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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
BATEMAN ESTATES AND SANDALWOOD COVE PLANNED UNIT DEVELOPMENT**

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a Planned Unit Development known as Bateman Estates and Sandalwood Cove.

RECITALS

Declarant possesses certain rights and interests in certain real property in South Weber City, Davis County, Utah, which is more particularly described below, by virtue of an Option Agreement, and is entitled to exercise all the rights of a Declarant, and is fully able to assign the Declarant's rights.

Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

It is the desire and intention of Declarant to construct Residential Homes and to sell and convey the same to various purchasers, and to convey common area to an Association in which the Residential Home owners will be members.

DECLARATIONS

Declarant hereby declares that all of the properties described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the map recorded concurrently herewith. This is for the purpose of protecting the value and desirability of the properties. This Declaration and the map shall be construed as covenants of equitable servitude, which shall run with the land and be binding on all parties having any rights, title, or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

The Properties are located in South Weber City, Davis County, Utah, and are described as follows:

ARTICLE I - DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

- Section 1. Declaration means this instrument, and any amendments.
- Section 2. Plat or Map means the subdivision plat recorded herewith entitled "Bateman Estates and Sandalwood Cove Planned Unit Development," consisting of one sheet, prepared and certified by Don Moore, a Utah Registered Land Surveyor, or any replacements thereof, or additions thereto.
- Section 3. Property means that certain real property hereinbefore described.

The term "common areas and facilities" refers to and consists of the entire condominium property, including all parts of the building other than the units, including without limitation, the following:

- (a) The land on which the buildings are erected.

1.6.13 The term "limited common areas and facilities" shall mean and refer to those common areas and facilities designated in the Declaration and the Map as reserved for use of a certain unit or units to the exclusion of the other units. Limited common areas and facilities shall be the assigned parking spaces and the storage areas as set forth in Appendix "A," attached hereto and made a part of this Declaration, and as more particularly identified in the Map. The use and occupancy of designated limited

common areas and facilities shall be reserved to its assigned unit and that unit owner is hereby granted an irrevocable license to use and occupy his assigned limited common areas and facilities.

Section 4. Common Area means that portion of property owned by the Association shown on the plat as dedicated to the common use and enjoyment of the owners and refers to and consists of all parts of the multi-family buildings other than the units, including, without limitation the following:

- (a) All foundations, columns, girders, beams, and supports;
- (b) All exterior walls of the building not including the portions thereof on the unit side of such wall; all walls and partitions separating units from corridors, elevators, stairs, incinerators and other mechanical equipment spaces, other than the portions of the plaster or sheetrock partitions separating units between the center lines of the plaster or sheetrock on each side of such partition; and all concrete floors and concrete ceilings;
- (c) Roofs, hall corridors, lobbies, stairs, stairways and entrances to and exits from the buildings;
- (d) Basements, sub-basements, yards, gardens, recreational or common facilities, mailrooms, vaults and other areas used in connection therewith; parking and driveway areas and storage spaces;
- (e) All space devoted to the lodging or use of the superintendent or other person employed in connection with the operation of the condominium property;
- (f) All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, heat, refrigeration, air conditioning and incinerating (including all pipes, ducts, wires, cables and conduits used in connection therewith, whether located in common areas or units) and all other mechanical equipment spaces;
- (g) All elevators, tanks, pumps, motors, fans, compressors and control equipment;
- (h) All sewer pipes;
- (i) All storage spaces in laundry rooms;
- (j) All terraces, balconies or patios; provided, however, that each unit owner whose unit has sole access to a terrace, balcony or patio shall have an easement for the exclusive use thereof; and
- (k) All other parts of the condominium property and all apparatus and installations existing in the building or on the Property for common use and necessary or convenient to the existence, maintenance or safety of the condominium

Section 5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is subject to rights of the Association set forth in this Declaration.

Section 6. Lot. Each lot is owned in fee simple by the owner and is designated on the plat map.

