After recordation, return to:

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DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

EAST MOUNTAIN

A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS DECLARATION (the "Declaration") is made this 16 day of December 1994 by **EAST MOUNTAIN DEVELOPMENT, L.C.,** a Utah limited liability company (the "Declarant"), in its capacity as the owner and developer of East Mountain, an Expandable Planned Unit Development, Provo, Utah.

ARTICLE I

PURPOSE AND EFFECTUATION

1.01 Purpose. The purpose of this instrument is to provide for the preservation of the values of both Lots and Common Areas within East Mountain, a Planned Unit Development in Provo, Utah (the "Development"), and for the maintenance of the Common Areas therein.

1.02 Effectiveness. From and after the effective date hereof: (a) Each part of the Development and each Lot and improvement constructed thereon lying within the boundaries of the Development shall constitute but constituent parts of a single Planned Unit Development; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the Plat, together with such additional Lots and Common Areas as may come into existence pursuant to the provisions hereof relating to annexation or expansion of the Development; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plat of the Development shall consist of the instrument which is identified as Plat "A" (Amended), East Mountain, A Planned Unit Development, Provo, Utah, and filed for record concurrently herewith in the office of the Utah County Recorder, Provo, Utah, as the same may be amended, and any subsequent plats which may be filed for record pursuant to the provisions hereof relating to annexation or expansion of the Development.

ARTICLE II

DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

2.01 Additional Land shall, at any point in time, mean all of the land in Provo City, Utah County, State of Utah, set forth and described in Exhibit A, attached hereto and made a part hereof.

2.02 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.

2.03 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.

2.04 Association shall mean **EAST MOUNTAIN OWNERS ASSOCIATION**, a Utah nonprofit corporation, and its successors and assigns.

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

2.06 Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles X, XI and XII.

2.07 Common Areas shall mean those parcels of real property within the Development owned by the Association for the common use, benefit and enjoyment of the Owners such as open spaces, landscaping, entry statements, median landscaping, structural common areas, if any, R.V. parking, jogging paths, and the like, together with all easements appurtenant thereto.

2.08 Declarant shall mean **EAST MOUNTAIN DEVELOPMENT, L.C.**, a Utah limited liability company, its successors and assigns, if any, as developers of the Development.

2.09 Declaration shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of East Mountain, A Planned Unit Development (Expandable), Provo, Utah County, Utah" as the same may be supplemented or amended from time to time.

2.10 Development shall mean the Planned Unit Development known as East Mountain as it exists at any given time.

2.11 Lot shall mean and refer to any of the separately numbered and individually described parcels of land within the Development as designated on the Plat intended for single family residential use.

2.12 Managing Agent shall mean any person or entity appointed or employed as Managing Agent by the Association.

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

2.14 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

2.15 Plat shall mean and refer to the subdivision plat covering the Property entitled Plat "A" (Amended), East Mountain, A Planned Unit Development, Provo, Utah County, Utah", prepared and certified to by Robert D. Gunnell (a duly registered Utah Land Surveyor holding Certificate No. 142870), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County, Utah concurrently with this Declaration. Such term shall also include any subdivision plat or plats

pertaining to all or any portion of the Additional Land as and when the same is annexed and added to the Development pursuant to the annexation provisions of Article III of this Declaration.

2.16 Property shall mean all land covered by this Declaration, including Common Areas and Lots and other land annexed to the Development as provided in this Declaration. The initial Property shall consist of the land described in Section 3.01 of Article III hereof.

2.17 Reimbursement Assessment shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner or his Lot and any improvements thereon into compliance with the provisions of this Declaration, the Articles, Bylaws or rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provisions of this Declaration.

ARTICLE III

PROPERTY DESCRIPTION AND ANNEXATION

3.01 Submission. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property in the City of Provo, Utah County, State of Utah:

> Commencing at a point which is South 1°11'42" East 444.23 feet and South 57°08'00" West 541.28 feet from the Southeast Corner of Section 17, Township 7 South, Range 3 East, Salt Lake Base & Meridian; thence as follows: South 57°08'00" West 223.53 feet; thence North 38°24'00" West 485.45 feet; thence North 48°00'23" West 246.77 feet; thence 43.80 feet along the arc of a 25.00 foot radius curve to the left, chord bearing North 81°48'23" East, chord length 38.41 feet; thence 101.57 feet along the arc of a 164.00 foot radius curve to the left, chord bearing North 13°52'34" East, chord length 99.96 feet; thence North 86°07'51" East 72.00 feet; thence North 48°18'18" East 137.49 feet; thence South 24°32'39" East 40.49 feet; thence South 47°09'59" East 215.00 feet; thence South 42°46'40" East 35.80 feet; thence South 51°36'00" West 117.35 feet; thence South 38°24'00" East 267.38 feet; thence 36.86 feet along the arc of a 25.00 foot radius curve to the left, chord bearing South 80°38'00" East, chord length 33.61 feet; thence North 57°08'00" East 41.02 feet; thence South 32°52'00" East 176.00 feet to the point of beginning. Area = 3.99 acres.
>
> TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat.
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> RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (excluding buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or

landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.

3.02 Division into Lots. The Development is hereby divided into fourteen (14) Lots, numbered as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc., all as set forth in this Declaration.

