

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS,
AND RESTRICTIONS

FOR

ARLINGTON PLACE

A Planned Unit Development

ENT 15631 BK 3898 PG 98
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1996 FEB 27 12:34 PM FEE 116.00 BY MB
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THIS DECLARATION (hereinafter the "Declaration") is made and executed this 9th day of February, 1996, by North Ridge Company, a Utah corporation, (hereinafter the "Declarant"), in its capacity as the owner of the below described real property and as the developer of Arlington Place, a Planned Unit Development, Provo, Utah, (hereinafter the "Project").

RECITALS

WHEREAS, the Declarant is the owner of the real property located in Provo, Utah County, Utah, and more particularly described on Exhibit A, (hereinafter the "Land").

WHEREAS, Declarant intends to develop the Land as a residential planned development with townhomes known and to be known as Arlington Place (the "Project"); and

WHEREAS, the Declarant will construct certain buildings and other improvements on the Land as shown on the Plat referred to below.

WHEREAS, Declarant desires to provide for the preservation of values and amenities within the project and for the maintenance of roadways, open spaces, and any other common areas or facilities to be developed as part of the Project; and to this end desires to subject the Land to the obligations, servitudes, easements, charges, liens and other provisions (herein all together called "covenants and restrictions") set forth in this Declaration, each and all of which is and are for the benefit of the real property and the subsequent owners thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Project to create an Association to which will be conveyed title to all of the Common Areas and to which will be delegated and assigned the powers and duties of maintaining and administering the Common Areas, administering and enforcing the provisions of this Declaration, and disbursing the charges and assessments herein created; and

WHEREAS, Declarant has caused to be formed Arlington Place Homeowners Association, Inc. a Utah non-profit corporation without capital stock (the "Association") for the purposes of carrying out the aforesaid powers, duties and obligations;

DECLARATION

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NOW, THEREFORE, Declarant hereby declares that the Land is and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to the covenants and restrictions hereinafter set forth, all of which, as declared and agreed shall be in aid of the Project's plan of development; shall protect the value of the Land and the improvements comprising the Project; shall run with and bind the Land and all persons having any right, title or interest therein, their heirs, successors and assigns; and shall inure to the benefit of and be enforceable by Declarant, its successors and assigns, the Association, and any person owning or acquiring an interest in the Land.

ARTICLE I.

DEFINITIONS

Unless the Declarant shall clearly indicate otherwise, the following terms as used in this Declaration shall have the meanings set forth in this article:

1.1 Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the office of the Division of Corporations and Commercial Code, State of Utah, as amended from time to time.

1.2 Assessment shall mean the amount which is to be levied and assessed against each Lot and paid by each Owner to the Association for Association expenses.

1.3 Association shall mean ARLINGTON PLACE HOMEOWNERS ASSOCIATION, Inc., a Utah nonprofit corporation, and its successors and assigns.

1.4 Board shall mean the Board of Trustees of the Association.

1.5 Bylaws shall mean the Bylaws of the Association, as amended from time to time.

1.6 Common Areas shall mean all portions of the Project except the Lots and Units, and shall include all property owned by the Association for the common use and enjoyment of the Owners including, but not limited to, the following:

(a) those common areas and facilities specifically set forth and designated as such on the Plat;

(b) all private, undedicated roadways and driveways, including without limitation Arlington Drive, parking, open spaces, landscaped areas, yards, and fences;

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(c) all easements appurtenant to the Land, including those reserved for the common use of the Association under this Declaration;

(d) all structural common areas, including, but not limited to footings, foundations, columns, girders, beams, supports, roofs, and bearing walls; all exterior surfaces, exterior or common stairs, stairways, walks and walkways; all installations of central services or facilities for power, light, gas, water, sewer, telephone and other utilities; and all other apparatuses, facilities and installations for common use.

1.7 Declarant shall mean North Ridge Company, a Utah corporation, and its successors and assigns, if any, as developers of the Project.

1.8 Declaration shall mean this Declaration of Covenants, Conditions and Restrictions of Arlington Heights, a planned unit development, and amendments or modifications hereto.

1.9 Development shall mean Arlington Heights, a planned unit development, as it exists at any given time.

1.10 Limited Common Areas and Facilities or Limited Common Areas shall mean any exterior balconies and any other Common Areas designated for exclusive use by the Owner of a particular Lot or Unit, whether designated herein or on the Plat. Limited Common Areas that are identified on the Plat with the same number or other designation by which the Lot or Unit is identified thereon shall be for the exclusive use of the Owner of the Lot or Unit bearing the same number or designation. Limited Common Areas shall include all party walls between Lots or Units which walls shall be treated as Limited Common Areas designated for the exclusive use of the particular Lots or Units which are separated by such walls even though not so designated on the Plat.

1.11 Lot shall mean and refer to any of the separately numbered and individually described parcels of land within the Project as designated on the Plat.

1.12 Manager shall mean and refer to the person, persons, corporation, or other entity engaged by the Association to manage the affairs of the Project.

