

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR VICTORIAN VILLAGE P.U.D.

This Declaration made this 14th day of April, 1997 by Co-AX Enterprises Inc., Developer of Victorian Village I P.U.D., hereinafter collectively referred to as "Declarant".

WITNESSETH:

Now therefore, Declarant is the owner of real property DESCRIBED in Article II hereof and desires to create thereon single family detached housing in a planned unit development ("P.U.D."), and whereas Declarant desires to provide for the preservation of the values and amenities of said P.U.D. for the benefit of the property owners thereof and for the maintenance of open spaces and common facilities and improvements thereon, and desires to subject the real property described in Article II hereof to the covenants and restrictions set forth hereinafter for the benefit of said property and each owner thereof; and,

Now therefore, Declarant has deemed it desirable for the PRESERVATION of the values and amenities of said P.U.D. to create an association for the purpose of maintaining and enforcing the covenants and restrictions as specified herein;

Now therefore, the Declarant declares that the real property, hereinafter described in Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, liens and easements, hereinafter set forth.

ARTICLE I
DEFINITIONS

ENT 859793 BK 747 Pg 208
DATE 1-MAY-1997 8:10AM FEE 66.00
MICHAEL L GLEED, RECORDER - FILED BY SA
CACHE COUNTY, UTAH
FOR REED ELDER

Section 1. The following terms used in this Declaration shall have the following meanings:

- a. "Association" shall mean and refer to the Victorian Village P.U.D. Homeowners association, its successors and assigns, established by Declarant for the purpose of maintaining, administering and enforcing the covenants and restrictions hereinafter set forth.
- b. "Unit" shall mean and refer to any plot of land shown upon any recorded P.U.D. map of the subject property of the Declaration with the exception of those parcels dedicated or otherwise set apart to any governmental agency, except common and limited common areas, and as approved by the City of Logan, Utah.
- c. "Living Unit" shall mean and refer to any portion of a building or structure situated upon any unit of the subject property of this Declaration which is designed and intended for use and occupancy as a residence by a single family or up to two (2) unrelated individuals, to include outbuildings appertaining thereto.
- d. "Family" shall mean one or more persons related by blood, marriage or adoption occupying a living unit and living as a single housekeeping unit, and shall include up to two (2) unrelated individuals.
- e. "Owner" shall mean and refer to the record owner, or contract owners, whether one or more persons or entities, of the fee simple title to any unit or living unit situated on the subject property of this Declaration, but not withstanding any applicable theory of mortgages, shall not mean or refer to a mortgage unless and until such mortgagee has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.
- f. "Member" shall mean and refer to all those owners who are members of The Association.
- g. "Mortgage" shall mean a trust deed or installment land purchase contract or any such similar instrument of encumbrance as well as a mortgage.
- h. "Mortgagee" shall mean a beneficiary under or a holder of a trust deed or installment land purchase contract or such similar instrument of encumbrance as well as a mortgage.
- i. "First Mortgage" shall mean a recorded mortgage with first priority over other mortgages.
- j. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and employment of the owners collectively. The Common Area owned by the Association at the time of the conveyance of the first unit is described in a deed to the association and reflected upon the recorded plat of Victorian Village P.U.D., to include but not be limited to recreation center, private roads, bike and walk paths, parking, open and greenery area.
- k. "Limited Common Property and Facilities" shall mean any porches, patios or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, and shall appertain to that unit exclusively. For all purposes herein, including maintenance and other costs, taxes or expenses attributable to Limited Common Property or Facilities, the owners of the units to which such property is appurtenant shall be solely

responsible for such costs and expenses, and such amounts may be assessed and apportioned to such units exclusively, in proportion to the use thereof available to such units.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. PROPERTY DESCRIPTION. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Logan, County of Cache, State of Utah and is more specifically described as follows:

BEG S 88°50'33" E 574.23 FT FROM NW COR OF LT 5 BLK 3 PLT D LOGAN FARM SVY & ON S R/W OF 1400 NORTH ST. & TH S 2°11'22" W 333.71 FT (S 330 FT BR) ALG FENCE TH N 88°25'53" WEST 189.75 FT (W 189.75 FT BR) ALG A FENCE TH N 2°12'50" E 332.34 FT (N 330 FT BR) TO SD S R/W TH S 88°50'33" E 189.75 FT (E 189.75 FT BR) TO BEG.

