAIL HOLLOW PHASE I PLANNED RESIDENTIAL UNIT DEVELOPMENT" ("Phase I Plat") filed for record in the office of the County Recorder of Morgan County, Utah, on the 1st day of October, 2002, as Entry No. 89494, in Book 184 of Plats, at Page 234; and the other, entitled "QUAIL HOLLOW PHASE II PLANNED RESIDENTIAL UNIT DEVELOPMENT" ("Phase II Plat"), as the same may be amended from time to time, shall be

prepared and certified by a registered Utah professional engineer and land surveyor. The Phase II Plat, as it may be amended, shall be executed, acknowledged and recorded in the office of the County Recorder of Morgan County, Utah, at such time as Declarant shall determine following receipt of final approval thereof.

1.22 Property shall mean and refer to all land covered by this Declaration, including Common Areas, Limited Common Areas and Lots. The Property shall be that certain real property situated in Morgan County, Utah, described in and shown on the Phase I Plat and the proposed Phase II Plat.

1.23 Residence shall mean and refer to a Lot and the Living Unit constructed thereon by Declarant as a single family dwelling unit, and shall include any Limited Common Area appurtenant thereto.

1.24 Secondary Water shall mean water to be used exclusively for irrigation, sprinkling or other nonculinary purposes delivered unmetered to the Lots and Common Areas through the Secondary Water system owned by the Association.

ARTICLE II

SUBMISSION AND DIVISION OF PROJECT

2.01 Submission. The Property shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration.

2.02 Annexation by the Association. Only the Association shall at any time have the right to annex any additional land to the Property, such right to be exercised only upon obtaining approval of such annexation from (a) the owner or owners of the land to be annexed and (b) sixty-seven percent (67%) of the Members of the Association. In addition, as long as there is a Class B Membership, any annexation will also require the consent of Declarant. The annexation of any such land shall become effective upon recordation in the office of the County Recorder of Morgan County, Utah, of (a) a subdivision plat or map covering the land to be annexed and (b) a supplemental declaration which (i) describes the land to be annexed or incorporated by reference to the description contained in the subdivision plat thereof, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration, (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land, (iv) states which portions of the annexed land are Common Areas, Limited Common Areas or Lots, and which portions are within any new land classification, provided that the nature and incidents of any such new land classification shall be fully set forth in such supplemental declaration or in another supplemental declaration previously filed with respect to some portion of the Property, and (v) describes generally any improvements situated or to be situated on the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property.

2.03 Division into Lots and Common Areas. Phase I of the Property is divided into 65 Lots, each of which shall be owned as a separate fee simple interest in a portion of the Property, as

shown on the Phase I Plat. Phase II of the Property is preliminarily divided into 27 Lots, each of which shall be owned as a separate fee simple interest in a portion of the Property, as shown on the Phase II Plat; provided, however, that since the Phase II Plat is a preliminary plat, it may hereafter be amended to reconfigure or reduce the number of Lots, but the number of Lots shall not be increased. All portions of the Property not designated as Lots on either Phase I or Phase II shall constitute the Common Areas and Limited Common Areas which shall be owned by the Association for the benefit of the Owners in accordance with the provisions of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.01 Membership. Every Owner upon acquiring fee title to a Lot shall automatically become a Member of the Association and shall remain a Member thereof until such time as his/her fee ownership of such Lot ceases for any reason, at which time his/her Membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

3.02 Voting Rights. The Association shall have the following described two classes of Voting membership:

Class A. Class A Members shall consist of all Owners, but excluding the Declarant until the Class B Membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held, without regard to the number of Owners thereof, as more particularly stated in Section 3.03 below.

Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to the following votes: (i) four (4) votes for each Lot which it owns. The Class B Membership shall automatically cease and be converted to Class A Membership on the first to occur of the following events:

- (a) When 75% of the Lots have been deeded in fee to homeowners.
- (b) Twenty (20) years after the date on which this Declaration was first filed for record in the office of the County Recorder of Morgan County, Utah.

3.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Lot. Unless the Association has received written instructions signed by all Owners of a Lot regarding the vote for said Lot Owners, a vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned; provided, however, if the Association has received no written instructions and an objection is made at the meeting by another Owner of the same Lot, then a majority in interest of

the co-Owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote, either in person or by proxy.

3.04 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document to him/her of his/her Lot and shall file a copy of such conveyance document with the secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a Mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the record of ownership.