3.03 Annexation by Declarant. Declarant may, from time to time, expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following Section 3.04, the annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Utah County, Utah, of a Plat of such Additional Land signed by the owner thereof and of a supplemental declaration ("Supplemental Declaration") which (a) is signed by the then owner(s) of such Additional Land as Declarant; (b) describes the land to be annexed; (c) declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and (d) sets forth such additional limitations, restrictions, easements, covenants and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment or supplement thereto.

3.04 Limitation on Annexation. Declarant's right to annex land to the Development shall be subject to the following limitations:

(a) The annexed land must be part of the Additional Land set forth and described herein;

(b) Declarant shall not effectuate any annexation of land which would cause the total number of Lots existing in the Development to exceed one hundred ninety-three (193);

(c) The holder of each mortgage, deed of trust or other security device affecting any part of the Additional Land being annexed into the Development must consent, through appropriate instruments recorded in Utah County, Utah, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration relates;

(d) The Additional Land added to the Development must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with all residential improvements, Lots and uses being similar in concept to those in Plat "A" of the Development; provided, however, that in each succeeding phase of the Development the architectural style of the residential improvements within such phase shall be in harmony with that of prior phases, subject always to final approval of the Architectural Control Committee as set forth herein;

(e) All Common Areas covered by the Supplemental Declaration designated on the Plat related thereto shall be conveyed to the Association pursuant and subject to the provisions of Section 5.03 of this Declaration; and,

(f) Declarant's right to annex land to the Development shall expire seven (7) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

3.05 No Obligation to Annex or Develop. Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article, shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant, including Exhibit A to this Declaration.

3.06 Other Annexation. Anything herein to the contrary notwithstanding, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Development and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3.04 of this Article III shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordations and comply with all the other requirements referred to in Section 3.03 of this Article III.

ARTICLE IV

DUTIES AND OBLIGATIONS OF OWNERS

4.01 Maintenance and Repairs. Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon, including landscaping, in good repair at all times. In the event of the damage or destruction of any residential improvements, the Owner of the Lot on which such improvement is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. The painting or repainting, remodeling, rebuilding or modification of any residence exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.

4.02 Insurance. Each Owner shall procure and maintain in force hazard insurance on residences and personal contents and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances, mortgage requirements, etc.

4.03 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time.

4.04 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration, following such transfer.

ARTICLE V

PROPERTY RIGHTS AND CONVEYANCES

5.01 Easement Concerning Common Areas. Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

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

> Lot No. _____ as identified in the Plat recorded in the office of the Utah County Recorder as Entry No. _____, and Map Filing No. _____contained within Plat _____ of East Mountain, A Planned Unit Development, SUBJECT TO the "Declaration of Easements, Covenants, Conditions and Restrictions of East Mountain, A Planned Unit Development (Expandable)," recorded in the office of the Utah County Recorder in Book _____, at Page _____, as Entry No. _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

5.03 Transfer of Title to Common Areas. Concurrent with, or within a reasonable time following, the recordation of this Declaration and the Plat, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities.

5.04 Limitation on Easement. Each Lot's appurtenant 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 reasonable rules and regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all of the Owners;
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> (b) 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 Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and
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> (c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) the holder of each and every Mortgage that encumbers any Lot and (ii) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

5.05 Easements for Encroachments. If any structure or residential improvement (including without limitation, roof overhangs) constructed on any Lot whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same

configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly different location than its predecessor shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

ARTICLE VI

USE RESTRICTIONS

6.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and residential improvements set forth herein.

6.02 Residential Use. The Property is zoned and is restricted to single family residential use pursuant to applicable provisions of Provo City Ordinances. Each Lot, residential improvement and Owner are subject to the uses and restrictions imposed by such zoning. Lot or residential improvement constructed thereon shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

6.03 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 11.03 of this Declaration:

(a) No Lot or residential improvement thereon shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the Provo City Ordinances as of the date hereof.

(b) No Lot or residential improvement thereon or any part thereof shall be used or occupied except as a single family detached residence, or a single family attached twin home.

(c) No lease of any Lot and residence shall be for less than the whole thereof.

(d) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including leash laws, adopted by the Board pursuant to Section 11.03 of this Declaration.

(e) No parking of vehicles or boats of any kind on the streets or parking areas within the Development shall be permitted except as set forth in rules and regulations adopted by the Board pursuant to Section 11.03 of this Declaration.

(f) No outside television or radio aerial or antenna, or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any residential improvement except pursuant to written approval of the Architectural Control Committee pursuant to rules and regulations adopted by it and/or as set forth in this Declaration.

(g) No residential improvement constructed on any Lot within the Development shall (i) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (ii) contain a swamp cooler.

6.04 Dwelling Sizes. The ground floor area of the main structure, exclusive of garage, basement, or open porches, shall not be less than 1,100 square feet for a one-story dwelling, nor less than 1,450 total square feet (ground floor and above) for a dwelling of more than one story. A dwelling of more than one story shall have a minimum area of 350 square feet above the first story. If a dwelling is considered a "split level", the minimum square foot area for the combination of ground floor and the first level up shall not be less than 1,100 square feet.

6.05 Landscaping of Lots. Front yard landscaping at a minimum shall be completed on each Lot prior to occupancy of any residence located thereon. Thereafter:

(a) Landscaping of the rear yard and side yards shall be completed by the Owner within twelve (12) months of occupancy of the residence located thereon.