Section 7. Lot. The term "Lot" shall mean one or more of the residential lots designated on the Map filed simultaneously with the original declaration and which is joined with other lots to form a multi-family building. Horizontally, each lot consists of the area measured horizontally from the lot side of the exterior walls of the building to the lot side of the walls and partitions separating each such lot from corridors, stairs, incinerators, and other mechanical equipment spaces, and where walls and partitions separate such lots from other lots, to the side of such walls and partitions on the interior of such lots. Vertically, each lot consists of the space between the top of the floor to the underside of the ceiling. A lot shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one lot.

Section 8. Residential Homes means a single family dwelling, without walls or roofs in common with other single family dwellings.

Section 9. Combination of lots. In the event two or more adjacent lots are held in identical ownership, the lots may be combined for use and construction purposes.

Section 10. Owner means the entity, person or group of persons owning fee simple title to any lots or units which are within the properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner."

Section 11. Association means Bateman Estates and Sandalwood Cove Planned Unit Development Association, its successors and assigns.

Section 12. Member means every person or entity who holds membership in the Association. Every member is an owner, and every owner is a member. Membership of each owner in the Association shall be mandatory.

Section 13. Trustees means the governing body of the Association.

Section 14. Declarant includes America West Development, LLC, and the Declarant's heirs, successors and assigns, but excludes grantees of a Declarant unless the Declarant's rights are specifically assigned.

Section 15. Mortgage includes "deed of trust" and mortgages includes "trust deed beneficiaries."

ARTICLE II - PROPERTY RIGHTS

Section 1. Title to the Common Area. The Declarant shall convey fee simple title to the common area and limited common area to the Association, prior to the conveyance of the first lot, but subject to this Declaration, easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2. Owners' Easements of Enjoyment. Every owner has a right and easement of use and quiet enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

- (a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the common area. No fees shall be charged for parking in spaces specifically designated on the plat as appurtenant to a lot.
- (b) The right of the Association to limit the number of guests of members using the common area.
- (c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

- (d) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the common area by the Association.
- (e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.
- (f) The terms and conditions of this Declaration.
- (g) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

Section 3. Limited Common Area. A lot or unit owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to the exclusive use of the parking area, if any, designated with his lot or unit number on the plat. Limited Common Area is subject to rights of the Association set forth in this Declaration. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area.

Section 4. Delegation of Use. An owner is deemed to delegate his right of enjoyment to the common area and facilities to a member of his family, his tenants, or contract purchasers who reside on the property. No one who is a non-resident shall have any such right of enjoyment.

Section 5. Lot. Each lot is owned in fee simple by the owner.

~~Section 6. Unit. Each unit is owned in fee simple by the owner.~~

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner shall be a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights. The Association has two classes of voting membership:

CLASS A. The Class A members are all members of the Association with the exception of the Declarant. Class A members are entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote for such lots shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each lot owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

- (a) upon conveyance to purchasers of seventy-five percent (75%) of the lots subject to this Declaration;
or
- (b) the expiration of four (4) years from the date the first lot is conveyed to a purchaser.

ARTICLE IV - FINANCE AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant and each subsequent owner of any lot or unit by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration; and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on that lot or unit and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them, but the lien upon the property shall continue until paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of the properties, services and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for the repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges, and snow removal.

Section 3. Maximum Annual Assessment. Until January 1 following recording of this Declaration, the maximum annual assessment shall be Twelve Hundred Dollars (\$1,2000.00) per lot or unit. This amount shall be the basis of calculation for future maximum annual assessments.

- (a) From and after the date referred to above the maximum annual assessment may be increased each year not more than five percent (5%) above the annual assessment for the previous year, without a vote of the membership.
- (b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes cast of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes cast of each class of members authorized to vote, in person or by proxy, at the meeting duly called for this purpose.

