

BYLAWS
OF
EASTGATE UNIT 11
(A PLANNED UNIT DEVELOPMENT)

Amended April 16, 2003

I. NAME AND LOCATION

1. **Name:** The name of the corporation is the Eastgate Unit 11 Homeowners Association, Inc., a Utah non-profit corporation.
2. **Principal Office:** The principal office of the Association shall be located at Iron County Utah, and meetings of Members and trustees may be held at such places within the County of Iron, State of Utah, as may be designated by the Board of Trustees.

II. DEFINITIONS

1. Articles shall mean and refer to the Articles of Incorporation of the Eastgate Unit 11 Homeowners Association, Inc.
2. Association shall mean and refer to the Eastgate Unit 11 Homeowners Association, Inc. a Utah non-profit corporation which is organized by the filing of the Articles.
3. Member shall mean and refer to every person who is entitled to a vote by the Association through ownership.
4. Properties shall mean and refer to all real property which becomes subject to the Declaration together with such other real property as may hereafter be annexed thereto under the provisions of the Declaration.
5. Declaration shall mean and refer to the instrument entitled DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF EASTGATE UNIT 11, executed and acknowledged by Declarant and filed for record in the office of the County Recorder of Iron County, Utah on March 7, 1996, Entry No. 361482 and amended on _____, Entry No. _____. The same may from time to time be supplemented or amended.
6. Lot shall mean and refer to any part of the separately numbered and individually described plot of land on the recorded Plat of the Development with the exception of the Common Areas.
7. Common Areas shall mean and refer to those areas of land shown on any recorded Plat of the Properties and intended to be devoted to the common use and enjoyment of the Members.
8. Owner shall mean and refer to the person who is the owner of record in the Office of the Iron County Recorder of Iron County, Utah.
9. Living Unit shall mean and refer to a structure on any Lot which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in connection with such residence.
10. Board of Trustees or the Board shall mean and refer to the Board of Trustees of the Association.
11. Development shall mean and refer to Eastgate Unit 11. 00674933 Bx00905 Pg00623

III. MEETINGS OF MEMBERS

1. Annual Meeting: The annual meeting will be held in September of each year. The purpose of the annual meeting shall be the election of the trustees and the transaction of such other business as may come before the Membership. If the election of trustees is not filled at the annual meeting, the Board shall cause such election to be held at a special meeting of the Members as soon thereafter is convenient.
2. Special Meetings: A special meeting of the Members for any purpose may be called by the President, by the Board, or upon written request of one-fourth of the total Members.
3. Place of Meeting: The Board of Trustees may designate any place in Iron County, Utah as the place for any annual meeting or for any special meeting called by the Board.
4. Notice of Meetings: Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting the purpose or purposes for which the meeting is called, shall be given to all Members at least 10 days but not more than 30 days prior to the meeting date. Such notice shall be deemed to have been properly furnished if mailed within the required time period to the person who appears as a Member, at the latest address for such person appearing in the records of the Association at the time of mailing.
5. Quorum: Except as otherwise provided in the Articles, in the Declaration, or by law, the Members present in person or by proxy after proper notice of the meeting shall constitute a quorum at any meeting of the Members.
6. Proxies: At any meeting of the Members, a Member may vote by proxy executed in writing by the Member. All proxies shall be filed with the secretary of the Association before or at the time of the meeting. Unless otherwise provided therein, no proxy shall be valid after 11 months from the date of its execution.
7. Cumulative Voting: At each election for trustees, a plurality shall be sufficient for the election of a candidate.
8. Necessary Vote: Except as concerns the election of trustees and except with respect to those proposals which under the Articles, under the Declaration, or by law require a greater proportion for adoption, the affirmative vote of a majority of all those which Members present in person or by proxy are entitled to cast at a meeting shall be sufficient for the adoption of any matter voted on by the Members.

IV. BOARD OF TRUSTEES

1. Number, Tenure and Qualifications: The affairs of the Association shall be managed by a Board of Trustees composed of three (3) individuals, a President, a Vice-President, and a Secretary/Treasurer. The Trustees shall serve two year terms. Any change in the number of Trustees may be made only by amendment of the Articles. Each trustee shall hold office until his term expires and until his successor has been duly elected and qualifies.
2. Compensation: The Board may provide by resolution that the Trustees shall be paid their expenses, if any, by attendance at each meeting of the Board. Trustees shall not be paid any salary or other compensation for their services as Trustees and shall not receive directly or indirectly any other profit or pecuniary advantage by virtue of their status as Trustee.

