

shall relieve such Lot from liability for any installments of assessments thereafter becoming due or from the lien thereof.

#### ARTICLE VIII

##### Architectural Control

Section 1. Members of Committee. The Architectural Committee, sometimes referred to in this Declaration as the "Committee" shall consist of three (3) members. The initial members of the Committee shall consist of representatives of Declarant. Each of said persons shall hold office until the election of the first Board of Directors by the membership of the Association. Thereafter, new members of the Committee shall be appointed by the Board of Directors and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee may be removed at any time without cause. The Board of Directors shall have the right to appoint and remove all members of the Committee.

Section 2. Review of Proposed Construction. Subject to Article X, Section 12 of this Declaration and the Development Guide, no building, fence, wall, patio cover or other structure shall be constructed, painted, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and color and location in relation to surrounding structures and topography by the Architectural Committee. The Committee shall approve proposals of plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Properties as a whole; that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals of plans and specifications upon such changes therein as it deems appropriate, upon the agreement by the Owner submitting the

same to grant appropriate easements to the Association or the cost of maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guide lines setting forth procedures for the submission of plans for approval, requiring a fee payable to the Association to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated, provided that in no event shall such fee exceed FIVE HUNDRED (\$500.00) DOLLARS. The Committee may require such detail in plans and specifications submitted for its review as it deems necessary and proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior materials and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval.

Section 3. Meetings of the Committee. The Committee shall meet, from time to time, as necessary to perform its duties hereunder and shall complete its review and report of proposed construction within thirty (30) days after submittal of a request. The Committee may, from time to time, by resolution, unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8 hereof. In the absence of such designation, the vote of any two (2) members of the Committee taken without a meeting shall constitute an act of the Committee.

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

proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

Section 5. Compensation of Members. The architect and landscape architect members of the Committee shall be paid for their services and necessary expenses. The other members of the Committee shall receive no compensation for services rendered, but shall be reimbursed for expenses incurred by them in the performance of their duties hereunder.

Section 6. Inspection of Work. Inspection of work and correcting of defects therein shall proceed as follows:

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

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

(c) If, upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such non-compliance, the Committee shall notify the Board, in writing, of such failure. Upon notice and hearing, the Board shall determine whether there is a non-compliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling within such period. The Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board

shall levy a Special Assessment against such Owner for reimbursement.

(d) If, for any reason the Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 7. Non-Liability of Committee Members. Neither the Committee nor any member thereof, nor its duly authorized Committee representative shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the wilful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing nor shall its approval of any plans or designs be deemed approval of any plans or designs from the standpoint of structural safety or conformance with buildings or other codes.

Section 8. Variance. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing and must be signed by at least two (2) members of the Board of Adjustment of Box Elder County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred

with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or of any Supplemental Declaration for any purpose except as to the particular property and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting his use of the premises, including but not limited to, zoning ordinances and lot set back lines or requirements imposed by any governmental or municipal authority.

## ARTICLE IX

### Maintenance and Repair Obligations

Section 1. Structural Maintenance Areas. No improvement, excavation or work which in any way alters the Structural Maintenance Areas from their natural or existing state on the date any such area is conveyed by Declarant to a purchaser of a Lot shall be made or done by any person other than the Association or its authorized agents. The Association shall maintain or provide for the maintenance in good order and repair and shall reconstruct, replace or refinish the improvements within the Structural Maintenance Areas.

Section 2. Maintenance Obligations of Owners. Subject only to the duty of the Association to provide for maintenance as provided in Article IX, Section 3 of this Declaration, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas subject to his exclusive control, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of the Owner shall be deemed to include, but not be limited to the interiors and exteriors of the dwelling unit and the appurtenant patios and fences and utility laterals. In the event that any Owner shall permit any improvement which is the responsibility of such Owner to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to



otherwise violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior written notice to the Owner of such Lot to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the cost thereof shall be charged to the Owner. Said cost shall be a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall promptly pay all amounts due for such work and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by each Owner as Common Assessments.

Section 3. Maintenance Obligation of Association. Subject to the provisions of Section 2 of this Article, the Association shall maintain or provide for the maintenance, of all Common Areas and all improvements thereon, including boundary fences, entrance gates, streets, sidewalks, Common Area landscaping, landscaping equipment and lighting and utility mains, and any and all utility laterals to the lot lines.