Section 5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized hereto, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of South Weber in maintaining, repairing or replacing utility lines and facilities thereon. It is acknowledged that the ownership of utility lines, underground or otherwise, is in the City up to and including the meters for individual units, and that they are installed by the Declarant and shall be maintained by the City to City specifications. Additional assessments

must have the assent of sixty-seven percent (67%) of the votes cast of each class of members authorized to vote, in person or by proxy, at the meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 or 5. Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 above shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment; Periodic Assessment. Both annual, special and additional assessments must be fixed at a uniform rate for all improved lots and units. Unimproved lots, on which a Residential Home has not been constructed to 80% completion, shall be assessed one-half the amount assessed improved lots or units, except that all lots shall be assessed at the uniform rate two years after the recording of the plat which contains that lot. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 8. Date of Commencement of Annual Assessment; Due Dates. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Trustees as to the amount of said assessment, the first annual assessment shall be an amount equal to 90% of the maximum annual assessment provided for above.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual, special and additional assessments in equal installments through the assessment year.

The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot or unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 9. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid.

The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, (b) may foreclose the lien against the lot or unit in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lots from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale, the lot may be sold in the manner provided by Utah law pertaining to deeds of trust as if said association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for the

purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lots or units shall not affect the assessment lien. However, the sale or transfer of any lot or unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to payments which became due after recording of the mortgage but prior to such sale or transfer. No such sale or transfer, however, shall relieve an owner from personal liability for assessments or affect subsequent owners from personal liability or the lots or units from the lien of future assessments.

Section 11. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours and upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

ARTICLE V - INSURANCE

Section 1. Casualty Insurance on Insurable Common Area. The trustees shall keep all insurable improvements and fixtures of the common area insured against loss or damage by fire for the full insurance replacement cost thereof, and may 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, against loss of 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. 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 are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all the single family Residential Homes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the single family Residential Homes shall be written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the owners.

Section 2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the common area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot and unit owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot or unit owner.

In the event that the Association is maintaining blanket casualty and fire insurance on the single family Residential Homes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or arguments. The Association is appointed attorney-in-fact of each owner for this purpose.

Section 3. Liability Insurance. The Trustees shall obtain a comprehensive policy liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas. Liability insurance policies obtained by the Association 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.

Section 4. Fidelity Insurance. The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name of the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses, (ii) the maximum reserves of the Association which may be on deposit at any time, and (iii) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5. Annual review of Policies. All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

ARTICLE VI - ARCHITECTURAL CONTROL COMMITTEE

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration to any lots, single family Residential Homes or units be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted, approval will not be required and compliance with this article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

ARTICLE VII - EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Owner Each lot owner shall be responsible for maintenance of his lot. The Trustee shall have the right, however, in the default of the owner to perform maintenance which is the owner's responsibility, and after a two-thirds (2/3) vote, and after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each single family Residential Home and lot. The cost of such maintenance shall be assessed against the individual lot or single family Residential Home.

Section 2. Maintenance by Association The Association shall be responsible for maintenance of the common area.

Section 3. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot, unit or limited common area at reasonable hours.

Section 4. Alteration of Certain Maintenance Duties by Rule The duty of maintenance for the area of a lot outside the walls of the single family Residential Home, and the limited common areas adjacent and appurtenant to the single family Residential Home, may be altered by Rule of the Association.

ARTICLE VIII - USE RESTRICTIONS

Section 1. General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including, but not limited to, community buildings on the common property. All buildings or structures erected on the properties shall be of new construction and no buildings or structures shall be removed from other locations to the property and no subsequent building or structures substantially dissimilar to those initially constructed shall be built on any lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

Section 2. Construction of Single Family Residential Homes. All single family Residential Homes, exclusive of porches, decks, patios and garages shall have a total finished square footage of 1,000 square feet and include one attached double-wide garage. All fences within the properties shall be of uniform size, type, material and color as determined by the Architectural Control Committee.

Section 3. Construction, Business and Sales Notwithstanding any provision to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary, including, but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices.

Section 4. Signs: Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or unit or any portion of the properties. No commercial activities of any kind whatsoever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 5. Quiet Enjoyment No obnoxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance which shall in any way increase the rate of insurance.