ARTICLE IV

DUTIES AND POWERS OF THE ASSOCIATION

4.01 Duties of the Association. Without limiting any other duties that may be imposed upon the Association by its Articles of Incorporation, Bylaws, this Declaration, or by law, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as Members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it by the Declarant.
- (c) The Association shall maintain and repair the Common Areas (including easement areas appurtenant thereto but excluding any portions of the Common Areas left in their natural state by Declarant or designated by Declarant as Natural Open Space on any recorded subdivision plat or map) and, at the discretion of the Board, any of the Property dedicated to any governmental authority and situated immediately adjacent to the Property if the Board determines that such dedicated property is not being maintained or landscaped in a condition comparable to the Common Areas.
- (d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (e) The Association shall obtain and maintain in force the policies of insurance required by Article XII of this Declaration.

4.02 Powers and Authority of the Association. The Association shall have all the powers and authority set forth in its Articles of Incorporation, Bylaws, and the Declaration, together with its general powers as a nonprofit corporation, including, without in any way limiting any of the

foregoing, the power to levy and collect assessments and maintain and repair the Lots and Common Areas, as herein provided.

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article IX or Article X of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or perform other work upon any of the Common Areas, and provided that any contract for goods or services shall state that it may be terminated for cause by the Association at any time or by either party at any time upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed for and in behalf of the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or otherwise provide for:

(1) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(2) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the Architectural Committee and the Owners;

(3) Such utility services, including (without limitation), Culinary Water, Secondary Water, sewer, telephone, cable television and other communication services, as the Board may from time to time deem desirable;

(4) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(5) Such security and protection services as the Board may deem desirable for the benefit of the Owners or any of the Property;

(6) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary to service the Common Areas or Association office; and

(7) Such other costs or expenses as the Board determines are necessary and proper.

(c) The Board may delegate to a Managing Agent any powers under this Declaration which are not deemed non-delegable; provided, however, among other things, the Board specifically cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of \$5,000 nor the power to sell, convey, mortgage or encumber any Common Areas.

4.03 Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce appropriate rules and regulations governing, among other things, (a) the use of the Common Areas; (b) the use of any utility or facilities owned by the Association; (c) other matters concerning the use and enjoyment of the Property and the conduct of residents.

4.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, the Architectural Committee or the Managing Agent, to the extent allowed by the Articles of Incorporation, Bylaws or law.

ARTICLE V

ASSESSMENTS

5.01 Personal Obligation and Lien. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association all properly imposed assessments together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Notwithstanding anything to the contrary in this Article V, however, the lien of any assessment shall be subordinate and junior to the lien of any first Mortgage.

5.02 Purpose of Assessments. Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Property.

The use made by the Association of funds obtained from assessments may include, but shall not necessarily be limited to payment of the cost of: (1) taxes and insurance on the Common Areas; (2) maintenance, repair, and improvements of the Common Areas; (3) management and supervision of the Common Areas; (4) establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; (5) maintenance, repair and improvements for the Culinary Water delivery system within the Development; (6) the costs of Culinary Water delivered to each Lot; (7) maintenance, repair and improvements for the Secondary Water delivery system within the Development; (8) the costs of Secondary Water delivered to the Common Areas and Limited Common Areas; (9) maintenance, repair and improvements to storm and sanitary sewer systems, and other utilities operated and/or maintained by or through the Association; (10) exterior maintenance of Lots and Living Units as set forth in Section 9.01 hereof; and (11) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration, its Articles of Incorporation and Bylaws. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Areas, roads, sidewalks, sanitary and storm sewers, Culinary Water system, and Secondary Water system that must be maintained, repaired or replaced on a periodic basis.

5.03 Determination of Assessments. The Board shall from time to time and in its discretion determine amounts reasonably estimated by the Board to be sufficient to meet the regular obligations of the Association ("Regular Assessments"), Special Assessments, and other Assessments provided or allowed in this Article or otherwise imposed pursuant to this Declaration. Unless otherwise specifically provided for by the Board, assessments shall be paid on a monthly basis.

5.04 Special Assessments. From and after the date set under Section 5.09 of this Article, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by regular assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas. Any such special assessment must be assented to by a majority of the votes of Owners present in person or represented by proxy and entitled to cast a vote at a meeting duly called for that purpose, as provided in the Bylaws.

5.05 Culinary Water Assessments. The costs of providing a minimum amount of Culinary Water to Lots shall be allocated equally to each Lot as provided for in Sections 11.02(a), (b) and (c) below. The costs of providing Culinary Water to Lots in addition to the basic minimum amount shall be allocated as provided for in Section and 11.02(d) below.

5.06 Secondary Water Assessments. The costs of providing Secondary Water to the Common Areas within a Phase shall be allocated equally to each Lot and Owner or Owners thereof within that Phase as a Common Areas Secondary Water Assessment. At such time as the Common Areas in both Phase I and Phase II are substantially developed and irrigated, the Board may allocate the costs of providing Secondary Water to all Common Areas in both Phases equally to each Lot and the Owner or Owners thereof in the Development.