Section 4. Damage and Destruction Affecting Residences -- Duty to Rebuild. If all of or any portion of any Lot or dwelling unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or dwelling unit to rebuild, repair or reconstruct said residence in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

Section 5. Variance in Exterior Appearance and Design. Any Owner who has suffered damage may apply for approval to the Architectural Committee for reconstruction, rebuilding or repair of his residence in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Committee shall grant such approval only if the design proposed by the Owner should

result in a finished residence as in harmony with exterior design of other residences on the Properties. Failure of the Architectural Committee to act within thirty (30) days after receipt of such a request in writing coupled with the drawings and plot plans showing the full and complete nature of the proposed changes, shall constitute approval thereof. If the obligation for repair falls upon the Association, Architectural Committee approval will not be required prior to the commencement of such work.

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

## ARTICLE X

### Use Restrictions

All real property within the Properties shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant in Section 12 hereof:

Section 1. Single Family Residence. Subject to Section 3 of this Article X, each Lot shall be used as a residence for a single family residence and for no other purpose.

Section 2. Business or Commercial Activity. Subject to Section 3 of this Article X, no part of the Properties shall ever be used or caused to be used or allowed or authorized, in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes; except Declarant, its successors or assigns, may use any portion of the Properties for a model home and sales period in accordance with Article II, Section 1(h) of this Declaration, and excepting professional and administrative occupations without external evidence thereof, for so long as such occupations are in conformance with Brigham City ordinances and are merely

incidental to the use of the dwelling unit as a residential home.

Section 3. Real Estate Business. No dwelling unit, lot, improvement or portion of the Common Area shall be used in the conduct of any real estate business, gainful occupation, profession, trade office or other non-residential activity; provided, however, that Declarant, or its designees, shall have the non-exclusive right, subject to the provisions of Article II, Section 1(h) of this Declaration, to use, without additional cost, the portions of any recreational building constructed on the Common Area for purposes of sales of lots within the Properties, provided that such use does not unreasonably interfere with the use of any recreational facilities by members of the Association. Furthermore, as to any Lots owned by Declarant, Declarant shall have the unrestricted right to maintain model homes thereon for sales purposes.

Section 4. Nuisances. No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Properties and the Board of Directors shall have the right to determine, in accordance with the Bylaws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Properties, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

Section 5. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties or any Lot, without the prior written consent of the Architectural



Committee, except one sign for each dwelling unit of not more than three (3) feet by two (2) feet, plain white or black block letters, advertising the property for sale or rent, or except signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Properties during construction and sales periods. All signs or billboards and the condition promulgated for the regulation thereof shall conform to the requirements of the Brigham City ordinances.

Section 6. Parking and Vehicular Restrictions. No Owner of a Lot shall park, store or keep any vehicle except wholly within the parking area designated therefor and any inoperable vehicle shall be stored only in garages. No Owner shall park, store or keep on any property or street (public or private) within the Properties any camper type or small truck, large commercial type vehicle (dump truck, cement mixer truck, delivery truck and any other vehicular equipment mobile or otherwise, deemed to be a nuisance by the Board), any recreational vehicle (camper unit, motor home, truck, trailer, boat, mobile home or other similar vehicle) upon any uncovered parking space, so as to be visible from anywhere in the Properties, except as otherwise provided by the Board. The above excludes campers or small trucks up to and including three quarter ton (3/4) when used for every day type transportation, which may be parked in a driveway or garage. No Owner of a Lot shall conduct major repairs or major restoration of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area. Provided, however, recreational vehicles may be temporarily parked from time to time for periods not to exceed forty-eight (48) hours for purposes of loading, unloading and cleaning.

Section 7. Animal Restrictions. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area, except usual and ordinary dogs, cats, fish, birds and other household pets may be kept on Lots, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than three (3) pets per household, provided, however, that the Association (or the Architectural Committee or such other person or entity as the Association may, from time to time designate) may

determine that a reasonable number in any instance may be more or less. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Properties) or a person designated by Declarant to do so, to a pound under the jurisdiction of the local municipality in which the Properties are situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his family, his tenants or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animal which have used any portion of the Common Area.

Section 8. Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and fire pits in the patios designed in such a manner that they do not create a fire hazard. No clothing or household fabrics shall be hung, dried or aired in such a way in the Properties as to be visible to other property and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to

accumulate on any portion of the Properties except within an enclosed structure or appropriately screened from view.

Section 9. View Obstructions. No fence, hedge, wall or other dividing instrumentality over six (6) feet in height measured from the ground on which it stands shall be constructed or maintained on any Lot, except that Declarant may vary or exceed said height or location of any fence in accordance with its architectural plans. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction by Declarant may impair the view of such Owner and hereby consents to such impairment.