Section 6. Animals No Animals, livestock or poultry of any kind shall be raised, bred, or kept on any said lots, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious by noise, smell, or otherwise to lot or unit owners. All pets must be kept in the lots or units or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 7. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this Declaration or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this

restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 8. Parking Parking spaces within the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle which is inoperable shall be placed in parking areas, and any motor vehicle which remains parked over 72 hours shall be secured by a lien for assessment obligations previously provided. If parking spaces are designated on the plat with numbers corresponding with the lot or unit numbers, each such space is for the exclusive use of the lot or unit owner. If parking areas are not designated on the plat with lot or unit numbers, the Board may assign vehicle parking spaces for that lot or unit. Recreational vehicles, boats, travel trailers, and similar property may not be parked in common parking areas, and unless permitted by rule of the Association, may not be parked in parking areas designated on the plat for exclusive use.

Section 9. Planting and Gardening Owners shall be permitted to plant gardens within the in .

Section 10. External Apparatus No lot or unit all cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees or their designated Architectural Control Committee.

Section 11. Exterior Television or Other Antennas No exterior radio or other antennas except one television antenna which shall not exceed four feet in height, per lot or unit, shall be placed, allowed or maintained upon any lot or unit or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees or their designated Architectural Control Committee.

Section 12. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 13. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot or unit. No derrick lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties of any lot or unit.

Section 14. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that adversely affects the other lots or owners.

Section 15. Leases Any lease or rental agreement 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, Bylaws and Rules and Regulations of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

ARTICLE IX - EASEMENTS

Section 1. Encroachments Each lot, unit and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the declarant. A valid easement for said encroachments and for the maintenance for same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed and then rebuilt, the owners of the lots or units so affected agree that minor encroachments of parts of

the adjacent lots, units or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties of ingress, egress, limited to water, sewer, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement on said property without conflicting with the terms hereof, such easement may be granted by the trustees. All utilities that are installed in, upon, under or through common areas of the properties shall be maintained by the Association, or South Weber City, as agreed.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas, lots and units to perform the duties of maintenance and repair.

Section 5. Other Easements The easements provided for in this article shall in no way affect any other recorded easement.

ARTICLE X - GENERAL PROVISIONS

Section 1. Enforcement The Association, the Declarant or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including, but not limited to, any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit is undertaken, to enforce any provisions hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustee may levy a fine or penalty not to exceed 10% of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice.

Section 2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, and their successors, heirs, and assigns, shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any article, section, subsection, paragraph, sentence, clause or phrase.

Section 3. Duration The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless, by a vote of at least two-thirds (2/3) of the then current owners of said lots and units, it is agreed to amend or release said

covenants in whole or in part by an appropriate agreement in writing specifying restrictions or covenants to be amended or released, and by filing said agreement with the office of the County Recorder.

Section 4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Any amendment must be properly recorded in the records of Davis County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declaration to comply with City, State or other laws, or regulations or requirements of holders, insurers, or guarantors of first mortgages, subject to the approval of the Federal Housing Administration or Veterans Administration.

Section 5. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7. Waivers No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XI - ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned

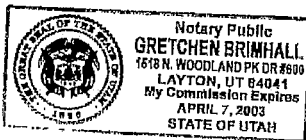
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set our hand and seal this 7th day of Feb, 1999,
2001

America West Development, LLC

By: Ryan Martinez
Member

STATE OF UTAH)
) ss.
COUNTY OF DAVIS)

On this 7th day of February, 1999,²⁰⁰¹ before me personally appeared Ryan Martinez, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn did say that he is the managing member of America West Development, LLC, and that the foregoing document was signed by him on behalf of that entity by authority of its bylaws, and he acknowledged before me that the company executed the document and the document was the act of the company for its stated purpose.