5.07 Special Assessment on Specific Lots. In addition to the Regular Assessment and any special assessment authorized pursuant to Section 5.04 above, the Board may levy at any time special assessments (a) on every Lot specifically benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner or Owners of the Lot or Lots to be charged, (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, (c) on every Lot as to which the Association shall incur any expense for insurance coverage pursuant to Section 12.05 of Article XII, and (d) for maintenance or repair work performed, or enforcement action taken, pursuant to Section 4.02(a) of Article IV or other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such insurance, improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of or payment for work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Lots benefited.

5.08 Uniform Rate of Assessment. All Regular and special assessments authorized by Section 5.03 or 5.04 above shall be fixed at a uniform rate for all Lots within a recorded Plat. Assessments for Culinary Water usage authorized by Section 5.05 above shall be levied as provided for in Article XI below. Assessments for Secondary Water usage shall be levied as provided for in Section 5.06 above. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.

5.09 Monthly Assessment Due Dates. The assessments provided for herein shall commence as to the Owners of all Lots within a recorded Plat as of the second month following conveyance to the Association of the Common Areas shown on that Plat. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any increase in the amount of monthly assessments to the Owners of Lots within a recorded Plat, the Association shall give each such Owner written notice of the amount and first due date of the assessment concerned.

5.10 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable-fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

5.11 Application and Effect of Partial Payment. Any payment received for less than the total amount due pursuant to an assessment shall be applied as follows, without regard to any specification as to the application thereof:

- (a) Payment shall be applied first to any past due and current regular assessment;

(b) Remaining funds shall next be applied to any past due and current special assessments;

(c) Remaining funds shall next be applied to any past due and current special assessments on the specific Lot,

(d) Remaining funds shall then be applied to any past due and current Culinary and Secondary Water assessments.

5.12 Effect of Nonpayment - Remedies. Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on or against the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month unless applicable law requires a lesser rate, which shall then become the rate; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both, as allowed by applicable law. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other recoverable cost or expense incurred by the Association in enforcing its rights.

5.13 Interruption of Culinary and Secondary Water for Nonpayment. In addition to the remedies outlined in 5.12 above, the Association shall have the right to interrupt the flow of Culinary or Secondary Water to any Lot that is 45 days or more past due on its Culinary or Secondary Water assessment, if not paid within seven (7) days after the date of personal delivery or mailing notice thereof. The Association will reinstate the flow of Culinary or Secondary Water upon the payment of all past due and current Culinary or Secondary Water assessments, and the payment of a \$20.00 reconnection fee.

5.14 Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage to a bank, savings and loan association, insurance company or other institutional lender; and a holder in due course of any such first Mortgage or purchaser, unrelated to the Owner or Owners whose interest was foreclosed, who comes into possession of the Mortgage or the affected Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of amounts necessary to satisfy all qualified indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due. Regardless of the subordination of the lien of the Association, the assessed Owner or Owners shall continued to be obligated and liable to pay unsatisfied Assessments until they have been paid in full.

5.15 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Areas.

5.16 Insurance Assessments. The Board of Directors, or its duly authorized agent, shall have the authority to and shall or may obtain the amount and types of insurance coverage as is required or permitted pursuant to Article XII of this Declaration, the costs of which, except for any insurance obtained pursuant to Section 12.05, shall be assessed to the Owners as part of their regular assessment.

ARTICLE VI

PROPERTY RIGHTS AND CONVEYANCES

6.01 Easement Concerning Common Areas. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides in the Living Unit on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Areas except for the necessary parking, access, communication, utility, and drainage purposes for which such easements are intended for use in common with others.

6.02 Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, or other instrument conveying an interest in or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ of the QUAIL HOLLOW PHASE _____ PLANNED RESIDENTIAL UNIT DEVELOPMENT, according to the Plat thereof recorded in Book _____, Page _____, of the Official Records of Morgan County, which Lot is contained within the _____ identified in the Declaration of Covenants, Conditions, and Restrictions of the QUAIL HOLLOW PHASE _____ PLANNED RESIDENTIAL UNIT DEVELOPMENT, recorded in Book _____ at Page _____, TOGETHER WITH a permanent, non-exclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions, and SUBJECT TO the covenants, conditions, restrictions, easements, charges and liens provided for in said Declaration of Covenants, Conditions and Restrictions.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Any lease of a Lot shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-laws and any rules and regulations of the Association and that any failure by the lessee under such lease to comply with the terms of such documents shall be a default under the lease.