(b) Each Owner shall maintain the landscaping, trees, shrubs and plants in his Lot in an attractive and well-kept condition at all times.

(c) Failure to comply with the covenants and provisions of Section 6.05 (a) and (b) shall subject an Owner and his Lot to action by the Association and a potential Reimbursement Assessment pursuant to Section 12.11 of this Declaration.

(d) Landscape design of yard areas visible from public streets shall be approved by the Architectural Control Committee.

ARTICLE VII

ARCHITECTURAL CONTROL

7.01 Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

7.02 Submission to Committee. No residential improvement, accessory of or addition thereto, shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any such improvement, accessories or additions shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

7.03 Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Development conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefor meet such criteria, the Committee must approve the same.

7.04 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

7.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

7.06 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article VII.

7.07 Declarant's Obligation. Declarant hereby covenants in favor of each Owner (a) that all Units to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, all Lots and Common Areas of the Development will be located approximately in the locations shown on the Plat.

ARTICLE XIII

INSURANCE

8.01 Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, 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 owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

8.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the County of Utah nor less than $1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, 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. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured. Any such overage procured by the Board shall be without prejudice to the

right of the Owners to insure their personal liability for their own benefit at their own expense.

8.03 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

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

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;

(c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

(d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

8.04 Fidelity Coverage. The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

(a) name the Association as an obligee;

(b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the insured.

8.05 Review of Insurance. The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owners and to the holder of any Mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

8.06 Other Insurance Provisions. All insurance required pursuant to this Article VIII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article VIII to the contrary, any insurance required to be obtained by the Association pursuant to Sections 8.01, 8.02, 8.03 or 8.04 of this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas or risks being insured.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

9.02 Preservation of Common Area. The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Except as contemplated by Section 5.04 (c), unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) the Owners of all Lots, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

9.03 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 sixty (60) 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.

9.04 Notice of Meetings. The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

9.05 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.

9.06 Right to Pay 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.

9.07 No Priority Accorded. No provision of this Declaration gives or may give a Lot Owner or any

other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

9.08 Construction. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES X, XI AND XII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE X

BYLAWS

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

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

10.02 Voting Rights. The Association shall initially have two (2) classes of voting memberships, votes of both classes being of equal value as to all matters:

(a) Class A. Each Owner, including Declarant, shall be a Class A member entitled to one (1) vote for each Lot in which such member holds the interest required for such Class A membership.

(b) Class B. Declarant shall be the only Class B member and shall be entitled to one (1) vote for each Association Class A membership outstanding at such time (in addition to any votes to which it is entitled as a Class A member); provided, however, that such Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) ninety (90) days following the date upon which the total outstanding Class A memberships, other than those held by Declarant, equal the total number of Class B votes to which Declarant is entitled pursuant to the provisions of Section 10.02(b); or

(ii) on December 31, 1999; or

(iii) upon surrender of said Class B membership by Declarant in writing to the Association.

Upon the lapse or surrender of the Class B membership, as provided in Section 10.02(b)(i) and (ii), Declarant shall

be and thereafter remain a Class A member as to each and every Lot in which Declarant holds the interest otherwise required for Class A membership.

10.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Lot be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned 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.

10.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein shall notify the Secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owners and Mortgagees of Lots.

10.05 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

10.06 Annual Meetings. Annual meetings of the membership of the Association shall be held in the month of September of each year beginning in the year 1995 if the Trustees deem it necessary in 1995; otherwise in 1996, on such day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than September may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected trustees of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

10.07 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

10.08 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

10.09 Quorum. Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote.

10.10 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 10.09.

10.11 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all

of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Committee immediately following each annual meeting of Owners at which the new Board has been elected.

(a) President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and records as the Board may direct and he shall, in general, perform all duties incident to the office of secretary of a similar type association.

(d) Treasurer. The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

10.12 Initial Composition of Board. Declarant alone shall have the right to select the initial Board of Trustees which may be composed of less than five (5) Trustees but not less than three (3), none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until the expiration of three (3) years after the first conveyance of title to any Lot Owner or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws set forth in Section 10.13, whichever event shall first occur. The Board may be expanded up to seven (7) Trustees at such time as Declarant deems the same to be warranted by reason of annexation and development of the Additional Land.

10.13 Board of Trustees: Composition, Election, Vacancies. The Association, through its Board of Trustees, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 10.12, the Board shall be composed of five (5) Trustees, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The Owners may increase the maximum number of Trustees to seven (7) at any meeting of Association members. At the first meeting of Owners to elect a Board of Trustees two (2) shall be elected to a three-year term, two (2) to a two-year term, and one (1) to a one-year term. As Trustees' terms expire, new Trustees shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Trustees from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Trustee they were appointed to replace.

10.15 Indemnification of Board. Each of the Trustees shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorneys fees reasonably incurred in connection with any proceeding in which such Trustee may become involved by reason of being or having been a member of said Board.

10.16 Board Meetings, Quorum, Board Action. The Board of Trustees shall establish its rules for meetings, either regular or special. A majority of current Trustees shall constitute a quorum. The action of a majority or those Trustees attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action of the Board by consent shall require the unanimous written consent of all current Trustees.

ARTICLE XI

BYLAWS

DUTIES AND POWERS OF THE ASSOCIATION

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

(a) The Association shall accept all Owners as members of the Association.