Also: BEGINNING SOUTH 88°55' 33" EAST 284.48 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 3, PLAT "D". LOGAN FARM SURVEY, SAID POINT ON THE SOUTH RIGHT-OF-WAY OF 1400 NORTH STREET, AND RUNNING THENCE SOUTH 2°12'50" WEST 332.34 FEET; THENCE NORTH 88°25'53" WEST 295.02 FEET ALONG FENCE TO THE EAST RIGHT-OF-WAY OF UTAH NORTHERN RAILROAD RIGHT-OF-WAY, THENCE NORTH 2°41'02" EAST 330.29 FEET ALONG THE RIGHT-OF-WAY TO THE SOUTH RIGHT-OF-WAY OF 1400 NORTH STREET; THENCE SOUTH 88°50'33" EAST 292.34 FEET ALONG THE RIGHT-OF-WAY TO BEGINNING.

ARTICLE III

PROPERTY RIGHTS

Section 1. OWNER'S EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
- c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer signed by 2/3rd of each class of members has been recorded or unless duly taken by authority of eminent domain.

Section 2. DELEGATION OF USE. Any owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

Section 1. MEMBERSHIP. Every person or entity who is a record owner of a fee or undivided fee interest in any unit which is the subject of this Declaration shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. VOTING RIGHTS. The Association shall have two classes of voting memberships.

CLASS A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

CLASS B. Class B members(s) shall be the Declarant, and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class A
- (b) On May 1, 2004

Section 3. BOARD OF DIRECTORS. A board of directors shall be established pursuant to the article of incorporation and by-laws of the Association for the purpose of directing the affairs of the Association. The board of directors shall have all powers as may be specified in the articles of incorporation and by-laws of said Association. For purposes of the Utah Non-Profit Corporation and Co-Operative Association Act, the Board of

Directors shall be the governing Board of Trustees, and directors who are member thereof shall be regarded as trustees.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.

The Declarant, for each unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. MAXIMUM ANNUAL ASSESSMENT. Until January 1, 1998, the maximum annual assessment shall be Three Hundred Sixty Dollars (\$360.00) per unit, prorated through 1997, payable monthly.

- a. From and after January 1, 1998, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
- b. From and after January 1, 1998, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c. The board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis; provided, however, that assessments pertaining to Limited Common Property and Facilities may be so assessed only among the units to which such Limited Common Property appertains.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessment on a unit is binding upon the Association as of the date of its issuance.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his unit.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Owners agree that they have waived and will not claim any homestead exemption if proceedings supplementary to obtaining judgment are required to collect said amounts.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. COMMITTEE. No building, fence, wall or other structure shall be commenced, directed or maintained upon the properties within this P.U.D., nor shall any exterior, addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same, shall have been submitted to and approved in writing by the Board of Directors of the Association or by an architectural committee composed of three or more representatives appointed by said Board as to harmony with external design and location (in relation to surrounding structures and topography). In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provision of this article will be deemed to have been fully met.

ARTICLE VII

OBLIGATIONS AND LIMITATIONS OF OWNER

Section 1. OWNER'S OBLIGATION TO REPAIR. Each Owner shall, at Owner's expense, keep the interior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition. Each Owner shall also, at his own expense, keep the exterior of his living unit and his unit in good order, condition and repair and shall be responsible to paint, repair, replace and care for roofs, gutters, down spouts, exterior building surfaces, walks and all other exterior improvements to his unit and living unit, to include that area directly in front and to the side and rear of his unit and living unit.