Section 10. Temporary Buildings. No outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Properties either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 11. Common Area Facilities. Nothing shall be altered or constructed in or removed from the Common Area except upon written consent of the Association.

Section 12. Declarant Exemption. Declarant or its successors or assigns will undertake the work of constructing dwelling units and developing all of the Lots included within the Properties and any annexation thereto. The completion of that work and sale, rental and other disposal of dwelling units is essential to the establishment and welfare of said property as a residential community. As used in this Section and its subparagraphs, the words "its successors or assigns" specifically do not include purchasers of Lots improved with completed dwelling units. In order that said work may be completed and the Properties be established as a fully occupied residential community as rapidly as possible, no Owner nor the Association shall do anything to interfere with and nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing, on

any Lot owned by them, whatever they determine to be necessary or advisable in connection with the completion of said work, including, without limitation, the alteration of its construction plans and designs as Declarant deems advisable in the course of development; or

(b) Prevent Declarant, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining, on any Lot or portion thereof, owned or controlled by Declarant or its successors or assigns or its or their representatives or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing the Properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(c) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from conducting on any Lot or any portion thereof, owned or controlled by Declarant, or its successors or assigns, its or their business of developing, subdividing, grading and constructing dwelling units and other improvements in the Properties as a residential community and of disposing of dwelling units thereon by sale, lease or otherwise; or

(d) Prevent Declarant, its successors or assigns, or its or their contractors or subcontractors, from maintaining such sign or signs on any Lot owned or controlled by any of them as may be necessary in connection with the sale, lease or other marketing of Lots and dwelling units in the Properties; or

(e) Prevent Declarant, at any time prior to acquisition of title to a Lot in a subdivision by a purchaser from Declarant, to establish on that subdivision additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may, from time to time, be reasonably necessary to the proper development and disposal of the Properties.

Section 13. Outside Installation. No radio station or shortwave operators of any kind shall operate from any Lot or



dwelling unit unless approved by the Board of Directors. Exterior radio antenna, television antenna or other antenna may be erected or maintained in the Properties, subject to the approval of the Architectural Committee.

Section 14. Insurance Rates. Nothing shall be done or kept in the Properties which will increase the rate of insurance on any property insured by the Association without the approval of the Board nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any laws.

Section 15. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted upon or in any Lot nor shall oil wells, tanks tunnels or mineral excavations or shafts be permitted upon the surface of any Lot or within five hundred (500') feet below the surface of the Properties. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. Further Subdivision. No Owner shall further partition or subdivide his Lot; provided, however, that this provision shall not be construed to limit the right of an Owner to: (1) rent or lease all or any portion of his Lot by a means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) sell his Lot; or (3) transfer or sell any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be subject, in all respects, to the provisions of this Declaration and Bylaws of the Association and any failure by the Lessee of such Lot to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease.

Section 17. Drainage. There shall be no interference with the established drainage pattern over any subdivision within the Properties, unless an adequate alternative



provision is made for proper drainage and is first approved in writing by the Architectural Committee. For purposes hereof, "established" drainage is defined as the drainage which exists at the time the overall grading of any subdivision is completed by Declarant or that which is shown on any plans approved by the Architectural Committee which may include drainage from the Common Area over any Lot or Lots in the Properties.

Section 18. Water Supply Systems. No individual water supply, sewage disposal system or water softener system shall be permitted on any Lot in the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of the Brigham City Water Department, the Architectural Committee and all other applicable governmental authorities.

#### ARTICLE XI

##### Fences

There shall be no fences or walls within or on the Properties except the fence and/or wall around the perimeter of the Properties and except party walls, except as approved by the Architectural Committee.

#### ARTICLE XII

##### Damage or Destruction to Common Area

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

(a) In the event of damage or destruction to the Common Area, and the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within TEN THOUSAND (\$10,000.00) DOLLARS or less of being sufficient to effect

total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each of the Lot Owners, in accordance with the provisions of Article VI, Section 5 of this Declaration.

(c) If the insurance proceeds are insufficient by more than TEN THOUSAND (\$10,000.00) DOLLARS to effect total restoration to the Common Area, then by written consent or vote of a majority of the Owners, they shall determine whether: (1) to rebuild and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Reconstruction Assessments against all Lots; (2) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of TEN THOUSAND (\$10,000.00) DOLLARS and which is assessable equally to all Owners but which is less expensive than replacing these improvements in substantially the same manner as they existed prior to being damaged, or (3) subject to the provisions of Article XIV, to not rebuild and to distribute the available insurance proceeds equally to the Owners and mortgagees of the Lots as their respective interests may appear.