6.03 Title to the Common Areas. The Declarant covenants for itself, its heirs and assigns, that it will convey fee-simple title to the Common Areas in each Phase to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot in that Phase, subject to: (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, (iii) easements and rights-of-way of record, and (iv) a covenant of the grantee to maintain the Common Areas in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

6.04 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by rules and regulations the use of the Common Areas for the Owners so as to provide for the enjoyment of the Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable user charges for the use of facilities (other than open areas) within the Common Areas and reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to suspend an Owner's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Owner's Lot remains unpaid for more than thirty (30) days and for a period not exceeding ninety (90) days for infractions by an Owner of the provisions of this Declaration or of any appropriate rule or regulation promulgated by the Board;

(c) The right of the City of Morgan and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be consented to in writing by (1) all holders of first mortgages secured by Lots and (2) the

Owners of at least sixty-seven percent (67%) of the Lots (not including Lots owned by Declarant). In addition, as long as there is a Class B Membership, any such dedication or transfer shall require the prior approval of the Class B Member.

6.05 Utilities Easement. There is hereby granted and conveyed for the use and benefit of the City of Morgan, AT&T Cable Television, Questar, Qwest, their successors and assigns, and other similar utility providers, a blanket easement upon, across and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said utilities reasonably deem appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television, telephone company and/or other utility provider to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television, telephone wires, circuits, conduits, pipes and other necessary equipment on, across and under the Common Area, it being understood that all utilities, unless specifically approved otherwise, shall be placed underground in the Development.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar providers of services to the Development to enter upon the streets and Common Areas in the performance of their duties. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed, located or relocated on the Common Areas except as initially planned and approved by the Declarant or thereafter approved by the Board. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

There may be instances where patios are located within a utility easement. If it becomes necessary to remove all or portions of a patio to access the utility, the costs for the replacement thereof shall be the responsibility of the Association if not replaced by the utility.

6.06 Easements for Encroachments. If any part of the Common Areas, as improved by Declarant, now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

6.07 Easements for Construction and Development Activities. Declarant, for itself, its contractors and others authorized by Declarant, reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the; (a) construction of Living Units on Lots; (b) improvement of the Common Areas, including construction, installation and maintenance thereon of walkways, buildings, structures, landscaping, and other facilities designed

for the use and enjoyment of some or all of the Owners; and (c) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roads, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

6.08 Loans. The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and in aid thereof to Mortgage said property; provided, however, that the rights of such Mortgagee in said property shall be subordinated to the rights of the Owners hereunder. The right of the Association to Mortgage Common Areas is subject to the approval required in the Articles of Incorporation and Bylaws.

6.09 Right to Protect. The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure.

6.10 Delegation of Use. Any Member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside in the Living Unit on his Lot.

ARTICLE VII

PARTY WALLS

7.01 General Rules of Law to Apply. Each wall built as a part of the original construction of a Living Unit upon a Lot and placed between two (2) separate Living Units, each intended for use and occupancy as a Residence by a single family shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.02 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who share ownership and use of the wall.

7.03 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who shares ownership of and has used the wall may restore it; and if both Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligence or willful acts or omissions. The word "use" as referred to herein means ownership of a Living Unit which incorporates such wall or any part thereof into its structure.

7.04 Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by insurance, an Owner who by his negligence

or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

7.05 Right to Contribution Runs With Land. The right of an Owner to contribution from any other Owner and the obligation to contribute under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.06 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and if said arbitrators cannot agree on a decision, then those two arbitrators shall choose a third arbitrator; thereafter, the decision of a majority of the arbitrators shall be final. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore, the Board shall select an arbitrator for the refusing party.

7.07 Encroachment. If any portion of a party wall or other part of a Living Unit now or hereafter constructed upon a Lot encroaches upon any part of the Common Areas or upon a Lot or Lots used or designated for use by another Owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and future Owners of any part of the affected Lot for the benefit of the present and future Owners of such encroaching structure or Living Unit for the purpose of occupying and maintaining the same. In the event a structure consisting of more than one Living Unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each Living Unit and Lot for the benefit of the Association and the adjacent Owner or Owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future Owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

ARTICLE VIII

LAND USE RESTRICTIONS AND OBLIGATIONS

8.01 General Restrictions and Requirements.

(a) No parking shall be allowed in Common Areas (with the exception of driveway approaches to Lots) or on any streets unless designated as parking zones. Parking, so as to obstruct any portion of a sidewalk, is prohibited.

(b) Storage deemed to be unsightly, creating a visual nuisance, is prohibited unless such storage is temporary. Temporary storage shall be no longer than 72 hours and must be contained within the drive approaches only. This includes, but is not limited to, trailers, off-road vehicles, boats, campers, inoperable or unregistered vehicles, household items, dismantled items, spare or surplus parts, building materials, refuse, etc.