Section 2. PRIOR APPROVAL OF BOARD OF DIRECTORS. Except for the restoration of the original state, color, shape, or condition of any exterior improvements of each unit or living unit, and unless at the instance and notice to said Owner of the Board of Directors of the Association that such restoration shall not be in conformity with the general purposes of the Association or the architectural or aesthetic values of the properties within the subject P.U.D., it shall be necessary, before any repairs or maintenance of exterior improvements to any unit or living unit shall be made, to obtain the prior approval of the board or architectural committee to make any such proposed changes in the manner specified in Article V hereof. Nevertheless, the duty of making repairs and keeping the unit and living unit of each Owner in good condition and repair is upon the Owner thereof, and failure of the Owner to repair or maintained upon thirty (30) days notice and demand of the board, shall in addition to all other rights, privileges and remedies provided in this Declaration allow the board to make or cause to be made such repairs and alterations to the exterior improvements of any unit or living unit as the board may deem consistent with the provisions and purposes of the Association or this Declaration. Therefore, the board shall assess such Owner the costs for such repairs and alterations and the same shall be a lien and encumbrance against the unit together with improvements thereon of the Owner until the same have been paid.

Section 3. LANDSCAPING. The Owner of each unit shall be responsible for providing and maintaining the landscaping to the side of his Unit up to and abutting the unit next to his own Unit, the front planting area directly in front of his Unit with flowers, shrubs, grass and such other plants and items as may be necessary to maintain an attractive appearance consistent with the purposes and intents of this Declaration. All Landscaping shall be subject to the approval of the Architectural Control Committee as provided in Article V of this Declaration, and shall be in accordance with a general landscape plan and design adopted by the Board or by the Architectural Control Committee, unless otherwise approved in writing by said committee or the Board.

Section 4. LIMITATIONS OF USE OF LIVING UNITS AND UNITS. The living units and units of Owners shall be occupied and used as follows:

a. No owner shall occupy or use his unit or permit the same or any part thereof to be occupied for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's tenants and the family or guests of such tenants.

b. Owner shall at all times maintain fire and casualty insurance upon the living unit in an amount equal to one hundred percent (100%) of its fair market value. In the event of fire, casualty or other damage to said unit, Owner shall, consistent with the terms and provisions of this Declaration, use the proceeds of such damaged unit and shall make such repairs and restoration within a reasonable time after the occurrence of such damage.

c. Nothing shall be done or kept on any living unit or on any unit which will increase the rate of insurance thereon, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his living unit or on his unit which will result in the cancellation of insurance of any living unit within the P.U.D. living units or lots of said P.U.D.

d. Owner shall obey and conform to all laws pertaining to the exercise of his use and enjoyment of his lot and living unit as required by the State of Utah, County of Cache or city of Logan, to include but not be limited to the zoning laws and ordinances now in effect or as may subsequently be amended by such governmental entities; and further shall insure and be responsible for insuring that all residents of his living unit shall also comply with said laws and ordinances.

e. Owner shall maintain the side walks and driveways of his unit and those directly in front of his living unit and keep the same safe and clean and free of ice, snow, rubbish, and debris.

f. No sign of any kind shall be displayed to the public view on or from any living unit without the prior consent of the board of trustees of the Association.

g. No animals, livestock, or poultry of any kind shall be raised, bred or kept in or about any living units, and be subject to the rules and regulations adopted by the Association and subject to other provisions of the Declaration.

h. No noxious or offensive trade, business or activity shall be carried on in any living unit or upon any unit nor shall anything be done which may be or become an annoyance or nuisance to other owners.

i. No trailer, basement, tent, shack, garage or barn or other outbuilding erected within the boundaries of the subject property of this Declaration shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.

j. A minimum of two (2) parking spaces for off-street parking shall be provide and set aside for each residence of said P.U.D. (includes one space inside of each garage). Parking shall be permitted only in spaces so provided. No parking or storage of any non-functioning vehicle shall be allowed in the rear yard or side yard of any unit and the parking or storage of any truck, trailer, or recreational vehicle, except as may be necessary and incidental to the construction or repair of a living unit on such unit. No on street parking shall be allowed within the P.U.D., the street or driveway accessing the units within the P.U.D. is a fire lane and therefore any vehicles parked thereon will be subject to being towed away at the owners expense.

k. None of the rights and obligations of the owners created herein or by subsequent deed shall be altered in any way by encroachment due to settlement or shifting of the structures or any similar cause. There shall be valid easements for the maintenance of said encroachment so long as they shall exist provided, however, that in no event shall a valid easement occurred due to the willful conduct of said owner.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. DURATION AND AMENDMENT. The covenants and restrictions of this Declaration shall run with the land and inure to the benefit of, and be enforceable by, the Association or the Owner of the land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded with the office of the Cache County Recorder.