(b) The Association shall accept title to all Common Areas conveyed to it, whether by Declarant or by others, provided the same is free and clear of liens and encumbrances.

(c) The Association shall maintain, repair, replace and landscape the Common Areas.

(d) In connection with its duties to maintain and repair Common Areas, the Association will provide maintenance and repair upon the that right of way area owned by U.D.O.T. adjacent to the Development, as reflected on the recorded Plat "A" (Amended), as if the same were Common Area.

(e) 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.

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

(g) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent 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 Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent 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, renewable by agreement of the parties for successive periods of one (1) year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

11.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement as required herein. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and 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 the Declaration, the Bylaws or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of the Declaration, the Bylaws and such rules and regulations.

(b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

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

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

(iii) Such Common Area related utility services as the Board may from time to time deem necessary or desirable;

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

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

(vi) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

11.03 Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, may adopt, amend, repeal and enforce reasonable rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Property; and (e) all other matters concerning the use and enjoyment of the Property and the conduct of Owners, their pets, and their invitees within the Development.

11.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

ARTICLE XII

BYLAWS

ASSESSMENTS

12.01 Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested

with his interest in a Lot, be deemed to covenant and agree to pay to the Association the annual, special assessments and Reimbursement Assessments described in this Article, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

12.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, and the maintenance, operation and carrying of the Common Areas. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, payment of the cost of: taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; payment of basic coverage cable TV providing coverage availability to each residential improvement in the Development; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Declaration or its Articles of Incorporation, Bylaws or rules and regulations.

12.03 Annual Assessments. Annual assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of the cost of those items set forth in Section 12.02, above.

12.04 Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following; provided the first fiscal year shall begin on the date of recordation of this Declaration. On or before December 15 of each fiscal year the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within thirty (30) days of such Owner's initial purchase. 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 fiscal year and as the major guideline under which the Development shall be operated during such annual period.

12.05 Notice and Payment of Annual Assessments. Except with respect to the fiscal period ending December 31, 1995, the Association shall notify each Owner as to the amount of the annual assessment against his Lot on or before December 15 of the year preceding the year for which such annual assessment is made. Each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessments for the fiscal period ending December 31, 1995, shall be based upon such portion of the calendar year 1995 as follows the date of recordation of the Declaration and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board of Trustees, may determine. 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 the 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 fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in the Declaration.

12.06 Initial Fees. In addition, each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Lot, whether as a first time or subsequent Owner, a sum equal to three times the then monthly installment of the annual assessment, which sum shall be in addition to any proration of assessment which

may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary.

12.07 Maximum Annual Assessment. Until January 1 of the calendar year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be $348 per Lot. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

12.08 Special Assessments. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment shall be apportioned among and assessed to all Lots in the same manner as annual assessments. Such special assessments must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

12.09 Uniform Rate of Assessment. All monthly and special assessments authorized by Sections 12.03 and 12.08, respectively, shall be fixed at a uniform rate for all Lots; provided, however, that until a Lot has been both fully improved with a residential improvement and occupied for the first time for residential purposes, the monthly and special assessments applicable to such Lot shall be one-third (1/3) of the monthly and special assessments which would otherwise apply to such Lot. During the period of time that Declarant holds the Class B membership in the Association if assessed fees collected by the Association fail to adequately meet Association expenses, then Declarant shall pay in excess of such one-third (1/3) partial assessment per Lot, up to the full assessed amount, if necessary, to apply toward such expenses.

12.10 Quorum Requirements. The quorum at any Association meeting required for any action authorized by Section 12.08, above, shall be as follows: At the first meeting called, the presence of Owners of or proxies entitled to cast sixty percent (60%) of the total votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 12.08, above) at which a quorum shall be one-half (½) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

12.11 Reimbursement Assessment on Specific Lot. In addition to the annual assessment and any special assessment authorized pursuant to Section 12.08, above, the Board may levy at any time Reimbursement Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

12.12 Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or

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

12.13 Effect of Nonpayment; Remedies. Any assessment (whether annual, special or Reimbursement Assessment) not received within ten (10) days of the date on which it becomes due shall be subject to a late charge equal to 5% thereof, which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owner who is personally liable therefor or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.

12.14 Subordination of Lien 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 time such holder or purchaser comes into possession or ownership of such Lot; 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 instalment thereafter becoming due.

12.15 No Abatement. No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas of the Development, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE XIII

MISCELLANEOUS

13.01 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 Managing Agent or any officer or Trustee of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Managing Agent or the Association or any member of the Architectural Control Committee.

13.02 Amendment. Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by Owners (including Declarant) who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association. The foregoing right of amendment shall, however, be subject to the right to supplement this Declaration in the manner and to the extent provided for in Article III of this Declaration. In addition, such right of amendment shall be subject to the following qualification: no amendment to any provision of this Declaration which has the effect of diminishing or impairing

Amendment

any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), or to a Mortgagee shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant, or by such Mortgagee, as the case may be.

13.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 13.03:

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

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

(c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.

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

13.05 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

13.06 Condemnation. If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

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

13.08 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) Any Owner;

(b) The Association; or

(c) Any Mortgagee.

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 attorney's fees.

13.09 Duration. This Declaration shall remain in effect until such time as there is recorded in Utah County, Utah, an instrument of termination which is executed by all of the parties required by Section 13.02 hereof, plus the Mortgagee of each and every Lot.