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3. Action Taken Without a Meeting: The Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Trustees. Any such action shall have the same effect as though taken at a meeting of the Trustees.

V. POWERS AND DUTIES OF THE BOARD OF TRUSTEES

1. **Powers:** The Board of Trustees shall have power to:
- a) adopt and publish rules and regulations governing the use of the Common Areas, and personal conduct of the Members and their guest thereon, and establish penalties for the infractions thereof;
 - b) suspend the voting rights and rights to use the Common Areas of a Member during a period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;
 - c) exercise for the Association the powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these Bylaws, the Articles, or the Declaration;
 - d) declare the office of a member of the Board of Trustees to be vacant in the event such member shall be absent from four consecutive regular meetings of the Board of Trustees without cause.
2. **Duties:** It shall be the duty of the Board of Trustees to:
- a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at a special meeting when such statement is requested in writing by one-fourth of the Members who are entitled to vote;
 - b) supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;
 - c) as more fully provided in the Declaration, to:
 - 1) fix the amount of the monthly assessment against each Lot and to send written notice of such assessment to every Owner;
 - 2) pursue reasonable collection against any Member or the lien against said Member's Lot when assessments are not paid within 30 days after the due date.
 - d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
 - e) procure and maintain adequate liability, hazard or other such insurance on property owned by Association as required by the insurance provisions in the Declaration;
 - f) cause all officers or employees having fiscal responsibilities to be bonded,

- as it may deem appropriate;
- g) cause the Common Areas to be maintained, and also, if any Owner of any Lot shall fail to maintain his Lot and the Living Unit located thereon in a manner satisfactory to the Board of Trustees, the Association after approval by 2/3 vote of the Board, shall have the right to enter upon the Lot and to repair, maintain and restore the exterior of the Living Unit and any other improvements erected thereon through an independent contractor;
 - h) carry out the duties specified in the Declaration.

VI. OFFICES AND DUTIES OF THE BOARD OF TRUSTEES

1. **President:** The President shall be the principal executive Officer of the Board of Trustees and shall exercise general supervision and control over all of the property and affairs of the Association. The President shall, when present, preside at all meetings of the Members and the Board of Trustees. If the President is not present then the Vice-President shall preside. The President, together with the Secretary/Treasurer or Vice-President may sign any deeds, contracts, or other instruments which the Board has properly authorized to be executed. The President shall, in general, perform all duties incident to the office of President and such other duties as may from time to time be prescribed by the Board of Trustees.
2. **Vice-President:** In the absence of the President or in the event of his death, inability, or refusal to act, the Vice-President shall perform all of the duties of President. When so acting, he shall have all the power of, and be subject to all the restrictions upon, the President. The Vice-President shall perform such duties as may from time to time be assigned to him by the President or the Board.
3. **Secretary/Treasurer:** The Secretary/Treasurer shall keep minutes of meetings of the Members and of the Board of Trustees in one or more books provided for that purpose, shall see that all notices are given in accordance with the provisions of these Articles, the Declaration, and law, shall maintain the membership list required by these Articles. The Secretary/Treasurer shall have the custody of and shall be responsible for all funds of the Association, shall receive and give receipts for money due and payable to the Association, shall deposit all such money in the name of the Association in such banks, trust companies, or other depositories as are selected by the Board, shall perform all accounting, financial record-keeping, and similar services which may be necessary or desirable in connection with the Association's affairs, and in general, perform all duties incident to the office of Secretary/Treasurer and such other duties as may from time to time be assigned to him by the President or the Board.

VII. NOMINATION AND ELECTION OF TRUSTEES

1. **Nomination:** Nomination for election to the Board of Trustees shall be made from the floor at the annual meeting.
2. **Election:** Elections to the Board of Trustees shall be made by secret written ballot. Each Owner has one vote for each vacancy.