Thereafter, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Unit Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Unit Owners. Any amendment must be recorded.

Section 2. NOTICES. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing.

Section 3. ENFORCEMENT. The Association, or any owner, shall have the right to enforce these covenants, conditions and restrictions. Enforcement of the covenants and restrictions contained in this Declaration shall be made by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction specified herein, either to restrain violation or recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any person in default of the terms of this Declaration or otherwise violating the provisions of this Declaration shall pay in addition to all proven damages, all costs incurred in the enforcement of these provisions, to include a reasonable attorney's fee.

Section 4. SEVERABILITY. Invalidation of any one provision of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. ANNEXATION. Additional residential property and common Area may be annexed to the properties with the consent of two-third (2/3) of each class of members.

Section 6. CONSTRUCTION REQUIREMENTS. All requirements for the construction of each of the units within the P.U.D. shall be under the rules and requirements of the Declaring Co-Ax Enterprises Inc.

Section 7. CONDOMINIUM OWNERSHIP ACT. It is intended that Chapter 8 of Title 57 of the Utah Code Annotated, titled "Condominium Ownership Act", shall apply to this property.

Section 8. SERVICE OF PROCESS. The name and address of the person to receive service of process on behalf of the project is Reed A Elder, 3685 N. Hwy 91, Smithfield, Utah 84335.

Dated the day and year first above written.

Co-Ax Enterprises Inc.

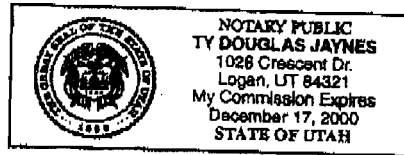
By: [Signature]
Reed A Elder, President

STATE OF UTAH)
) : ss.
County of Cache)

On this 14 day of April, 1996, personally appeared before me Reed A Elder, President of Co-Ax Enterprises, Inc., who duly acknowledged to me that he is the authorized declarant, duly authorized and empowered to execute the foregoing document.

[Signature]
NOTARY PUBLIC

Commission Exp. 12/17/2000



ENT 672391 Bk 780 Pg 80
DATE 4-DEC-1997 3:59PM FEE 21.00
MICHAEL L GLEED, RECORDER - FILED BY JH
CACHE COUNTY, UTAH
FOR CO-AX ENTERPRISES

(Amended)

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR VICTORIAN VILLAGE

This Declaration made this 14th day of April, 1997 by Co-Ax Enterprises Inc., Developer of Victorian Village, hereinafter collectively referred to as "Declarant".

WITNESSETH:

Now therefore, Declarant is the owner of real property DESCRIBED in Article II hereof and desires to create thereon single family detached housing in Victorian Village development ("Development"), and whereas Declarant desires to provide for the preservation of the values and amenities of said Development for the benefit of the property owners thereof and for the maintenance of open spaces and common facilities and improvements thereon, and desires to subject the real property described in Article II hereof to the covenants and restrictions set forth hereinafter for the benefit of said property and each owner thereof, and,

Now therefore, Declarant has deemed it desirable for the PRESERVATION of the values and amenities of said Development to create an association for the purpose of maintaining and enforcing the covenants and restrictions as specified herein;

Now therefore, the Declarant declares that the real property, hereinafter described in Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, liens and easements, hereinafter set forth.