1.13 Mortgage shall mean any recorded mortgage or deed of trust encumbering a Lot; and Mortgagee shall mean any mortgagee under a mortgage or a beneficiary under a Deed of Trust.

1.14 Owner shall mean any person or entity, including the Declarant, who is the owner of record or the contract purchaser of a fee or undivided fee interest in a Lot. Notwithstanding any applicable theory of law relating to Mortgages, Owner shall not mean or refer to any Mortgagee unless such Mortgagee has acquired fee title pursuant to foreclosure, or any sale,

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conveyance or other proceeding in lieu of foreclosure. If more than one person or entity shall be the Owner of a particular Lot, then all of such persons or entities shall be jointly and severally liable for all obligations and responsibilities of an Owner hereunder.

1.15 Plat shall mean the plat covering a portion of the Property and which is entitled Arlington Place, Phase I, a Planned Unit Development, Provo, Utah County, Utah, prepared and executed by Declarant and is filed for record in the office of the Utah County Recorder concurrently with this Declaration. Plat shall also mean any of the other plat(s) covering the remaining portion of the Property and which will be entitled respectively Arlington Place, Phase II, III, IV and V, a Planned Unit Development, Provo, Utah County, Utah, at the time the same are filed for record in the office of the Utah County Recorder.

1.16 Property shall mean all Land covered by this Declaration, including the Common Areas and Lots, all buildings, improvements and other structures thereon, all easements, rights and appurtenances belonging thereto and all personal property intended for use in connection therewith.

1.17 Unit shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit (but designated and designed to serve only that Unit) such as decks, appliances, electrical receptacles and outlets, air conditions units, but specifically excluding exterior surfaces of Units (and/or the buildings in which the Units are located).

ARTICLE II.

SUBMISSION OF PROPERTY AND RESERVATION OF RIGHTS

2.1 Submission of Property. The Declarant hereby submits and subjects the real property located in Provo, Utah County, Utah and more particularly described on **Exhibit A**, attached hereto and by reference incorporated herein, the buildings, improvements, and other structures located thereon, all easements, rights and appurtenances, and all other Property, as defined herein, to the provisions of this Declaration and declares that all such real property, buildings, improvements, structures, easements, rights, appurtenances and other Property are and shall be held, possessed, occupied, used, leased, encumbered, transferred, sold, conveyed, devised and inherited subject to the provisions of this Declaration.

2.2 Reservation of Rights in Property. Declarant reserves, however, such easements and rights of ingress and egress over, across, through and under the above described real property and any improvements (including buildings or Units) now or hereafter constructed thereon as may be reasonably necessary for Declarant (a) to construct and complete each of the buildings and Units and all of the other improvements, structures, utilities and facilities described in this Declaration or in the Plat recorded concurrently herewith or which shall hereafter be recorded and

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all other things reasonably necessary in connection therewith; (b) to construct and complete each of the Residences and all of the other improvements, structures, utilities and facilities, including Common Areas of Arlington Heights, a planned unit development (hereinafter Arlington Heights) as set forth in the Declaration or Plat thereof, © to construct and complete on the Property, or any portions thereof, such other improvements, structures, facilities or landscaping designed for the use and enjoyment of the Owners as Declarant may reasonably deem necessary or appropriate; and (d) such marketing, sales, management, promotional or other activities designed to accomplish or facilitate the management of the Common Areas or the sale of the Lots or Units hereof or of the Lots of Arlington Heights owned by Declarant. With the exception of any easements described in Section 4.05, this reservation shall, unless sooner terminated in accordance with the terms hereof, expire ten (10) years after the date on which this Declaration is filed for record with the County Recorder of Utah County.

2.3 Arlington Drive Maintenance Agreement. Declarant, for and in behalf of Arlington Place and the Property thereof and of Arlington Heights and the real property thereof, has entered into a maintenance agreement regarding Arlington Drive (hereinafter the Arlington Drive Maintenance Agreement), which is incorporated herein by reference. The Property shall be entitled to the easements, rights, interests and estates and shall be subject to the duties, responsibilities, liabilities and obligations as set forth in the Arlington Drive Maintenance Agreement.

2.4 Covenants to Run with Land. This Declaration and all the provisions hereof are declared to be and shall constitute covenants which run with the land or equitable servitudes and shall be binding upon and inure to the benefit of Declarant and any and all parties who have acquired or hereafter acquire any interest in a Lot or in the Common Areas, their respective grantees, transferees, mortgagees, tenants, heirs, devisees, personal representatives, successors and assigns. Each present and future Owner, Mortgagee, tenant, or occupant of a Lot or Unit shall be subject to and shall comply with the provisions of this Declaration and the provisions of any rules and regulations contemplated by this Declaration. Each party acquiring any interest in a Lot or Unit thereby consents to and agrees to be bound by all of the provisions of this Declaration.

ARTICLE III.

BUILDINGS AND IMPROVEMENTS

3.1 Buildings and Improvements. The buildings and other improvements constructed or to be constructed on the Land are described on the Plat. The Project consists generally of fourteen (14) residential buildings ("Buildings") each containing four (4) Lots for a total of fifty-six (56) Lots as shown on the Plat.