(d) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligence or wilful misconduct of said Owner or of his family and guests, both minor and adult. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be jointly and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Common Assessments.

## ARTICLE XIII

Insurance

Section 1. Common Area. The Association shall keep all buildings, improvements and all 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 or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of and proceeds 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 included in the Common Assessments made by the Association.

Section 2. Insurance Obligations of the Association. ~~The Association shall insure each entire dwelling unit, including the structural portions of the dwelling unit, against loss or damage by fire or by any other casualty,~~ under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by any Mortgagee of the residence. All such insurance shall be for the full replacement value of the dwelling unit and for the benefit of the Owner.

Section 3. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area facilities or other improvements in the Properties insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XII of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lot Owners to cover the additional

cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessments made against such Lot Owner in accordance with the provisions of Article VI, Section 5 of this Declaration. In the event of total destruction of all of the improvements in the Properties, the proceeds of the insurance carried by the Association shall be divided proportionately among the Lot Owners, such proportion based upon the original base sales price of each improved lot at the time it was initially sold by the Declarant, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

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

Section 5. Liability Insurance. The Association shall obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in the amount of \$1,000,000.00 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other. Such insurance shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of a Lot Owner because of negligent acts of the Association or other Lot Owners.

The Association shall obtain liability coverage on members of the Board of Directors for negligent conduct.

Section 6. Fidelity Coverage. The Association shall obtain fidelity coverage against dishonest acts on the part

of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Lot Owners. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount sufficient to provide protection which is in no event less than one and one-half (1 1/2) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

Section 7. Other Insurance and General. The Association may also obtain, through the Board of Directors, Workman's Compensation Insurance and other liability insurance as it deems desirable, insuring each Lot Owner and the Association, Board of Directors and Manager from liability in connection with the Common Area and the premiums for which are Common Expenses including in the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of a Lot Owner because of the negligent acts of the Association or other dwelling unit Owners.

All policies shall be reviewed at least annually by the Board of Directors and the limits increased at its discretion.

Notwithstanding any other provision herein, the Association shall continuously maintain in effect such casualty, flood and liability and bonds and other insurance meeting the requirements for planned unit developments established by the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and the Federal Home Loan Mortgage Corporation (FHLMC), so long as there are any mortgages on any of the Properties.

Section 8. Hazard Insurance. Each Owner shall be responsible for hazard insurance on the contents of his property.



## ARTICLE XIV

Mortgage Protection Clause

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

(a) Each first mortgagee of a mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the mortgagor of such Lot in the performance of such mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default;

(b) Each Owner, including every first mortgagee of a mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided in such mortgage, or by foreclosure of such mortgage or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal".

(c) Each first mortgagee of a mortgage encumbering any Lot which obtains a title to such Lot pursuant to the remedies provided in such mortgage or by foreclosure of such mortgage, shall take title to such Lot free and clear of any claims of unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the mortgagee.

(d) Unless at least sixty seven percent (67%) of first mortgagees (based upon one vote for each mortgage owned), and owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Area and the improvements thereon, directly or indirectly which are owned by the Association. (The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association or the transfer of the Common Area or improvements to an unincorporated association of the Owners in accordance with the Articles of Incorporation of the Association shall not be deemed a transfer within the meaning of this clause);

(2) change the method of determining the obligations, assessments, due or other charges which may be levied against a Lot Owner;

(3) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design of the exterior appearance of the dwelling units, the maintenance of common property party walks, party walls or common fences and driveways or the up-keep of lawns and plantings in the Properties;

(4) fail to maintain fire and extended coverage on insurance Common Area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement costs);

(5) use hazard insurance proceeds for losses to any Common Area property for other than the repair, replacement or reconstruction of such improvement;

(e) First mortgagees shall have the right to examine the books and records of the Association during normal business hours.

(f) All first mortgagees shall be given: (1) thirty (30) days written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association and prior to the effective date of any termination of an agreement for professional management of the Properties following a decision of the Owners to assume self-management

of the Properties; and (2) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds TEN THOUSAND (\$10,000.00) DOLLARS and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Properties;

(g) 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 Common Area property and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property and the first mortgagee making such payments shall be owed immediate reimbursement therefor from the Association;

(h) First mortgagees, pursuant to their mortgages, shall have priority over unit Owners in case of a distribution of insurance proceeds or condemnation awards for losses to or taking of the Common Area property.