ARTICLE I

DEFINITIONS

Section 1. The following terms used in this Declaration shall have the following meanings:

- a. "Association" shall mean and refer to the Victorian Village Homeowners Association, its successors and assigns, established by Declarant for the purpose of maintaining, administering and enforcing the covenants and restrictions hereinafter set forth.
- b. "Unit" shall mean and refer to any plot of land shown upon any recorded Development map of the subject property of the Declaration with the exception of those parcels dedicated or otherwise set apart to any governmental agency, except common and limited common areas, and as approved by the City of Logan, Utah.
- c. "Living Unit" shall mean and refer to any portion of a building or structure situated upon any unit of the subject property of this Declaration which is designed and intended for use and occupancy as a residence by a single family or up to two (2) unrelated individuals, to include outbuildings appertaining thereto.
- d. "Family" shall mean one or more persons related by blood, marriage or adoption occupying a living unit and living as a single housekeeping unit, and shall include up to two (2) unrelated individuals.
- e. "Owner" shall mean and refer to the record owner, or contract owners, whether one or more persons or entities, of the fee simple title to any unit or living unit situated upon the subject property of this Declaration, but not withstanding any applicable theory of mortgages, shall not mean or refer to a mortgage unless and until such mortgagee has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure.
- f. "Member" shall mean and refer to all those owners who are members of the Association.
- g. "Mortgage" shall mean a trust deed or installment land purchase contract or any such similar instrument of encumbrance as well as a mortgage.
- h. "Mortgagee" shall mean a beneficiary under or a holder of a trust deed or installment land purchase contract or such similar instrument of encumbrance as well as a mortgage.
- i. "First Mortgage" shall mean a recorded mortgage with first priority over other mortgages.
- j. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and employment of the owners collectively. The Common Area owned by the Association at the time of the conveyance of the first unit is described in a deed to the association and reflected upon the recorded plat of Victorian Village, to include but not be limited to recreation area, private roads, bike and walk paths, parking, open and greenery area.
- k. "Limited Common Property and Facilities" shall mean any porches, patios or other apparatus intended to serve a single unit, but located outside the boundaries of the unit, and shall appertain to that unit exclusively. For all purposes herein, including maintenance and other costs, taxes or expenses attributable to Limited Common Property or Facilities, the owners of the units to which such property is appurtenant shall be solely responsible for such costs and expenses, and such amounts may be assessed and apportioned to such units exclusively, in proportion to the use thereof available to such units.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. PROPERTY DESCRIPTION. The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the City of Logan, County of Cache, State of Utah and is more specifically described as follows:

BEG S 88°50'33" E 574.23 FT FROM NW COR OF LT 5 BLK 3 PLT D LOGAN FARM SVY & ON S R/W OF 1400 NORTH ST. & TH S 2°11'22" W 333.71 FT (S 330 FT BR) ALG FENCE TH N 88°25'53" WEST 189.75 FT (W 189.75 FT BR) ALG A FENCE TH N 2°12'50" E 332.34 FT (N 330 FT BR) TO SD S R/W TH S 88°50'33" E 189.75 FT (E 189.75 FT BR) TO BEG.

Also: BEGINNING SOUTH 88°55' 33" EAST 284.48 FEET FROM THE NORTHWEST CORNER OF LOT 5, BLOCK 3, PLAT "D", LOGAN FARM SURVEY, SAID POINT ON THE SOUTH RIGHT-OF-WAY OF 1400 NORTH STREET, AND RUNNING THENCE SOUTH 2°12'50" WEST 332.34 FEET; THENCE NORTH 88°25'53" WEST 295.02 FEET ALONG FENCE TO THE EAST RIGHT-OF-WAY OF UTAH NORTHERN RAILROAD RIGHT-OF-WAY THENCE NORTH 2°41'02" EAST 330.29 FEET ALONG THE RIGHT-OF-WAY TO THE SOUTH RIGHT-OF-WAY OF 1400 NORTH STREET; THENCE SOUTH 88°50'33" EAST 292.34 FEET ALONG THE RIGHT-OF-WAY TO BEGINNING.

ARTICLE III

PROPERTY RIGHTS

Section 1. OWNER'S EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

b. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

c. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer signed by 2/3rd of each class of members has been recorded or unless duly taken by authority of eminent domain.