(c) No permanent or semi-permanent structures of any kind shall be placed upon a patio or Limited Common Area.

(d) No improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Lot from its natural or improved state existing on the date such Lot is first conveyed by Declarant to a purchaser shall be made or done except upon approval of the Board.

(e) Lots and Living Units shall be used only for single-family residential purposes.

(f) The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Unimproved or landscaped portions of the Common Areas shall not be used in a manner which shall unduly injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to other Owners in their enjoyment of their Lots and Living Units or the Common Areas.

(g) No business, profession or trade other than those allowed by the Morgan City Home Occupation Ordinance shall be operated or maintained on any Lot or in any structure thereon without the prior approval of the Board, except that this provision shall in no way limit or restrict Declarant in its activities prior to the sale of all Lots nor prevent Owners from renting their Living Units to tenants.

(h) No noxious or offensive activity shall be carried on or upon any Lot or Limited Common Areas, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Lots and Living Units or the Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and Living Unit thereon, shall be placed or used upon any Lot without the prior written approval of the Architectural Committee.

(i) Each Lot and all improvements located thereon shall be maintained by the Owner thereof in good condition and repair, and in such manner as not to create a fire hazard, all at the Owner's expense. All fences constructed on Lots shall be constructed of materials suitable for the purposes for which the fence is constructed and shall be pre-approved by the Architectural Committee pursuant to Article X. The Architectural Committee shall have the authority to create architectural standards for the construction of fences, including height limitations and construction materials that can be used in the construction of fences.

(j) Any containers or equipment commonly used for storage and disposal of refuse or garbage shall be kept in a clean and sanitary condition. Each Lot, Limited Common Area, driveway approach and its abutting street shall be kept free of trash, weeds and refuse by the Owner at the Owner's expense. Containers or equipment used for storage

and disposal of refuse and garbage shall not be left on the curbside or the street for a period of time exceeding twenty-four (24) hours. If in the opinion of the Architectural Committee, the Owner is not maintaining, or is otherwise allowing the Lot and any Limited Common Area to become unsightly, or is maintaining objects of trash and rubbish or other materials which in the opinion of the Architectural Committee are degrading the value of the surrounding Lots, then such materials shall be removed and kept out of the view of the general public at the Owner's expense.

(k) All garages shall be maintained as garages and shall not be converted to additional living space.

(l) No exterior lighting of any sort shall be installed or maintained on a Lot if the light source shines directly into a neighboring Living Unit.

(m) No outside toilet, other than self-contained portable toilet units used during construction, shall be placed or constructed on any Lot or the Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system.

(n) No exterior antenna or satellite dish of any sort shall be installed or maintained on any Lot except of a height, size and type approved by the Architectural Committee. No activity shall be conducted on a Lot or the Common Areas which unduly interferes with television or radio reception.

(o) There shall be no blasting or discharge of explosives upon any Lot or the Common Areas except as permitted by the Board; provided, that this provision shall in no way limit or restrict Declarant in its activities in connection with and during the development, construction and sale of Lots.

(p) No signs whatsoever shall be erected or maintained upon any Lot, except:

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

(ii) Such signs as Declarant may erect or maintain on a Lot prior to sale and conveyance;

(iii) One "For Sale" or "For Rent" sign having a maximum face area of nine (9) square feet and referring only to the Lot on which it is situated; and/or

(iv) One contractor identification sign having a maximum face area of fifteen (15) square feet may be displayed on a Lot during construction, but must be removed upon completion.

(q) There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles designed for

such purposes. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, is in violation of any fire prevention regulations, or would result in an increase of fire insurance premiums to the Association.

(r) There shall be no camping upon any Lot, Limited Common Areas or the Common Areas, except for family overnight recreation, and except as permitted by the Board by written license. There shall be no hunting or discharge of firearms on any Lot or the Common Areas.

8.02 Use of the Limited Common Areas. Adjacent to each Lot is a Limited Common Area, as designated on the Plat for that Phase. Requirements and restrictions for use of that Limited Common Area are:

(a) The Owner of the Lot to which the Limited Common Area is adjacent shall have the exclusive right of use of that Limited Common Area for his use and enjoyment.

(b) The Limited Common Area may be fenced with materials and to the height specified by the Architectural Committee.

(c) The Owner of a Lot may use the Limited Common Area for patio, garden, or whatever other use desired so long as such use does not infringe on the rights of adjoining Owners, adjoining Common Areas, or this Declaration.

8.03 Exemption of Declarant. The provisions of Section 8.01 of this Article shall not apply to any improvement or structure constructed on any Lot or the Common Areas by Declarant prior to the time that such Lot or Common Areas are conveyed by Declarant to another Owner or the Association, as the case may be; and the Declarant shall have the right to use any Lot or Living Unit owned by it, and may use only that part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and sale of all Lots owned by Declarant.