13.10 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

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

EAST MOUNTAIN DEVELOPMENT, L.C.

By: Ray G. Morley
Ray G. Morley, Manager

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On this 16 day of Dec., 1994, personally appeared before me Ray G. Morley who, being by me duly sworn, did say that he is the Manager of East Mountain Development, L.C., a Utah limited liability company; that said instrument was signed by him in behalf of said company pursuant to authority; and that said company executed the same.

Glen W. Roberts
NOTARY PUBLIC

Notary Public
GLEN W. ROBERTS
337 West 3600 North
Provo, Utah 84604
My Commission Expires
January 1, 1997
State of Utah

EXHIBIT A

to

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

of

EAST MOUNTAIN
A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS DESCRIPTION OF THE ADDITIONAL LAND IS SET FORTH AND ATTACHED IN THIS EXHIBIT A TO THE DECLARATION SOLELY FOR PURPOSES OF IDENTIFICATION. THE DECLARATION IS NOT INTENDED AS AND SHOULD NOT BE DEEMED TO CONSTITUTE ANY LIEN, ENCUMBRANCE, RESTRICTION, OR LIMITATION UPON ANY PORTION OF THE EXPANSION LAND UNLESS AND UNTIL SUCH PORTION IS ADDED TO THE DEVELOPMENT IN ACCORDANCE WITH THE PROVISIONS OF THE DECLARATION.

Located in Utah County, Utah:

Commencing at the Southeast corner of Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian, and running thence South 1°11'42" East 444.235 feet; thence South 57°08'0" West 764.813 feet; thence North 38°24'0" West 451.443 feet; thence North 48°0'23" West 625.482 feet; thence North 41°59'37" East 100 feet; thence North 48°0'23" West 60 feet; thence North 41°59'37" East 290 feet; thence North 48°0'23" West 280 feet; thence South 41°59'37" West 50 feet; thence North 48°0'23" West 120.00 feet; thence North 43°42'39" East 240.104 feet; thence North 48°0'23" West 302.169 feet; thence North 41°13'16" East 487.837 feet; thence North 31°45'5" East 458.285 feet; thence North 28°0'17" East 31.753 feet; thence North 10°29'57" East 31.870 feet; thence North 3°26'49" East 34.009 feet; thence North 13°54'3" West 33.195 feet; thence North 24°23'44" West 28.615 feet; thence North 26°31'11" West 70.047 feet; thence North 23°50'48" West 61.586 feet; thence North 17°44'43" West 67.829 feet; thence North 10°49'55" West 78.787 feet; thence North 7°7'0" West 180.517 feet; thence North 7°7'0" West 124.839 feet; thence North 7°7'0" West 144.537 feet; thence North 11°4'41" West 79.244 feet; thence North 19°9'28" West 66.303 feet; thence North 26°0'51" West 61.144 feet; thence North 89°54'58" East 1,143.354 feet; thence South 1°9'22" East 2,662.477 feet; thence North 21°32'45" West .003 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM:

East Mountain Plat "A" (Amended), A Planned Unit (Expandable), according to the official plat thereof as recorded in the Utah County Recorders Office, Provo, Utah.

After recordation, return to:

John K. M. Olsen
Attorney at Law
CottonTree Square, Bldg. 7G
2230 No. at University Parkway
Provo, UT 84604

ENT 2734 BK 3604 PG 393
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1995 JAN 13 2:33 PM FEE 18.00 BY MB
RECORDED FOR TITLE WEST TITLE CO

FIRST SUPPLEMENT TO

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

OF

EAST MOUNTAIN

A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS FIRST SUPPLEMENT TO DECLARATION is made as of this 13 day of January, 1995, by **EAST MOUNTAIN DEVELOPMENT, L.C.**, a Utah limited liability company ("Declarant"), pursuant to the following:

RECITALS:

A. Declarant is the developer of East Mountain, an expandable Planned Unit Development in Provo, Utah (the "Project").

B. On or about December 21, 1994, Declarant caused to be recorded as Entry No. 95723, Book 3591, Page 320, in the office of the Recorder of Utah County, Utah, that certain "Declaration of Easements, Covenants, Conditions and Restrictions of East Mountain, a Planned Unit Development (Expandable) (the "Declaration") relating to the Project.

C. Pursuant to §3.03 of the Declaration, Declarant is permitted to annex into the Project additional real property ("Additional Land") as set forth and described in the Declaration (including any Exhibit thereto) for purposes of development into additional Lots and Common Areas, if any, consistent with the existing phase (Plat "A") of the Project and with the Declaration.

D. Declarant desires to annex a portion of the Additional Land into the Project for development as Plat "D" of the Project.

NOW, THEREFORE, Declarant hereby declares as follows:

1. All defined terms as used in this First Supplement to Declaration shall have the same meaning as those set forth and defined in the Declaration.