3.2 Description of Lots. The Plat contains the Lot number, location, and dimensions of each Lot in the Project and all other information necessary to identify each such Lot.

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3.3 Description of Common Areas. The Plat and this Declaration contain a description of the Common Areas of the Project.

3.4 Description of Limited Common Areas. This Declaration contains a description of the Limited Common Areas which consist generally of any exterior balconies and the party walls between the Units. The Plat may also contain a description of the Limited Common Areas of the Project. The Limited Common Area is identified on the Plat with the same numbers or other designations as the Lots. Each Limited Common Areas is part of or appurtenant to, is reserved for the exclusive use of, and may not be severed from the Lot bearing the same number or other designation.

ARTICLE IV.

NATURE AND INCIDENTS OF OWNERSHIP, PROPERTY RIGHTS AND CONVEYANCES

4.1 Transfer of Title to Common Areas. Concurrent with or immediately following the filing of each Plat, Declarant shall convey to the Association title to the various Common Areas.

4.2 Easement for Use of Common Areas. Each Lot shall have appurtenant thereto a nonexclusive right and easement for use of the Common Areas, which shall, include, without limitation, an easement for ingress to and egress from the said Lot and a right of lateral support of the Unit located on a Lot. Each Lot shall have appurtenant thereto an exclusive right and easement for use of the Limited Common Areas designated for the exclusive use of such Lot. The rights and easements described herein shall pass with the title to each Lot, whether by gift, devise, inheritance, transfer, conveyance, encumbrance, or otherwise and whether or not reference is made thereto and in no event shall such rights and easements be separated from the Lot. No Owner shall bring any action for partition of the Common Areas. The rights and easements described herein shall be for the purposes and uses set forth in this Declaration and shall be subject to such reasonable rules and regulation regarding the use of the Common Areas and Limited Common Areas as the Association shall establish.

4.3 Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Lot or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot or Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any building on the Property, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

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4.4 Easements for Access to Common Areas. Some of the Common Areas are or may be located within the Lots, or may be conveniently accessible only through the Lots. There is reserved hereby an easement of access over, across, through and under each Lot and Unit for access to all Common Areas for the purpose of maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom and for the purpose of emergency repairs to prevent damage to the Common Areas or to another Unit. Use of the easement may be exercised by the Association, or its agents, during reasonable hours and upon reasonable notice, except in an emergency in which event the notice to be given and the hours for access shall be in accordance with the circumstances. Damage to any Lot resulting from such maintenance, repair, emergency repair or replacement of any of the Common Areas or as a result of the emergency repairs on or within another Lot or Unit at the insistence of the Association shall be at the expense of the Association. However, if such damage is the result of the negligence of an Owner, then such Owner shall be financially responsible for such damage. Such damage shall be repaired and the Property shall be restored substantially to the same condition as existed prior to the damage.

4.5 Utility Easements. There is reserved hereby an easement for all pipes, lines, utility lines, cables, wires, optical fiber lines or other similar facilities which traverse, intersect, or underlie the Property, whether such pipes, lines, utilities and facilities are now existing or hereafter constructed and further are subject to an easement necessary for ingress to, egress from, repair, maintenance, and replacement of such pipes, lines, utility lines, cables, wires, optical fiber lines or other similar facilities.

4.6 Easements Deemed Created. All conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

4.7 Title to Lots. Title to a Lot, consisting of a fee simple interest therein, may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah, including, but without limitation, joint tenancy or tenancy in common.

4.8 Description of a Unit. Every deed, mortgage, purchase contract, lease, or other instrument, conveying, encumbering or affecting the title to a Lot shall describe that Lot by the number shown on the Plat with the appropriate reference to the Plat and to this Declaration, as each shall appear on the records of the County Recorder of Utah County, Utah, in substantially the following fashion:

Lot _____, as shown in the Plat for Arlington Place, Phase _____, recorded in the County Recorder of Utah County, Utah, in Book _____, Page _____, SUBJECT TO the Declaration of Easements, Covenants, Conditions and Restrictions of Arlington Place, a Planned Unit Development, recorded in the office of the Utah County Recorder as Entry No. _____, in Book

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_____, at Page _____, (as the same is amended or modified)
TOGETHER WITH a right and easement of use of the Common Areas as described
and provided in the said Declaration and Plat described above.

Whether or not the above form is used in any such instrument, the provisions of this Declaration shall be binding upon and inure to the benefit of any party acquiring an interest in a Lot.

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

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

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

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

(d) The right of the City of Provo, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across the debris basin and along the canal right of way as noted on the recorded plat for any flood control services provided by any governmental or municipal service, or for any maintenance and repair of the canal. Declarant, Owners, as well as subsequent owners of the real property agree to hold Provo City harmless for all activities in relation to providing this service; and

(e) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such condition as may be agreed upon by the Association.

ARTICLE V.

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USE RESTRICTIONS

5.1 Residential Use. Each of the Lots and Units in the Project shall be used for single family housing in compliance with Provo City ordinances. No Lot or Unit shall be used or occupied by any person not falling within the definition of "family" as such term is defined by Section 14.06.020 of the Provo City ordinances as of the date hereof.