Section 2. DELEGATION OF USE. Any owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

Section 1. MEMBERSHIP. Every person or entity who is a record owner of a fee or undivided fee interest in any unit which is the subject of this Declaration shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. VOTING RIGHTS. The Association shall have two classes of voting memberships.

CLASS A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Unit.

CLASS B. Class B members(s) shall be the Declarant, and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class A

(b) On May 1, 2004

Section 3. BOARD OF DIRECTORS. A board of directors shall be established pursuant to the article of incorporation and by-laws of the Association for the purpose of directing the affairs of the Association. The board of directors shall have all powers as may be specified in the articles of incorporation and by-laws of said Association. For purposes of the Utah Non-Profit Corporation and Co-Operative Association Act, the Board of Directors shall be the governing Board of Trustees, and directors who are member thereof shall be regarded as trustees.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.

The Declarant, for each unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. MAXIMUM ANNUAL ASSESSMENT. Until January 1, 1998, the maximum annual assessment shall be Three Hundred Sixty Dollars (\$360.00) per unit, prorated through 1997, payable monthly.

a. From and after January 1, 1998, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

b. From and after January 1, 1998, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

c. The board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-third (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis; provided, however, that assessments pertaining to Limited Common Property and Facilities may be so assessed only among the units to which such Limited Common Property appertains.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessment on a unit is binding upon the Association as of the date of its issuance.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his unit.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGES. The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Owners agree that they have waived and will not claim any homestead exemption if proceedings supplementary to obtaining judgment are required to collect said amounts.

ARTICLE VI

ARCHITECTURAL CONTROL

Section 1. COMMITTEE. No building, fence, wall or other structure shall be commenced, directed or maintained upon the properties within this Development, nor shall any exterior, addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same, shall have been submitted to and approved in writing by the Board of Directors of the Association or by an architectural committee composed of three or more representatives appointed by said Board as to harmony with external design and location (in relation to surrounding structures and topography). In the event said Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and the provision of this article will be deemed to have been fully met.

ARTICLE VII

OBLIGATIONS AND LIMITATIONS OF OWNER

Section 1. OWNER'S OBLIGATION TO REPAIR. Each Owner shall, at Owner's expense, keep the interior of his unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition. Each Owner shall also, at his own expense, keep the exterior of his living unit and his unit in good order, condition and repair and shall be responsible to paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, walks and all other exterior improvements to his unit and living unit, to include that area directly in front and to the side and rear of his unit and living unit.

Section 2. PRIOR APPROVAL OF BOARD OF DIRECTORS. Except for the restoration of the original state, color, shape, or condition of any exterior improvements of each unit or living unit, and unless at the instance and notice to said Owner of the Board of Directors of the Association that such restoration shall not be in conformity with the general purposes of the Association or the architectural or aesthetic values of the properties within the subject Development, it shall be necessary, before any repairs or maintenance of exterior improvements to any unit or living unit shall be made, to obtain the prior approval of the board or architectural committee to make any such proposed changes in the manner specified in Article V hereof. Nevertheless, the duty of making repairs and keeping the unit and living unit of each Owner in good condition and repair is upon the Owner thereof, and failure of the Owner to repair or maintain upon thirty (30) days notice and demand of the board, shall in addition to all other rights, privileges and remedies provided in this Declaration allow the board to make or cause to be made such repairs and alterations to the exterior improvements of any unit or living unit as the board may deem consistent with the provisions and purposes of the Association or this Declaration. Therefore, the board shall assess such Owner the costs for such repairs and alterations and the same shall be a lien and encumbrance against the unit together with improvements thereon of the Owner until the same have been paid.

Section 3. LANDSCAPING. The Owner of each unit shall be responsible for providing and maintaining the landscaping to the side of his Unit up to and abutting the unit next to his own Unit, the front planting area directly in front of his Unit with flowers, shrubs, grass and such other plants and items as may be necessary to maintain an attractive appearance consistent with the purposes and intents of this Declaration. All Landscaping shall be subject to the approval of the Architectural Control Committee as provided in Article V of this Declaration, and shall be in accordance with a general landscape plan and design adopted by the Board or by the Architectural Control Committee, unless otherwise approved in writing by said committee or the Board.