8.04 Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce compliance with this Declaration:

- (a) Declarant, so long as it has any interest in any of the Property or Lots;
- (b) Any Owner; or
- (c) The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

8.05 Control of Secondary Water and Ground Water. The Association will operate a *Secondary Water* system which will provide water to the Property to be used for irrigation,

sprinkling and other watering. Water from such Secondary Water system shall not be used, and the Limited Common Areas and the Commons Areas shall not be irrigated or watered in such a manner as to create excessive ground water either on the Property or neighboring property, or in such a manner as to create excessive runoff which causes unreasonable or unnecessary erosion to other Lots, the Common Areas or neighboring property. The Association shall have the right to regulate or restrict the use of water from such Secondary Water system on the Property and shall have the right to delegate all or part of such authority to the City of Morgan or to any other governmental or quasi-governmental entity and to enter into such other agreements with the City of Morgan or any other governmental or quasi-governmental entity as the Association may deem necessary or appropriate to provide for the control, maintenance and operation of such Secondary Water system, including the runoff resulting from the use of such system.

8.06 Household Pets. No animals, livestock or poultry of any kind may be raised, bred or kept on any Lot or in the Limited Common Areas or Common Areas, except that dogs, cats or other normal household pets may be kept in Living Units, or upon any Lot, subject to the rules and regulations adopted by the Board.

8.07 Obstruction of the Common Areas. There shall be no obstruction of the Common Areas. Nothing shall be stored on the Common Areas without the prior consent of the Board.

8.08 Time-Sharing Prohibited. Neither the Declarant nor any Owner shall allow or permit any form of time-sharing ownership.

8.09 Leases. Any lease agreement between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, the Bylaws and any rules and regulations of the Association, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

ARTICLE IX

EXTERIOR MAINTENANCE

9.01 Association's Responsibility. In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot and Living Unit which is subject to assessment, including but not limited to, paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or heating and cooling units or similar equipment located upon any Lot or upon any Living Unit.

9.02 Owner's Liability. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of a special assessment to which such Lot is subject.

ARTICLE X

ARCHITECTURAL CONTROL

10.01 Approval of Architectural Committee. No fence, wall, replacement of Living Units, sign or other structure (including basketball standards), any exterior addition or change, or alteration, including painting, or landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the Lots or Limited Common Areas, or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by the Architectural Committee, which shall be composed of either the Board or three (3) or more representatives appointed by the Board. Said plans and specifications shall be prepared by a duly licensed architect or other person approved by the Architectural Committee and shall include, where appropriate, the following:

- (a) Plot plans, showing the location of all structures and showing grade elevations and drainage;
- (b) Building plans, including floor, foundation and roof plans, with all materials therefor;
- (c) Exterior elevations, surfaces, sections, structural design and salient exterior details;
- (d) General exterior color scheme; and
- (e) Landscaping plans, showing type, location and elevation of trees, bushes, shrubs, plants, hedges and fences.

10.02 Submission in Writing. All such plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or such Owner's authorized agent.

10.03 Approval Standards. Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and material; conformity and harmony of external design with neighboring structures; effect of location and use of landscaping on neighboring property, relation of topography, grade and finished ground elevation of property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of view and aesthetic beauty with respect to fences, walls and landscaping; assurance of adequate access by the Association in connection with the performance of its duties and the exercise of its powers hereunder; conformity with such rules and regulations as may be adopted by the Board in accordance with this Article; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The provisions of this Article shall not apply to Declarant during construction of the Common Areas and Living Units in developing Phase I or Phase II.

10.04 Timely Approval and Completion. In the event the Architectural Committee fails to either approve or disapprove such plans and specifications within thirty (30) days after the same

have been submitted to it, it shall conclusively be presumed that the Architectural Committee has approved such plans and specifications. All approved improvement work shall be diligently completed and constructed in accordance with approved plans and specifications.

10.05 Change, waiver or Abandonment of Regulations. Unless at least sixty-seven percent (67%) of the votes of each class of Members have given their prior written approval, the Association shall not be entitled by act or omission to change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, their exterior maintenance or the maintenance and upkeep of the Common Areas.

ARTICLE XI

CULINARY AND SECONDARY WATER

11.01 Association to Provide Culinary Water. The Association shall operate and maintain a Culinary Water system in order to provide Culinary Water for the Lots. Each Lot shall be connected to the Culinary Water system for the Living Unit located thereon and the Limited Common Area associated with that Lot. Each Lot shall have a Culinary Water meter to measure Culinary Water usage.