5.2 Common Area Use. The Common Areas shall be used only in a manner consistent with the use restrictions applicable to Lots and Units as set forth herein.

5.3 No Alterations or Obstructions to Common Areas. Without the prior written consent of the Association in each specific instance, no Owner shall make or cause to be made any alteration, addition, removal or improvement in or to the Common Areas or any part thereof, or do any act which would impair the structural soundness or integrity of any improvement, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Land. Without the prior written consent of the Association, no Owner or guest shall obstruct the Common Areas or any part thereof, or park any recreational vehicles, including trailers, campers, motor homes, boats and snowmobiles, on the Common Areas. Without the prior written consent of the Association, no Owner shall store or keep any property on the Common Areas or any part thereof.

5.4 Alterations to Lots or Units. No structural alterations to any Lot or Unit shall be made, and no plumbing, electrical or similar work within the Common Areas shall be done, by any Owner without the prior written consent of the Association, except emergency repair.

5.5 Other Restrictions. Nothing shall be done on or kept on or in any Lot, Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by Owner or Owners' invitees; provided, however, that any invitee to the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No obnoxious, destructive, or offensive activities shall be carried on within any Lot or in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. Without the prior written consent of the Association nothing shall be done on or kept on or in any Lot or Unit or in the Common Areas or any part hereof which would result in the cancellation of the insurance on the Common Areas or any part thereof or increase the rate of the insurance on the Common Areas or any part thereof over what the Association, but for such activity, would pay.

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5.6 Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the use of the Project, Lots, Units, Common Areas and the Land, as the same may be adopted, modified, amended and construed by the Association.

5.7 Exception for Declarant. Notwithstanding any other provisions of this Declaration, Declarant shall have the right to use any Lot or Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas, and/or sale of all Lots or Units owned by the Declarant or the Lots owned by the Declarant in Arlington Heights.

ARTICLE VI.

DUTIES AND OBLIGATIONS OF OWNERS

6.1 Maintenance and Repair. Each Owner shall, at his or her sole cost and expense, keep his or her Lot, including, without limitation, interior walls, windows, glass, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean, sanitary and attractive condition, and in a good state of repair, shall be responsible for the maintenance, repair, or replacement of any plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in, or connected with his Unit. Each Owner shall keep the Limited Common Areas designed for use in connection with his or her Lot in a clean, sanitary and attractive condition.

6.2 Assessments. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration.

6.3 Observation of Rules and Regulations. Each Owner shall be responsible for the observance by Owner and any guests or invitees of Owner of the rules and regulations adopted from time to time by the Association.

ARTICLE VII.

PARTY WALLS

7.1 General Rules of Law to Apply. Each wall built or to be built as a part of the original construction of the Units and placed substantially on a dividing line between Lots shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

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7.2 Sharing of Repair and Maintenance. Unless otherwise treated as Common Areas, the cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

7.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Lot thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use; the foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

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

ARTICLE VIII.

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

8.1 Membership. Each Owner, including the Declarant, shall be entitled and required to be a Member of the Association. Upon acquiring title to a Lot, an Owner shall automatically become a member of the Association, and upon ceasing to be an Owner, for any reason, an Owner's membership in the Association shall automatically cease. Each membership in the Association shall be appurtenant to and may not be separated from the Lot to which it relates. No person or entity, other than an Owner, may be a member of the Association. Any sale, transfer, conveyance, devise, encumbrance or other disposition of a Lot shall automatically sell, transfer, convey, devise, encumber or otherwise dispose of the Owner's membership in the Association and the right and obligations appurtenant thereto. The Association shall have two classes of membership: Class A and Class B.

Class A members are all members, with the exception of Declarant, its successors or assigns. The Class B member is Declarant, its successors and assigns. The Class B memberships shall cease and shall be converted to Class A memberships on the happening of either of the following events, whichever occurs earlier:

- (a) conveyance of seventy-five (75%) of the Lots to purchasers, or
- (b) expiration of five (5) years from the conveyance of the first Lot to a purchaser.

8.2 Voting Rights. Each Class A member shall be entitled to one (1) vote per Lot owned by such member on each matter submitted to the vote of the members. The Class B

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member is entitled to three (3) votes per Lot owned by such member on each matter submitted to the vote of the members.

8.3 Multiple Owners of a Lot. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the one (1) vote appurtenant to each Lot held by a Class A member be cast with respect to any issue nor more than the three (3) votes appurtenant to each Lot held by a Class B member be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting or in writing by another Owner of the same Lot, in which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

8.4 Record of Owners. Each Owner shall promptly notify the Association of any change of ownership, contract sale, or encumbrance of a Lot and, if requested by the Association, shall deliver to the Association a copy of any such conveyance document, sale contract or encumbrance. The Association may rely on the information from the Utah County Recorder regarding the Owners and Mortgagees of Lots.