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VIII. MEETING OF TRUSTEES

1. Regular Meetings: A regular meeting of the Board of Trustees shall be held immediately after, and at the same place as the annual meeting of the Members. The Board of Trustees may hold additional meetings without notice to the Members.
2. Special Meetings: Special Meetings of the Board of Trustees may be called by any Trustee. The Board of Trustees may designate any place in Iron County, Utah as the meeting place. Notice of the special meeting, written or printed, stating the place, day and hour of any special meeting of the Board shall be delivered by mail at least 3 days prior to the meeting to each of the Trustees.
3. Quorum: A majority of the Trustees then in office shall constitute a quorum for the transaction of business at any meeting of the Board.
4. Vacancies: Any vacancy on the Board may be filled by the affirmative vote of a majority of the remaining Trustees, even though such remaining Trustees constitute less than a quorum. A Trustee thus selected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

IX. ASSESSMENTS

1. As more fully provided in the Declaration, each Member (subject to exceptions provided for Declarant) is obligated to pay the Association monthly and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessment not paid when due will be subject to interest and costs of collection and have a lien placed against the Property as stated in the Declaration.

X. AMENDMENTS

1. These Bylaws may be amended, at any regular or a special meeting of the Board of Trustees, by a vote of the majority of the Board of Trustees.
2. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

XI. MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December.

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[Signature]
Signature of President

9-12-03
Date

[Signature]
Signature of Vice-President

9-12-03
Date

[Signature]
Signature of Secretary Treasurer

9-12-03
Date

covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, as set forth in the plat perimeters recorded concurrently herewith.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof under "RECITALS"), the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this instrument as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions hereof (and in particular in accordance with the provisions of Article XI) concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development.

2. Plat shall mean and refer to the plat of the EASTGATE UNIT 11, a Planned Unit Development consisting of one page, executed and acknowledged by Declarant, prepared and certified by Douglas B. Grimshaw, a registered Utah Land Surveyor, and recorded in the office of the County Recorder of Iron County, Utah, on the 30 day of January, ~~1996~~¹⁹⁹⁶, in Book 554 at page 486 as Entry No. 360024, as the same will hereafter be modified, amended, supplemented or expanded in accordance with the provisions of Article XI concerning amendments or supplements to this Declaration which are to occur in conjunction with the expansion of the Development as herein provided.

3. Property shall mean and refer to all of the real property which is covered by the Plat, a description of which is stated in Exhibit A of this Declaration.

4. Lot shall mean and refer to any of the separately numbered and individually described plots of land.

5. Common Areas shall mean and refer to that portion of the property which is not included within the Lots, including all improvements other than utility lines now or hereafter constructed or located thereon.

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15. Front Yard Area shall mean and refer to the yard area of each Living Unit extending from the street to the front line of the Living Unit, or as otherwise deemed or described by legal description on each Lot or Living Unit.

16. Supplementary Declaration shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of the Declaration to all or any portion within the Additional Land and contain such complementary or amended provisions for such additional land as are herein required by the Declaration.

II. DESCRIPTION OF PROPERTY

The property which initially comprises the Development and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the real property situated in Iron County, State of Utah, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

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.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes; assessments, and charges imposed or levied by governmental or quasigovernmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; and instruments of record which affect the above-described land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member.

(b) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Iron County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may permit any person to the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

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

ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service; and

(d) The right to the Association to dedicate or transfer all or 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. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Encroachments. If any portion of a Living Unit constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

V. ASSESSMENTS

1. Personal Obligation and Lien. Declarant, for each Lot owned by it, and 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 monthly and the special assessments described in the Article, together with the hereinafter provided for interest and costs of collection. 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; and (b) the personal obligation of the person who is the owner of such Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due.

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preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Equal Rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots, subject to the provision of paragraph 4, above, regarding the Declarant, or his assigns.

7. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date deed is delivered to first purchaser of a Lot (or contract of sale) or the date of occupancy under an occupancy agreement whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not 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 in good faith rely thereon.

9. Effect of Non-Payment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, subject, to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments become due. The Association may, but shall not be required to, record a notice of its lien in the records of the Iron County Recorder at any time an assessment against any lot is more than thirty (30) days past due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus late payment service charge equal to five percent (5%) of each delinquent amount due and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment

subject. Notwithstanding the provisions regarding Lot (except the Front Yard Area) and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot and the exterior of his Living Unit situated thereon in a manner satisfactory to the Architectural Control Committee or the Board, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents, employees, or through an independent contractor to enter upon his Lot and repair, maintain, and restore the portion of the Lot maintainable by the Owner and the exterior of his Living Unit and any other improvements erected thereon (but not the interior of his Living Unit). The cost of such exterior maintenance shall be added to and become part of the assessment to which each Lot is subject. This minimum exterior standard will be set forth initially by the Architectural Control Committee and will be adopted and enforced by the Association or Board. If the minimum landscape standard is not met, the Association, may, after a period of forth-five (45) days from written notice, proceed with completion of the same, adding the cost to the subject Lot(s) assessment.