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first mortgages encumbering Lots with dwelling units thereon. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their dwelling units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

Neither this Declaration nor the Articles of Incorporation nor the Bylaws of the Association will be amended in such a manner that the rights of any first mortgagee will be adversely affected.

General Provisions

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

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

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

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

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

(e) A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws shall not affect or impair the lien or charge of any bona fide first mortgage or Deed of Trust made in good faith and for value on any residential Lot or the improvements thereon, provided, however, that any subsequent Owner of such property

shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a Trustee's Sale or otherwise.

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

Section 3. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, perpetually, unless otherwise provided by an appropriate amendment.

Section 4. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of community recreational facilities and the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 5. Annexation. There shall be no annexation of additional territory to the Properties.

Section 6. Amendments. Except as provided herein, this Declaration may be amended only by the affirmative vote or written consent of the Owners holding a majority of the voting power of each class of members; provided, however, that the prior written approval of at least sixty-seven percent (67%) of all first mortgagees must be obtained also, before Article XIV may be amended. Notwithstanding the foregoing, prior to the sale of the first Lot in the Properties, Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification in accordance



with the laws of the State of Utah and subject to Article XV, Section 6 of this Declaration. For purposes of this Declaration, the sale shall be deemed to be the date upon which a Deed conveying a Lot is recorded in the office of the Box Elder County Recorder.

Provided, further however, this Declaration shall not be amended in such a manner that the rights of any first mortgagee will be adversely affected.

Section 7. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public or for any public use.

Section 8. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 9. Reservation of Easements. Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners for the control, maintenance and repair of the utilities of adjoining Lot Owners. Declarant expressly reserves, for the benefit of all of the real property in the Properties and the Owners, reciprocal easements of access, ingress and egress over all Lots and over the Common Area, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, for maintenance and repair of any dwelling. Such easements may be used by Declarant, its successors, purchasers and all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Properties, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere

with the established drainage pattern over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provisions for drainage in the event he changes the established drainage over his Lot. For purposes of this Declaration, "established drainage" on any Lot is defined as the drainage pattern and facilities in existence at the time that such Lot is conveyed to a purchaser from Declarant. In the event that any dwelling unit encroaches upon the Common Area and facilities as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Declarant and the Lot Owners of each Lot on which there is constructed a dwelling unit along or adjacent to said Lot shall have an easement appurtenant to said Lot over the Lot line to and over the adjacent Lot, for the purposes of accommodating any natural movement or settling of any dwelling unit located on said Lot, any encroachment of any dwelling unit due to minor engineering or construction variances and any encroachment of eaves, roof overhangs and architectural features as part of the original construction of any dwelling unit located on said Lot. Declarant reserves the right to grant exclusive easements over certain limited portions of the Common Area, if necessary, to certain Lot Owners for yard purposes, as required by the Federal Housing Administration. Declarant further expressly reserves, for the benefit of the Association, its agents and employees, easements of access, ingress and egress over the Lots and Common Area, for the purpose of maintaining, repairing and installing sewer pipelines and laterals in accordance with the provisions of this Declaration and as otherwise provided by law.

Section 10. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered as provided either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice or to the residence of such person if no address has been

given to the Association. Such address may be changed, from time to time, by notice in writing to the Association.

Section 11. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or his agents or employees in connection with the Properties or any portion of the Properties, or any improvements thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulations thereof as a planned development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the Utah Land Sales Practices Administration or Brigham City.

#### ARTICLE XVI

##### Party Walls

There exists party walls between structures on the Lots. The general common law rules with respect thereto apply. Neither Owner of a party wall may interfere with it to the detriment of the other, or do anything to its structure that will weaken it. The common party walls shall not be removed, remodeled, damaged or changed in any manner whatsoever by either Owner.

Damages to or destruction of the party walls shall be repaired or replaced at the common, equal expense of each Owner.

Declarant has executed this Declaration on the day and year first above written.

EAGLE ESTATES, a Utah General Partnership

By: 



STATE OF UTAH                    )  
                                      : ss.  
COUNTY OF WEBER                )

The foregoing instrument was acknowledged before me this  
3 day of January, 1992 by Troy M Miller,  
a partner in EAGLE ESTATES, a Utah General Partnership.

Ruth Clement  
NOTARY PUBLIC