8.5 Board of Trustees. The Board of Trustees of the Association shall be composed of not less than three (3) Trustees. Until termination of the Class B memberships none of such Trustees need be Owners. Upon termination of the Class B memberships, each of the Trustees shall be an Owner (or an officer, director, or agent of an Owner who is not an individual). The term of office of each Trustee shall be one (1) year and each Trustee shall serve until his or her successor is elected.

8.6 Indemnification of Board. Each Trustee shall be indemnified and held harmless by the Owners against all costs, expenses, and liabilities, including, but not limited to attorneys fees, incurred in connection with any proceeding in which such Trustee may become involved by reason of being a member of the Board, except actions arising from the criminal or fraudulent actions or conduct of such Trustee.

8.7 Obligations of the Association. The Association shall have the obligation to do and perform the following for the benefit of the Owners and the maintenance and improvement of the Project.

(a) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others.

(b) The Association shall maintain, repair, replace and landscape the Common Areas and keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. In connection with its duties to maintain and repair Common Areas, the Association will provide

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maintenance and repair upon the exterior surfaces of the Lots (and/or the buildings in which such Lots are located, including, but not limited to, painting, replacing, and caring for roofs, gutters, downspouts, exterior surfaces, window casings and trim and other exterior improvements except glass surfaces.

(c) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(d) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(e) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Manager to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Manager by the Board. Any agreement appointing a Manager shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one (1) year each, renewable by agreement of the parties for successive one (1) year periods. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

8.8 Powers of Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, all powers that have been or may hereafter be conferred by law to nonprofit corporations, all powers as may hereafter be granted to it by its members, and the power to do all things authorized, required or permitted to be done by the Association under the provisions of this Declaration, including, but not limited to the following:

- (a) The Association shall have the power to obtain, contract and pay for:
- (i) the construction, maintenance, repair and landscaping of the Common Areas;
 - (ii) such insurance policies or bonds as may be required by this Declaration or as the Board may deem reasonable or necessary for the benefit of the Association, the Trustees and the Owners;
 - (iii) such utility services for the Common Areas as the Board may deem reasonable and necessary; and

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(iv) such materials, supplies, equipment, furniture and other personal property and such labor and other services as the Board may deem reasonable and necessary to carry out the duties of the Association.

(b) The Association shall have the power to levy and collect assessments as hereinafter provided.

(c) The Association shall have the power to adopt, amend, modify, repeal, construe and enforce reasonable rules and regulations governing among other things the use of the Common Areas, including the roads and utility services, the use of the Lots and Units, and the use and enjoyment of the Property and the conduct of Owners and their guests and invitees on the Project, which rules and regulations shall be consistent with the rights and duties established in this Declaration.

(d) The Association shall have the power, in its own name, and in its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Association, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations. The Association shall also have power to adopt bylaws or rules and regulations regarding the suspension of the rights, including voting rights, of an Owner as a member of the Association during any period of time during which the Owner fails to comply with the rules and regulations of the Association or with Owner's obligations under this Declaration.

(e) The Association shall have the power, without liability to any Owner for trespass or damage, to enter upon any Lot or Limited Common Area for the purpose of maintaining and repairing such Lot or Limited Common Area or any improvement thereon, if for any reason the Owner fails to maintain and repair the Lot, Limited Common Area or improvement as required hereunder.

(f) The Association shall have all other rights, powers and privileges reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.9 Grant of Easements. The Association may grant or create, on such terms as it deems advisable, easements and rights of way over, under, across, and through the Common Areas for roads, streets or other means of access for, utilities, and for such other purposes as reasonably may be necessary or useful for the proper maintenance, use and operation of the Property and the Project.

8.10 Governance of Association. Except as herein set forth, the Association shall be governed by its Articles of Incorporation and Bylaws, and the resolutions adopted by its members or the Board.

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ARTICLE IX.

ASSESSMENTS

9.1 Agreement to Pay Assessments. The Declarant, for each Lot within the Project, and for and as the Owner of the Land and Property and every part thereof, hereby covenants and each Owner of any Lot by the acceptance of a deed or other instrument of conveyance and transfer therefor, whether or not it be so expressed in said deed or other instrument, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration, any special assessment for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article IX.

9.2 Annual Assessments. Annual Assessments shall be computed and assessed against all Lots in the Project based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and Facilities, the furnishing of utility services and other common items to the Lots. Such estimated expenses may include, without limitation, the following: Expenses of management; real property taxes and special assessments on the Common Areas, real property taxes and special assessments levied by governmental authorities against the Lots or Units until the same are separately assessed; premiums for all insurance that the Association is required or permitted to maintain hereunder; common lighting, heating, water and sewer charges, trash collection, repairs and maintenance including repairs and maintenance under Section 8.8(e); wages for Association employees, including fees for a Manager (if any); legal and accounting fees; any deficit remaining from a previous period; creation of reasonable contingency reserve, major maintenance reserve, and/or surplus or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, where such reserve is to be funded by monthly payments rather than extraordinary special assessment; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 9.2 shall be part of the Common Expense Fund.