2. The following described real property situated in the City of Provo, County and State of Utah, is hereby submitted to the provisions of the Declaration and, pursuant thereto, is hereby annexed into the Project to be held, transferred, sold, conveyed and occupied as a part thereof:

Beginning at a point West 475.77 feet and South 547.98 feet from the Southeast corner Section 17, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence as follows: South 32°52'00" East 56.00 feet; thence South 57°08'00" West 7.54 feet; thence South 32°52'00" East 120.00 feet; thence South 57°08'00" West 70.00 feet; thence North 32°52'00" West 176.00 feet; thence South 57°08'00" West 41.02 feet; thence along the arc of a 36.86 feet radius curve to the right 25.00 feet (curve has central angle of 84°28'00" and a chord bearing North 80°38'00" West 33.61 feet); thence North 38°24'00" West 267.30 feet; thence North 51°36'00" East 117.35 feet; thence South 42°46'40" East 304.51 feet to the point of beginning. Contains 1.167 acres.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (except buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of the Declaration): (i) to construct and complete each of the buildings and all of the other improvements described in the Declaration or in the Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which the Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THE DECLARATION.

3. Section 3.02 of the Declaration in amended in its entirety to read as follows:

3.02 Subdivision into Lots. The Development is hereby subdivided into nineteen (19) Lots, as set forth and described in the Plats, with appurtenant and equal rights and easements of use and enjoyment in and to any Common Areas, as well as appurtenant obligations, all as set forth in this Declaration.

4. Except as amended by the provisions of this First Supplement to Declaration, the Declaration shall remain unchanged and, together with this First Supplement to Declaration shall constitute the Declaration of Easements, Covenants, Conditions and Restrictions for the Project as expanded by the annexation of the Additional Land described herein.

5. This First Supplement to Declaration shall be recorded in relation to the Plat entitled "Plat "D", East Mountain, An Expandable Planned Unit Development, Provo, Utah County, Utah", prepared and certified to by Dennis P. Carlyle (a duly registered Utah Land Surveyor holding Certificate No. 172675), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County, on January 10, 1995, as Entry No. 1823, Map Filing No. 5875.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first above set forth.

DECLARANT:

EAST MOUNTAIN DEVELOPMENT, L.C.

By: Ray G. Morley
Ray G. Morley, Manager

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On this 13 day of January, 1995, personally appeared before me Ray G. Morley who, being by me duly sworn, did say that he is the Manager of East Mountain Development, L.C., a Utah limited liability company; that said instrument was signed by him in behalf of said company pursuant to authority; and that said company executed the same.

Notary Public
GLEN W. ROBERTS
337 West 3800 North
Provo, Utah 84604
My Commission Expires
January 1, 1997
State of Utah

Glen W. Roberts
NOTARY PUBLIC

ENT 46063 BK 3723 PG 39
RANDALL A. COVINGTO
UTAH COUNTY RECORDE
1995 JUL 19 8:57 AM FEE 48.00 BY J
RECORDED FOR TITLE WEST TITLE CO

After recordation, return to:

John K. M. Olsen
Attorney at Law
CottonTree Square, Bldg. 7G
2230 No. at University Parkway
Provo, UT 84604

SECOND SUPPLEMENT TO

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

OF

EAST MOUNTAIN

A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS SECOND SUPPLEMENT TO DECLARATION is made as of this 14 day of July, 1995, by **EAST MOUNTAIN DEVELOPMENT, L.C.** , a Utah limited liability company ("Declarant"), pursuant to the following:

RECITALS:

A. Declarant is the developer of East Mountain, an expandable Planned Unit Development in Provo, Utah (the "Development").

B. On or about December 21, 1994, Declarant caused to be recorded as Entry No. 95723, Book 3591, Page 320, in the office of the Recorder of Utah County, Utah, that certain "Declaration of Easements, Covenants, Conditions and Restrictions of East Mountain, a Planned Unit Development (Expandable) (the "Declaration") relating to the Development.

C. Pursuant to §3.03 of the Declaration, Declarant is permitted to annex into the Development additional real property ("Additional Land") as set forth and described in the Declaration (including any Exhibit thereto) for purposes of development into additional Lots and Common Areas, if any, consistent with the existing phases (Plats "A" and "D") of the Development and with the Declaration.

D. Declarant desires to annex a portion of the Additional Land into the Development for development as Plats "B" and "C", respectively, of the Development.

NOW, THEREFORE, Declarant hereby declares as follows:

1. All defined terms as used in this Second Supplement to Declaration shall have the same meaning as those set forth and defined in the Declaration. The term "Declaration" shall be deemed to include the Declaration and all subsequent supplements or amendments thereto.

2. The real property situated in the City of Provo, County and State of Utah, described in Exhibit "A", attached hereto and made a part hereof, is hereby submitted to the provisions of the Declaration and, pursuant thereto, is hereby annexed into the Development to be held, transferred, sold, conveyed and occupied as a part thereof:

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat.

ENT 46063 BK 3723 PG 40

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (except buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of the Declaration): (i) to construct and complete each of the buildings and all of the other improvements described in the Declaration or in the Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire twenty (20) years after the date on which the Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THE DECLARATION.**

3. Section 3.02 of the Declaration in amended in its entirety to read as follows:

3.02 Subdivision into Lots. The Development is hereby subdivided into forty-two (42) Lots, as set forth and described in the Plats, with appurtenant and equal rights and easements of use and enjoyment in and to any Common Areas, as well as appurtenant obligations, all as set forth in the Declaration.

4. Plat "B" of the Development contains no Lots but does contain Common Area labeled as Parcel A which Parcel A is encumbered in part with a 35 foot wide access easement to Lot 19 in Plat "A" of the Development. All costs of maintenance and upkeep of said easement shall be upon the owner of said Lot 19.