11.02 Costs of Culinary Water. Culinary Water costs will be allocated as follows:

(a) From and after the date of connection to the Culinary Water system, the Owner or Owners of a Lot will be assessed a monthly charge to cover the costs of Culinary Water paid by the Association to Morgan City and maintenance of the Culinary Water system. That monthly minimum will be assessed equally to the Owner of all connected Lots.

(b) Each Lot will be entitled to receive up to 10,000 gallons of Culinary Water for the minimum monthly assessment.

(c) If the Association as a whole does not exceed its monthly minimum Culinary Water allotment from Morgan City, each Owner will be assessed only the monthly minimum.

(d) If the Association exceeds its minimum monthly allotment and is required to pay a surcharge to Morgan City for excess Culinary Water usage, the water meters will be read and Owners of Lots that have exceeded the minimum monthly allotment will be assessed the overage charges based on the usage of each such Lot.

11.03 Association to Provide Secondary Water. The Association shall operate and maintain a Secondary Water system in order to provide irrigation water for the Common Areas. The Association shall be responsible for all irrigation and watering of the Common Areas.

11.04 Costs of Irrigating Common Areas. The costs associated with irrigation of the Common Areas shall be shared equally among each Owner as provided in Section 5.06 above in order to cover the costs of Secondary Water paid by the Association to Morgan City and to maintain the Secondary Water system.

11.05 Uses of Water Assessments. The assessments for Culinary and Secondary Water are intended to reimburse the Association for the costs associated with purchasing the water from Morgan City and the costs of maintaining the Culinary and Secondary Water systems within the Development. The Association shall maintain a reasonable reserve to cover replacement, repair and maintenance of each system, but may not generate profits from the water systems that are utilized for other purposes.

11.06 Review of Water Assessments. An annual report showing the total costs and revenues for the previous year, and the estimated costs and assessments for the upcoming year associated with the Culinary and Secondary Water systems will be prepared annually and made available to all Owners. Assessments will be reviewed annually and adjusted as needed pursuant to the provisions of this Declaration, including Section 11.04 above.

ARTICLE XII

INSURANCE

12.01 Hazard Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of the land, foundations, excavation and other items normally excluded from coverage) of the common property owned by the Association (including Common Area structures and all building service equipment, if any, and the like, with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and
- (b) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

12.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a rating of "AA" or better from Best's Insurance Reports a policy or policies (herein called "the Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent and employees of the Association against claims for bodily injury (including death) and property damage arising out of any kind of negligence of the insureds, the conditions of the Common Areas or activities thereon, under a Comprehensive General Liability form. Such

insurance shall be for such limits as the Board may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be cancelled by the insurer unless it gives at least thirty (30) days' prior written notice thereof to the Board and every other person in interest who shall have requested in writing such notice of the insurer. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

12.03 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association, the Board, the Managing Agent or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide: (a) a waiver of the insurer's rights of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants; (b) that it cannot be cancelled, suspended or invalidated, due to the conduct of any particular Owner or Owners; (c) that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any directors, officer, agent, or employee of the Association without a prior written demand that the defect be cured and (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

12.04 Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall prepare a written report as to the conclusions and action taken on such review, which shall be made available to the Owner of any Lot and to the holder of any Mortgage on any Lot who shall have requested a copy of such report in writing. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner or his Mortgagee.

12.05 Insurance on Living Units. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Living Unit, or acts or events thereon; provided, however, that in the event an Owner fails to supply proof to the Board, upon request, of adequate coverage against loss or damage to his Living Unit from fire and other normally covered hazards in an amount equal to its full replacement value, the Board may, but shall not be required to obtain a policy for the Living Unit sufficient to cover the Association's interest therein as a lien holder and assess the Owner for the cost thereof as a special assessment on a specific Lot.

ARTICLE XIII
CONDEMNATION

13.01 If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Board and shall be used promptly by the Board to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Board which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Board shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Board shall disburse the portion of the proceeds of the condemnation award relating to the interest of the Owner of such Lot and the Common Areas to such Owner and any first Mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share attributable to said Lot with respect to the cost of debris removal. Any Owner whose Lot is the subject of a condemnation action shall be entitled to personally defend against the same and receive a specific award of damages related to the condemnation of such Lot.

ARTICLE XIV
RIGHTS OF FIRST MORTGAGEES

Notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first mortgagees shall be in effect:

14.01 Preservation of Regulatory Structure and Insurance. Unless the Owners of at least sixty-seven percent (67%) of the Lots (not including Lots owned by Declarant) and such Owners' first Mortgagees, if any shall have given their prior approval, the Association shall not be entitled:

(a) to amend this Declaration or change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Living Units, the exterior maintenance of Living Units, the maintenance of party walls or common fences and driveways, or the upkeep of lawns and plantings on the Property.