9.3 Unit Utilities. It is acknowledged that each Unit shall be separately metered for gas, electricity, water and sewer. Costs of gas, electric, water and sewer service shall be paid by each Owner. As determined by the Association, the garbage may be collected jointly for the Project as opposed to separate unit garbage collection. In the event the Association should determine to collect and pay for garbage services for the Project, the cost thereof shall be a common expense. Owners are hereby advised that failure of the Association to pay water, sewer, and garbage bills may result in loss of such service. Common area utilities shall be paid by the Association.

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9.4 Maximum Annual Assessment. Until January 1, 1997 the maximum annual assessment shall be Eight Hundred Forty Dollars (\$840.00) per Lot. 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 maximum 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 of each class of Members, voting in person or by proxy, at a meeting duly called for this purpose.

9.5 Rate and Date of Assessment. The Common Expenses shall be apportioned and assessed to all Owners at a uniform rate, (provided, however that the Association may assess the end units a different rate than the inside units on each building), which shall be in proportion to the number of Lots in the Project; provided, however, that no assessments shall accrue against and Declarant shall not be obligated to pay assessments with respect to any Lots owned by it for any period of time for which Declarant has Class B membership on the condition that Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Class B membership. Each Owner upon conveyance by Declarant of his or her Lot shall be responsible for assessments due thereafter, beginning on the first day of the calendar month following such conveyance.

9.6 Annual Budget. Annual assessments shall be made on a calendar year basis; provided however that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Project. The Association shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment (hereinafter "Annual Assessment") with respect to his Lot not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the calendar year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming calendar year and as the major guideline under which the Project shall be operated during such annual period.

9.7 Payment. Each Annual Assessment shall be due and payable in monthly installments on the 1st day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within (30) days after such date. In addition, in the event that any installment of the Annual Assessment is not paid

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within thirty (30) days of the date such installment becomes due, the Association may, at its option, and upon thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining Annual Assessment installments of the calendar year and all accrued but unpaid interest thereon. Payment of the Annual Assessment installments so accelerated shall be due at the expiration of said thirty (30) day notice period and interest shall accrue on the entire sum at the rate of eighteen percent (18%) per annum from such date until paid in full. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

9.8 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 9.9 below, except that the vote therein specified shall be unnecessary.

9.9 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Trustees on behalf of the Association may, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the members of the Association, special assessments (hereinafter "Special Assessments"), payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or improvements thereon or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source or authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners on the same basis as set forth in Section 9.05 (namely in proportion to the number of Lots in the Project). Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due if not paid within thirty (30) days after such date.

9.10 Reimbursement Assessment on Specific Lot. In addition to the annual assessment and any special assessment authorized pursuant to this article, the Board may levy at any time Reimbursement Assessments (a) on every Lot especially benefitted by any improvement to adjacent roads, sidewalks, planting areas, or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; and (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs. The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such

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improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the special benefit or cause of damage, as the case may be, and such assessment may be made in advance of the performance work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

9.11 Lien for Assessments. All sums assessed to a Lot pursuant to the provisions of this Article IX, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner, and a description of the Lot. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Utah County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. Such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid an amount equal to its existing lien at any foreclosure sale, and to acquire, hold, convey, lease, rent, mortgage or use the Lot the same as the Owner. A release of lien shall be executed by the Association and recorded in the office of the County Recorder of Utah County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

9.12 Subordination of Liens to First Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the date the Mortgage was recorded; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any assessment installment thereafter becoming due.

9.13 Certificate of Payment of Assessments. Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser

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of a Lot, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot; the amount of the current yearly assessment and the portion thereof which has heretofore been paid; credit for advanced payments or prepaid items, including, but not limited to, prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the ten (10) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Lot.

9.14 Notice to and Payment by Mortgagee of Unpaid Assessments. The Association shall report to any Mortgagee or other encumbrancer of a Lot any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such Mortgagee or encumbrancer first shall have furnished to the Association written notice of such encumbrance and a request for notice of unpaid assessments. A Mortgagee or other encumbrancer holding a lien on a Lot may pay, but shall not be required to pay, any amounts secured by the lien created by this Notice, and upon such payment such shall be subrogated to all rights of the Association with respect to such lien, including priority.

9.15 Personal Obligation of Owner. The amount of any Annual, Special Assessment or Reimbursement Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.16 Personal Liability of Purchaser. Subject to the provision of Sections 9.11 and 9.12 a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.17 Lien for Fines. The Association may levy fines against any unit owner who violates any of the provisions of the Declaration of Easements, Covenants, Conditions and Restrictions, or the Articles of Incorporation, By-laws or Rules and Regulations of the Association. Said fines shall be secured by a lien on such Lot and shall be superior to all other liens and encumbrances

on such Lot except only for (a) valid tax and special assessment liens on the Lot in favor of any governmental assessment authority; (b) encumbrances on the Lot recorded prior to the date notice of the lien provided for herein is recorded; and © other annual, special and reimbursement assessments recorded prior to the date notice of this lien is recorded.

ARTICLE X.