Section 4. LIMITATIONS OF USE OF LIVING UNITS AND UNITS. The living units and units of Owners shall be occupied and used as follows:

a. No owner shall occupy or use his unit or permit the same or any part thereof to be occupied for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's tenants and the family or guests of such tenants.

b. Owner shall at all times maintain fire and casualty insurance upon the living unit in an amount equal to one hundred percent (100%) of its fair market value. In the event of fire, casualty or other damage to said unit, Owner shall, consistent with the terms and provisions of this Declaration, use the proceeds of such damaged unit and shall make such repairs and restoration within a reasonable time after the occurrence of such damage.

c. Nothing shall be done or kept on any living unit or on any unit which will increase the rate of insurance thereon, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his living unit or on his unit which will result in the cancellation of insurance of any living unit within the Development living units or lots of said Development.

d. Owner shall obey and conform to all laws pertaining to the exercise of his use and enjoyment of his lot and living unit as required by the State of Utah, County of Cache or city of Logan, to include but not be limited to the zoning laws and ordinances now in effect or as may subsequently be amended by such governmental entities; and further shall insure and be responsible for insuring that all residents of his living unit shall also comply with said laws and ordinances.

e. Owner shall maintain the side walks and driveways of his unit and those directly in front of his living unit and keep the same safe and clean and free of ice, snow, rubbish, and debris.

f. No sign of any kind shall be displayed to the public view on or from any living unit without the prior consent of the board of trustees of the Association.

g. No animals, livestock, or poultry of any kind shall be raised, bred or kept in or about any living units, and be subject to the rules and regulations adopted by the Association and subject to other provisions of the Declaration.

h. No noxious or offensive trade, business or activity shall be carried on in any living unit or upon any unit nor shall anything be done which may be or become an annoyance or nuisance to other owners.

i. No trailer, basement, tent, shack, garage or barn or other outbuilding erected within the boundaries of the subject property of this Declaration shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence.

j. A minimum of two (2) parking spaces for off-street parking shall be provide and set aside for each residence of said Development (includes one space inside of each garage). Parking shall be permitted only in spaces so provided. No parking or storage of any non-functioning vehicle shall be allowed in the rear yard or side yard of any unit and the parking or storage of any truck, trailer, or recreational vehicle, except as may be necessary and incidental to the construction or repair of a living unit on such unit. No on street parking shall be allowed within the Development, the street or driveway accessing the units within the Development is a fire lane and therefore any vehicles parked thereon will be subject to being towed away at the owners expense.

k. None of the rights and obligations of the owners created herein or by subsequent deed shall be altered in any way by encroachment due to settlement or shifting of the structures or any similar cause. There shall be valid easements for the maintenance of said encroachment so long as they shall exist provided, however, that in no event shall a valid easement occurred due to the willful conduct of said owner.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. DURATION AND AMENDMENT. The covenants and restrictions of this Declaration shall run with the land and inure to the benefit of, and be enforceable by, the Association or the Owner of the land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded with the office of the Cache County Recorder. Thereafter, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Unit Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Unit Owners. Any amendment must be recorded.

Section 2. NOTICES. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed postage prepaid to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing.

Section 3. ENFORCEMENT. The Association, or any owner, shall have the right to enforce these covenants, conditions and restrictions. Enforcement of the covenants and restrictions contained in this Declaration shall be made by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction specified herein, either to restrain violation or recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any person in default of the terms of this Declaration or otherwise violating the provisions of this Declaration shall pay in addition to all proven damages, all costs incurred in the enforcement of these provisions, to include a reasonable attorney's fee.

Section 4. SEVERABILITY. Invalidation of any one provision of these covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. ANNEXATION. Additional residential property and common Area may be annexed to the properties with the consent of two-third (2/3) of each class of members.