Gretchen Brimhall
Notary Public

Appendix " A "

Beginning at a point North 89°53'21" East 50.50 feet along the section line and South 0°07'32" West 30.02 feet from the North Quarter Corner of Section 34, Township 5 North, Range 1 West, Salt Lake Base and Meridian, running

thence East 165.57 feet;
 thence South 102.07 feet;
 thence Easterly 110.76 feet along the arc of a 368.00 foot radius curve to the right (center bears South 08°26'55" West, chord bears South 72°55'45" East 110.34 feet through a central angle of 17°14'41");
 thence North 25°43'41" East 117.20 feet;
 thence South 48°48'29" East 37.20 feet;
 thence South 50°24'29" East 102.60 feet;
 thence South 47°04'29" East 184.65 feet;
 thence South 51°18'29" East 47.80 feet;
 thence South 60°19'29" East 239.91 feet;
 thence South 64°30'29" East 67.62 feet;
 thence South 0°04'25" West 274.42 feet;
 thence South 41°11'24" West 95.89 feet;
 thence North 89°52'29" West 401.25 feet;
 thence South 0°07'32" West 200.00 feet;
 thence North 89°52'28" West 467.76 feet;
 thence North 0°07'32" East 97.54 feet;
 thence 69.93 feet along the arc of a 951.63 foot radius curve to the right (center bears South 89°52'27" East, chord bears North 2°51'13" East 69.92 feet through a central angle of 4°12'38");
 thence 2.20 feet along the arc of a 967.40 foot radius curve to the left (center bears North 85°39'50" West, chord bears North 4°16'15" East 2.20 feet through a central angle of 0°07'50");
 thence Southeasterly 24.63 feet along the arc of a 15.00 foot radius curve to the left (center bears South 85°47'39" East, chord bears South 42°50'03" East 21.96 feet through a central angle of 94°04'50");
 thence South 89°52'28" East 208.82 feet;
 thence Easterly 69.85 feet along the arc of a 136.25 foot radius curve to the left (center bears North 0°07'32" East, chord bears North 75°26'22" East 69.09 feet through a central angle of 29°22'21");
 thence 659.67 feet along the arc of a 327.00 foot radius curve to the left (center bears North 29°14'49" West, chord bears North 14°33'39" West 632.63 feet through a central angle of 150°37'39");
 thence North 69°52'28" West 97.52 feet;
 thence Southwesterly 23.56 feet along the arc of a 15.00 foot radius curve to the left (center bears South 0°07'32" East, chord bears South 45°07'32" West 21.21 feet through a central angle of 90°00'00");
 thence North 0°07'32" East 153.834 feet to the point of beginning.

Contains 7.64 acres, 15 lots.

Beginning at a point North 89°53'21" East 50.50 feet along the section line and South 0°07'32" West 183.85 feet from the North Quarter Corner of Section 34, Township 5 North, Range 1 West, Salt Lake Base and Meridian, running

thence Northeasterly 23.56 feet along the arc of a 15.00 foot radius curve to the right (center bears South 89°52'28" East, chord bears North 45°07'32" East 21.21 feet through a central angle of 90°00'00");
 thence South 89°52'28" East 97.52 feet;
 thence 659.67 feet along the arc of a 327.00 foot radius curve to the right (center bears South 0°07'32" West, chord bears South 14°33'38" East 632.63 feet through a central angle of 150°37'39");
 thence Westerly 69.85 feet along the arc of a 136.25 foot radius curve to the right (center bears North 29°14'49" West, chord bears South 75°26'22" West 69.09 feet through a central angle of 29°22'21");
 thence North 89°52'28" West 208.82 feet;
 thence Northwesterly 24.63 feet along the arc of a 15.00 foot radius curve to the right (center bears North 0°07'32" East, chord bears North 42°50'01" West 21.95 feet through a central angle of 94°04'50");
 thence Northerly 58.80 feet along the arc of a 967.40 foot radius curve to the left (center bears North 85°47'39" West, chord bears North 2°27'53" East 58.79 feet through a central angle of 3°28'56");
 thence North 0°43'25" East 18.88 feet;
 thence Northerly 65.68 feet along the arc of a 313.03 foot radius curve to the right (center bears North 89°16'35" East, chord bears North 6°44'03" East 65.56 feet through a central angle of 12°01'16");
 thence Northerly 68.96 feet along the arc of a 313.12 foot radius curve to the left (center bears North 71°15'11" West, chord bears North 6°26'06" East 68.82 feet through a central angle of 12°01'09");
 thence North 0°07'32" East 387.27 feet to the point of beginning.

Contains 5.49 acres, 68 lots.