5. The following Lots in Plat "C" of the Development are twin home Lots as reflected on the Plat and upon which twin homes may be constructed with a party wall on the dividing line between said lots: Lots 67 and 68, 69 and 70, 71 and 72, and 73 and 74. The following provisions shall apply to any construction involving party walls:

PARTY WALLS

(a) **General Rules of Law to Apply.** Each wall 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.

(b) **Sharing of Repair and Maintenance.** 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.

(c) **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.

(d) **Weatherproofing.** Notwithstanding any other provision of this Paragraph 5, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Paragraph 5 shall be appurtenant to the land and shall pass to such Owner's successors in title.

6. Except as amended by the provisions of this Second Supplement to Declaration, the Declaration, as previously supplemented or amended, shall remain unchanged and, together with this Second Supplement to Declaration shall constitute the Declaration of Easements, Covenants, Conditions and Restrictions for the Development as expanded by the annexation of the Additional Land described herein.

7. This Second Supplement to Declaration shall be recorded concurrently with the Plats entitled "Plat "B", East Mountain, An Expandable Planned Unit Development, Provo, Utah County, Utah", and "Plat "C", East Mountain, An Expandable Planned Unit Development, Provo, Utah County, Utah, prepared and certified to by Thurman E. Madden (a duly registered Utah Land Surveyor holding Certificate No. 156204), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County.

(The balance of this page is purposely left blank)

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first above set forth.

DECLARANT:

EAST MOUNTAIN DEVELOPMENT, L.C.

By: Ray G. Morley
Ray G. Morley, Manager

STATE OF UTAH)
: ss.
COUNTY OF UTAH)

On this 14 day of July, 1995, personally appeared before me Ray G. Morley who, being by me duly sworn, did say that he is the Manager of East Mountain Development, L.C., a Utah limited liability company; that said instrument was signed by him in behalf of said company pursuant to authority; and that said company executed the same.

Notary Public
GLEN W. ROBERTS
337 West 3800 North
Provo, Utah 84601
My Commission Expires
January 1, 1997
State of Utah

Glen W. Roberts
NOTARY PUBLIC

Notary Public
GLEN W. ROBERTS
337 West 3800 North
Provo, Utah 84601
My Commission Expires
January 1, 1997
State of Utah

Exhibit "A"

ENT 46063 BK 3723 PG 43

Plat "B"

BEGINNING AT A POINT SOUTH 83.86' AND WEST 895.68' OF THE SOUTHEAST CORNER SECTION 17, TOWNSHIP 7 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS:

S24°32'40"E	34.00'				
S48°18'18"W	137.49'				
S86°07'51"W	43.00'				
ARC TO LT	L=40.23'	Δ=11°56'36"	R=193.00'	CHD=N09°50'26"W	40.16'
ARC TO RT	L=233.13'	Δ=64°31'43"	R=207.00'	CHD=N16°27'07"W	221.00'
ARC TO LT	L=22.65'	Δ=06°43'22"	R=193.00'	CHD=N45°21'18"E	22.63'
S48°00'23"E	43.00'				
S13°42'33"E	116.70'	TO THE POINT OF BEGINNING.			

CONTAINING 1 PARCEL AND 0.631 ACRES

BASIS OF BEARING: THE SECTION LINE BETWEEN THE SOUTHEAST CORNER OF SECTION 17 AND THE EAST QUARTER CORNER OF SECTION 17 BEARS NORTH 1°09'22" WEST.

ENT 46063 BK 3723 PG 44

Exhibit "A"

Plat "C"

BEGINNING AT A POINT SOUTH 83.86' AND WEST 895.68' OF THE SOUTHEAST CORNER SECTION 17. TOWNSHIP 7 SOUTH. RANGE 3 EAST. SALT LAKE BASE & MERIDIAN: THENCE AS FOLLOWS:

N13°42'33"W	116.70'	
N48°00'23"W	72.00'	
N41°59'37"E	17.50'	
N48°00'23"W	103.30'	
S41°59'37"W	23.50'	
N48°00'23"W	420.00'	
S41°59'37"W	42.79'	TO A FENCE LINE
N47°08'07"W	137.09'	ALONG SAID FENCE LINE TO FENCE CORNER ON THE SOUTHEASTERLY LINE OF CRESCENT HILLS SUBD. PLAT "B" AS IT EXISTS ON THE GROUND
N42°34'30"E	223.65'	ALONG SAID SUBD. LINE
ARC TO LEFT	L=5.48'	Δ=1°19'35" R=228.00' CHD=N47°20'36"W 5.28'
N48°00'23"W	202.47'	
ARC TO RIGHT	L=30.74'	Δ=17°36'45" R=100.00' CHD=N39°12'00"W 30.62'
ARC TO LEFT	L=47.95'	Δ=17°36'45" R=156.00' CHD=N39°12'00"W 47.77'
N41°59'37"E	262.97'	
S23°14'19"E	440.89'	
S44°44'47"E	535.61'	
S43°48'39"E	75.96'	
S44°47'20"E	84.54'	
S41°59'37"W	93.97'	
S27°16'29"W	75.42'	
S43°13'27"W	125.37'	TO THE POINT OF BEGINNING

CONTAINING 27 PARCELS AND 6.364 ACRES

BASIS OF BEARING: THE SECTION LINE BETWEEN THE SOUTHEAST CORNER OF SECTION 17 AND THE EAST QUARTER CORNER OF SECTION 17 BEARS NORTH 1°09'22" WEST.