ENT 15631 BK 3898 PG 117

INSURANCE

10.1 Hazard Insurance. The Association shall procure and maintain, from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Common Areas and Facilities, including building service equipment and common personal property and supplies, owned by the Association with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Such insurance policy or policies shall name the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

10.2 Liability Insurance. The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies (herein called the "Policy") of public liability insurance to insure the Association, the Board, the Manager and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use to the Common Areas. The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced.

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The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

10.3 Fidelity Insurance. The Association may procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies of blanket fidelity insurance to protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessment on all Lots, plus reserves. The policy or policies shall provide that they may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity insurance which shall provide the same insurance coverage as required of the Association by this Section.

10.4 Worker's Compensation. The Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees of the Association in the amounts and in the forms now or hereafter required by law.

10.5 Additional Insurance. The Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Association shall deem advisable.

10.6 General Requirements. Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:

(a) a waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and

(c) that any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

ARTICLE XII.

MORTGAGEE PROTECTION

ENT 15631 BK 3898 PG 120

12.1 Amendment. No amendment to this Declaration shall affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment or any successor or assign thereof, unless such Mortgagee has consented in writing to such amendment.

12.2 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

(a) there is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within ninety (90) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00;
or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

12.3 Notice of Meetings. Upon request of a Mortgagee, the Association shall give to such Mortgagee of a Lot notice of all meetings of the Association. Each Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

12.4 Right to Examine Association Records. Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

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

12.6 Insurance and Condemnation Proceeds. No provision of this Declaration shall be deemed to grant any Owner any rights in or to a distribution of insurance proceeds or a condemnation award for the loss to or the taking of a Lot or the Common Areas which are prior to the rights of the Mortgagee under its respective Mortgage to such distribution of insurance proceeds or condemnation award.

ENT 15631 BK 3898 PG 119

10.7 Owners' Insurance. Each Owner shall obtain insurance at his or her own expense, providing coverage on Owner's Lot, Owner's personal property and Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officer, servants, employees, agents, invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

ARTICLE XI.

DAMAGE OR DESTRUCTION

11.1 Damage or Destruction to Common Areas. In the event the Common Areas, or any portion thereof, shall be damaged or destroyed, the Association shall take all necessary and appropriate action to effect repair or reconstruction thereof. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Project, or in accordance with such other plans and specifications as the Owners may approve, provided that in the latter event the location of the Lots and of any buildings shall be substantially the same as prior to the damage and destruction.

11.2 Funds for Repair and Reconstruction. If the proceeds of any insurance shall be insufficient to pay the estimated or actual costs of repair or reconstruction, the Association may levy, in advance, one or more Special Assessments sufficient to pay for such estimated or actual costs of repair or reconstruction. Such Special Assessment shall be levied and collected in accordance with the provisions of Section 9.09. The costs of repair and reconstruction shall be deemed disbursed first from any insurance proceeds, and then from any Special Assessment. Any unexpended portion of the Special Assessment shall be returned to the Owners in proportion to their contributions thereto.

11.3 Election not to Repair or Reconstruct. In the event the Project is destroyed or damaged to the extent of more than seventy-five percent (75%) of the value thereof, then the Owners, each owner subject to the consent of their respective Mortgagees, who own at least eighty percent (80%) of the Lots in the Project may elect to not repair, rebuild or reconstruct the Project. Such election shall be made at a duly called meeting of the members of the Association which is held not more than one hundred (100) days after the date of the damage or destruction. If the Owners shall so elect, then the Project shall not be repaired, rebuilt or reconstructed, but shall be disposed as soon as reasonably practicable after such election.

ARTICLE XIII.

ENT 15631 BK 3898 PG 121

MISCELLANEOUS

13.1 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the registered agent, or any officer or Trustee of the Association.

13.2 Amendment of this Declaration. The Owners at any time, and from time to time, have the right to amend this Declaration and/or the Plat upon the written approval of the Owners of not less than two-thirds of the Lots. Any such amendment shall be by an instrument duly recorded with the County Recorder of Utah County, Utah.

13.3 Declarant's Rights Assignable. Declarant's rights under this Declaration or in any way relating to the Property or the Project may be assigned.

13.4 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with, or to obtain redress for violation of this declaration; (a) Declarant, so long as it has any interest in any of the Property; (b) any Owner; (c) the Association; (d) any Mortgagee; or (e) Provo City. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys fees.

13.5 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the singular, and the use of any gender shall include all genders.

13.6 Severability. If any of the provisions of this Declaration or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.

13.7 Topical Headings. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning, or intent of this Declaration of any paragraph or provisions hereof.

13.8 Effective Date. This Declaration, any Plat and any amendment or supplement to either, shall take effect upon the recording thereof in the office of the County Recorder of Utah County, Utah and shall remain in effect until terminated by the recording of an instrument executed and consented to in writing by all Owners and Mortgagees of Lots affected thereby in accordance with the provisions of Section 13.02.

13.9 Conflict. In case any provisions shall conflict with Utah law, Utah law shall be deemed to control. ENT 15631 BK 3898 PG 122

EXECUTED by Declarant on the day and year first above written.