3. Water and Garbage Removal. The Association shall pay for all water and garbage removal services furnished to each Lot. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service. (eg; sewer, power, gas).

4. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "EASTGATE PHASE II, a Planned Unit Development, Home Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not

Mortgagees.

(5) Miscellaneous Requirements. Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A Waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Lot Owner Insurance. Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Fidelity Coverage. The Association may maintain fidelity coverage to protect against dishonest acts on the part of trustees, officers, manager, employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

(a) name the Association as an obligee as the named insured;

(b) be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves;

(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 cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30)

5. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

6. Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

2. Use of Lots and Living Units. All Lots are or will be improved with Living Units and are restricted to such use. Each Lot has been or will be improved with a Living Unit, each to be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Parking Lot. Parking Lot must be large enough to accommodate one (1) parked automobile per unit. Parking stalls shall not be appurtenant to any unit, however, the homeowners association may assign one parking stall per unit if it deems advisable by adoption of a rule or regulation to that effect.

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10. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on the Lots provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers. This will be limited to one (1) dog or cat per dwelling Unit or Lot. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise or otherwise, to Lot Owners. All pets must be kept in a fenced Yard of the Lot or on a leash in the Common Areas.

11. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by a fence, building, or appropriate screen.

12. Electronic Antennas. No television, radio, or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the Living Units or structures on the Lots in said tract unless and until the same shall have been approved in writing by the Architectural Committee of the Association.

13. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the seven-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Iron County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it and any part of the Common Areas reasonably necessary or appropriate, including, but not limited to, a sales office, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvements and/or sale of all Lots owned by Declarant. Declarant may also conduct collateral business activity on the Project.

VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee, the function of which shall be to insure that the exterior of all Living Units and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such

7. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

8. Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Architectural Committee.

9. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Iron County, Utah. Declarant shall further have the right to designate the location and design of any common area amenities including, but not limited to clubhouse, pool or other recreational amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this paragraph.

10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living Units erected by it, or caused to be erected by it, and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another.

IX. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used promptly by Association to the extent necessary and possible for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full thereof, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot is eliminated, the Association shall disburse the

similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

Neither this Article X nor the insurance provision contained in Article VI may be amended without the prior approval of all first Mortgagees.

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

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same; or

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the

10. Mortgagees' Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XII of the Declaration, no material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association which affects the Mortgagee's rights or protections hereunder shall be accomplished or effective unless one hundred percent (100%) of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have their prior written approval to such amendment.

XI. MISCELLANEOUS

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

2. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration, except as otherwise set forth herein, shall require: (a) the affirmative vote of at least two-thirds of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and (b) so long as the Class B membership exists, the written consent of Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10), but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not

number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

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

5. Reserve Fund. The Association shall establish adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any Owner may lease his Lot or Living Unit, provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, *inter alia*, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the Bylaws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease; and

(c) The minimum time period of any Lease is thirty (30) days at daily or weekly rental situation will not be allowed within the Development. If such a situation arises, it will be deemed a direct violation of these covenants and a fine or other enforcement as deemed necessary by the Association may be pursued.

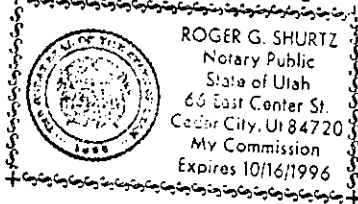
7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct all Common Areas and amenities thereto indicated on the Plat. Declarant makes no other covenants regarding improvements to be constructed.

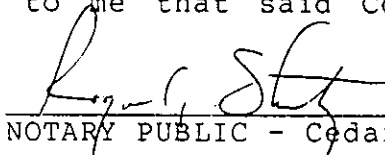
8. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

STATE OF UTAH
COUNTY OF IRON

On the 9th day of February, 1996, personally appeared before me CAROL J.E. LA FOUNTAIN, who being by me duly sworn, did say that she, the said CAROL J.E. LA FOUNTAIN is the President of XERYUS, INC., a Utah Corporation, and that the within and foregoing instrument was signed on behalf of said Corporation by authority of a resolution of its Board of Directors and said XERYUS, INC., a Utah Corporation and CAROL J.E. LA FOUNTAIN acknowledged to me that said Corporation executed the same.

My Commission Expires:





NOTARY PUBLIC - Cedar City, UT