After recordation, return to:

John K. M. Olsen
Attorney at Law
CottonTree Square, Bldg. 7G
2230 No. at University Parkway
Provo, UT 84604

ENT 88169 BK 4107 PG 115
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
1996 Oct 29 03:59 pm FEE 16.00 BY JRD
RECORDED FOR TITLE WEST TITLE CO

THIRD SUPPLEMENT TO

DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

OF

EAST MOUNTAIN

A Planned Unit Development (Expandable)

Provo, Utah County, Utah

THIS THIRD SUPPLEMENT TO DECLARATION is made as of this ___ day of September, 1996, by **EAST MOUNTAIN DEVELOPMENT, L.C.** , a Utah limited liability company ("Declarant"), pursuant to the following:

RECITALS:

A. Declarant is the developer of East Mountain, an expandable Planned Unit Development in Provo, Utah (the "Development").

B. On or about December 21, 1994, Declarant caused to be recorded as Entry No. 95723, Book 3591, Page 320, in the office of the Recorder of Utah County, Utah, that certain **Declaration of Easements, Covenants, Conditions and Restrictions of East Mountain, A Planned Unit Development (Expandable)** (the "Declaration") relating to the Development.

C. Pursuant to §3.03 of the Declaration, Declarant is permitted to annex into the Development additional real property ("Additional Land") as set forth and described in the Declaration (including any Exhibit thereto) for purposes of development into additional Lots and Common Areas, if any, consistent with the existing phases (Plats "A", "B", "C" and "D") of the Development and with the Declaration.

D. Declarant desires to annex a portion of the Additional Land into the Development for development as Plat "E" of the Development.

NOW, THEREFORE, Declarant hereby declares as follows:

1. All defined terms as used in this Third Supplement to Declaration shall have the same meaning as those set forth and defined in the Declaration. The term "Declaration" shall be deemed to include the Declaration and all subsequent supplements or amendments thereto.

2. The following described real property situated in the City of Provo, County and State of Utah, is hereby submitted to the provisions of the Declaration and, pursuant thereto, is hereby annexed into the Development to be held, transferred, sold, conveyed and occupied as a part thereof:

ENT 88169 BK 4107 PG 116

Beginning at a point South 83.86 feet and West 895.68 feet of the Southeast corner Section 17, Township 7 South, Range 3 East, Salt Lake Base & Meridian: said point being the Southwesterly corner of Plat "C" East Mountain subdivision; thence along said subdivision line North 43°13'27" East 125.37 feet; thence North 27°16'29" East 75.42 feet; thence North 41°59'37" East 93.97 feet to the Northeasterly corner of said Plat "C"; then South 30°41'31" East 75.74 feet; thence South 40°17'42" East 70.45 feet; thence South 46°46'33" East 762.76 feet; thence South 57°08'00" West 374.11 feet to the Northeasterly corner of Plat "D" East Mountain subdivision; thence North 32°52'00" West 120.00 feet along said subdivision line; thence North 57°08'00" East 7.54 feet; thence North 32°52'00" West 56.00 feet; thence North 42°46'40" West 304.51 feet to the Northeasterly corner of said Plat "D", also being the Easterly most corner of Plat "A" East Mountain subdivision; thence North 42°46'40" West 35.79 feet along said subdivision line; thence North 47°09'59" West 215.00 feet; thence North 24°32'39" West 40.94 feet to the Northerly most corner of said Plat "A", also being the Southeasterly most corner of Plat "B" East Mountain subdivision; thence North 24°32'40" West 34.00 feet along said subdivision line to the point of beginning. Containing 6.01 acres.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the said property and any improvements (except buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of the Declaration): (i) to construct and complete each of the buildings and all of the other improvements described in the Declaration or in the Plat, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and complete on the Additional Land or any portion thereof such improvements as Declarant shall determine to build in its sole discretion (and whether or not the Additional Land or any portion thereof has been or hereafter will be added to the Development); and (iii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their

terms, expire twenty (20) years after the date on which the Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the said real property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THE DECLARATION.**

3. Section 3.02 of the Declaration in amended in its entirety to read as follows:

ENT 88169 BK 4107 PG 117

3.02 Subdivision into Lots. The Development is hereby subdivided into sixty-six (66) Lots, as set forth and described in the Plats, with appurtenant and equal rights and easements of use and enjoyment in and to any Common Areas, as well as appurtenant obligations, all as set forth in the Declaration.

4. Plat "E" of the Development contains Common Area labeled as Parcel C which Parcel C adjoins other Common Area from prior phases of the Development.

5. Except as amended by the provisions of this Second Supplement to Declaration, the Declaration, as previously supplemented or amended, shall remain unchanged and, together with this Third Supplement to Declaration shall constitute the entire Declaration of Easements, Covenants, Conditions and Restrictions for the Development as expanded by the annexation of the Additional Land described herein.

6. This Third Supplement to Declaration shall be recorded concurrently with the Plat entitled **Plat "E", East Mountain, An Expandable Planned Unit Development, Provo, Utah County, Utah**, prepared and certified to by Thurman E. Madden (a duly registered Utah Land Surveyor holding Certificate No. 156204), executed and acknowledged by Declarant, accepted by Provo City, and filed for record in the office of the County Recorder of Utah County.

(the balance of this page is purposely left blank)