NORTH RIDGE COMPANY
a Utah Corporation

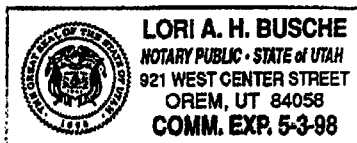
By: L. Wayne Ross
L. Wayne Ross, President

STATE OF UTAH)

) :ss

COUNTY OF UTAH)

On the 9th day of February, 1996 personally appeared before me L. Wayne Ross, who being by me duly sworn did say, for himself, that he, the said L. Wayne Ross is the President of North Ridge Company, a Utah corporation, and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said L. Wayne Ross duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.



Lori A. Busche
Notary Public

EXHIBIT "A"

ENT 15631 BK 3898 PG 123

Real Property located in Provo, Utah County, Utah, and more particularly described as follows:

BEGINNING at a point North 00°43'43" West 674.717 feet and North 89°16'17" East 499.263 feet from the West Quarter Corner of Section 5, Township 7 South, Range 3 East, Salt Lake Base and Meridian and running thence North 57°17'27" West 154.168 feet to the beginning of a 28.000 foot radius curve to the right (Bearing to center is North 32°42'33"); Thence along the arc of said curve 36.886 feet (Delta = 75°28'42") to a point on a 307.000 foot radius reverse curve (Bearing to center is North 71°48'45"); Thence along the arc of said curve 98.165 feet (Delta = 18°19'15"); Thence North 0°08'00" West 296.127 feet to the beginning of a 241 foot radius curve to the right (Bearing to center is North 89°52'00" East); Thence along the arc of said curve 153.855 feet (Delta = 36°34'40") to a 255.120 foot radius compound curve (Bearing to center is South 53°33'20" East); Thence along the arc of said curve 409.542 feet (Delta = 91°58'34") to a 307.000 foot radius reverse curve (Bearing to center is North 38°25'14" East); Thence along the arc of said curve 31.126 feet (Delta = 05°48'33") to a point on a 35.000 foot radius curve to the right (Bearing to center is South 71°23'55" West); Thence along the arc of said curve 16.683 feet (Delta = 27°18'35") to a 114.000 foot radius reverse curve (Bearing to center is South 81°17'13" East); Thence along the arc of said curve 90.187 feet (Delta = 45°19'39"); Thence South 36°36'52" East 5.503 feet to the beginning of a 100.000 foot radius curve to the right (Bearing to center is South 53°23'08" West); Thence along the arc of said curve 124.991 feet (Delta = 71°36'52"); Thence South 35°00'00" West 542.356 feet to the beginning of a 35.000 foot radius curve to the left (Bearing to center is North 55°00'00" West); Thence along the arc of said curve 31.056 feet (Delta = 50°50'21") to the point of beginning.
Containing 251,442 sq. ft. or 5.7723 acres.

TOGETHER WITH an undivided three-fourth (3/4) interest (the other one-fourths (1/4) interest being held by Arlington Heights, a planned unit development) in and to Arlington Drive as set forth and shown on the Plat of Arlington Place, a planned unit development, and which Arlington Drive is more particularly described as follows:

BEGINNING at a point along the north right-of-way of Arlington Drive, which point is North 37°36'09" East 841.22 feet from the West Quarter Corner of Section 5, Township 7 South, Range 3 East, Salt Lake Base & Meridian, and running thence along said right of way North 57°17'27" West 12.91 feet to the beginning of a 35 foot curve to the left (Bearing to center North 4°09'39" West); thence along the arc of said curve 31.06 feet (Delta = 50°50'21"); thence North 35°0'0" East 542.36 feet to the beginning of a 100 foot curve to the left (Bearing to center North 55°0'0" West); thence along the arc of said curve 124.99 feet (Delta = 71°35'52"); thence North 36°36'52" East 5.50 feet to the beginning of a 114 foot curve to the right (Bearing to the center North 53°23'08" East); thence along the arc of said curve 90.19 feet to the beginning of a 35 foot curve to the left (Bearing to center North 81°17'13" West); thence along the arc of said curve 16.69 feet to a point along the South right-of-way of Seven Peaks Boulevard, which said point is along a 307 foot curve to the left (Bearing to center North 32°36'39" East); thence along said right-of-way which is along the arc of said curve 64.00 feet to the beginning of a 33 foot curve to the left (Bearing to center South 60°31'47" West); thence along the arc of said curve 57.75 feet to the beginning of a 86 foot curve to the left (Bearing to center South 60°31'47" West); thence along the arc of said curve 10.72 feet; thence South 36°36'52" East 5.50 feet to the beginning of a 128 foot curve to the right (Bearing to center South 53°23'08" West); thence along the arc of said curve 159.99 feet; thence South 35°0'0" West to the beginning of a 35 foot curve to the left (Bearing to center South 55°0'0" East); thence along the arc of said curve 33.85 feet to a point along the north right-of-way of Arlington Drive; thence North 57°17'27" West 29.16 feet along said right-of-way to the point of beginning.
Containing 23,325 sq.ft. or 0.535 acres

BASIS OF BEARING: Utah State Plane Coordinate System, Central Zone.