(b) to fail to maintain insurance as required by Article XII. This Section 14.01 may be amended as provided in Section 15.02 of Article XV hereof, except that such amendment must be approved by a vote otherwise sufficient to authorize action under this subsection prior to such amendment.

14.02 Preservation of Common Areas; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) all first Mortgagees of Lots, (2) the Owners of at least sixty-seven percent (67%) of the Lots (not including Lots owned by Declarant) the Association shall not be entitled:

14.07 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE XV

MISCELLANEOUS

15.01 Notices. Any notice required or permitted to be given to any Owner, Mortgagee or other person under the provisions of this Declaration shall be deemed to have been given and received when delivered in person or deposited in the US mail, first class postage prepaid, to the person or entity, at the latest address for such person or entity as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association or Architectural Committee may be given by delivering in person or mailing the same by first class mail, postage prepaid, to the Managing Agent or the President of the Association at the Association's address. For purposes hereof, the Association's initial Address shall be c/o Dan Follett, 898 North 700 East, Morgan, Utah 84050. The Association may change its address at any time by giving written notice as provided herein.

15.02 Amendment. Except as provided in Section 14.01 and 14.02 of Article XIV this Declaration may be amended by:

- (a) the affirmative vote of sixty-seven percent (67%) of the Owners; and
- (b) the written consent of Declarant, if such amendment is adopted any time when Declarant holds Class B membership in the Association; and
- (c) The filing of an instrument for record in the office of the County recorder of Morgan County, Utah, executed by any two officers of the Association and certifying that such amendment has been duly adopted by the affirmative vote of sixty-seven percent (67%) of the Owners.

15.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of any action or transaction the assent or affirmative vote of a stated percentage of the Owners, whether present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage of all Membership votes outstanding in connection with the class of Membership concerned. The following additional provisions shall govern any application of this Section 15.03:

- (a) All Members of the Association shall receive notice of the requested consent to the action or transaction in the manner provided in Section 15.01 above.

(b) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(c) The total number of written consents required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(d) Except as provided in the following sentence any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would increase the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(e) Unless the Association has on file a valid written instrument signed by all Owners of a Lot granting one such Owner the right to vote or consent on behalf of all Owners of said Lot, the consent of all Owners whose Memberships are appurtenant to the same Lot must be secured before the consent of such Owners shall be effective.

15.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

15.05 Interpretation and Severability. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision herein is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect to the extent it can continue to operate reasonably without such unenforceable portion. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

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

15.07 Duration. This Declaration, including the covenants, restrictions and rights contained therein, shall remain in effect for twenty (20) years from the date this Declaration was first filed in the office of the County Recorder of Morgan County, Utah, after which time it shall be automatically extended for successive periods of ten (10) years each unless terminated by an

instrument filed in the office of the County Recorder, executed by any two (2) officers of the Association, certifying that the Owners of at least seventy-five percent (75%) of the Lots and their first Mortgagees, if any, voted in favor of such termination. If any of the privileges, covenants, or rights created by this Declaration would otherwise be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then the provision herein creating such privilege, covenant or right shall, in any event, terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Michael Leavitt, the Governor of the State of Utah at the time this Declaration was recorded.


15.08 Enforcement. The Association, or the Declarant or its successors in interest, or any Owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or the Articles of Incorporation or Bylaws of the Association. Failure at any particular time by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

15.09 Governance Conflicts. In the event of any conflict between the requirements of the Declaration, Articles of Incorporation or the Bylaws of the Association and applicable Morgan City Ordinances, the stricter requirement will apply. However, neither this Declaration, the Articles of Incorporation or the Bylaws shall be interpreted to permit or allow any activity or use which would be in violation of any City ordinance. Action will be taken by the Association to appropriately amend this Declaration, the Articles of Incorporation or the Bylaws upon notice from the City of any such conflict.

15.10 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Morgan County, Utah.

"Declarant"

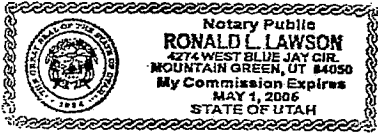
Mt. Joy, L.L.C., a Utah Limited Liability Company

By: 
Name: _____
Its: Manager

STATE OF UTAH)
 : ss
COUNTY OF WEBER)

On the 14th day of MAY, 2003, personally appeared before me
GRAY JENSEN, who being by me duly sworn did say that he is the

Manager of Mt. Joy, L.L.C., a Utah limited liability company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its governing documents, and the said GRAY JENSEN duly acknowledged to me that said limited liability company executed the same.



Ronald L. Lawson
NOTARY PUBLIC
Residing At: Mountain Green, UT
My Commission Expires: 5-1-2005