

ENT 605873 Bk 620 Pg 730
DATE 26-JUL-1994 1:00PM FEE 80.00
MICHAEL L GLEED, RECORDER - FILED BY DB
CACHE COUNTY, UTAH
FOR HICKMAN LAND TITLE COMPANY

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
SHADOW MOUNTAIN ESTATES
A RESIDENTIAL PLANNED UNIT DEVELOPMENT

WITNESSETH

The following covenants, conditions and restrictions are hereby imposed on and for the benefit of the real property described below by all of Owners/pursuant to the laws of the State of Utah.

These covenants, conditions and restrictions are enforceable equitable servitude running with the land. They are specifically enforceable by owners of lots/homes in the development and by the Shadow Mountain Estates Planned Unit Development Association, a nonprofit corporation, incorporated under the laws of the State of Utah.

Owners hold fee simple title to all of that certain parcel of real property situated at Cache County, Utah described as follows:

Part of the Southeast Quarter of Section 35,
township 12 North, Range 1 East of the Salt
Lake Base and Meridian described as follows:
Beginning at a point which lies East 175.14
feet from the southeast corner of horizon hill
subdivision, said point lying on the East line
of 1400 east street, and running thence north

along said East line of street 727.40 feet;
thence East 63.84 feet; thence north 89° 52'
00" East 35.66 feet (East 35.13 feet by
record); Thence south 53° 55' 57" East 370.33
feet (south 53° 54' 29" East 370.52 feet by
record); Thence south 72° 25' 24" East 210.34
Feet (South 72° 28' 14" East 210.08 feet by
record); thence South 6° 02' 29" West 10.00
feet: Thence South 0° 02' 49" West 436.00 feet
(South 435.92 Feet by Record): Thence West
597.96 feet (597.65 feet by record) to the
point of beginning. Containing 8.098 Acres +/-

Said parcel consists of 8.098 acre, that will be layed out and developed as shown in all of appendix # 1. All of the outside areas shall be held and used in common by the owners of the 43 homes. Said parcel, 43 lots/homes, and common areas, are hereby designated and named "Shadow Mountain Estates Residential Planned Unit Development" The lots and common areas are as depicted on the Logan City Residential Planned Unit Development Plat recorded herewith in the office of the Cache County Recorder.

All of said premises shall hereafter be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are hereby imposed for the purpose

of protecting the value and desirability of and shall run with said real property and be binding on an inure to the benefit of the present owners and their successors and assigns who have or acquire rights of possession to any lot(s)/home(s) in the Development.

ARTICLE I
DEFINITIONS

1. Association- means all of the owners of lot(s)/home(s) all of whom are automatic members of the "Shadow Mountain Estates Residential Planned Unit Development Association, a Utah non-profit corporation of property owners incorporated concurrently with the adoption of this Declaration of Covenants, Conditions and Restrictions, acting through the Association pursuant to this Declaration, the Articles of Incorporation and the By-Laws.

2. Common Areas and Facilities - means all common areas and all commonly used facilities, including all improvements located thereon, all of which common areas are shown on the Shadow Mountain Estates Residential Planned Unit Development Plat.

3. Lot (s)/home (s) - means those separate physical parcels of real property intended for independent residential use and the completed residential dwelling unit situated thereon, title to which is and shall be held in fee simple ownership. 43 lot (s)

home(s) and associated common areas form the Development and are shown on the Plat. The residential dwelling home (s) are intended to be used solely and independently by home owners. Lot(s)/home (s) are intended to be independently owned in fee simple, encumbered and conveyed. Home(s) include the walls and partitions which are wholly contained within a home(s), the roof and outside walls also the lot upon which the homes are built will be a rectangle equal in each direction to the largest dimension of the home and will be shown on the final plat and described on the Home Owners deed. The interior decorated and finished surfaces of inside walls, floors and ceilings. Mechanical equipment located within a home(s), or located outside a home(s) but designated and designed to serve only one home, such as appliances, shall be considered part of a home.

4. Lot /Home Numbers - means the lot/home numbers shown on the Plat. The legal description of individual lot(s)/home(s) consist of such lot/home numbers as shown on the Plat.

5. Owners and Members- means each owner of a fee simple interest in a lot/home unit and of an appurtenant one-forty third (1/43) or divided equally between lot(s)/home(s) owned or occupied at time of billing undivided interest in common areas and facilities. When a home is the subject of an executory contract of purchase, the contract purchaser shall, unless the contract seller and contract purchaser otherwise agree and inform the management committee in writing of such an agreement, be considered the owner for all purposes of membership in the

Association, including voting, eligibility to serve as a Trustee or officer of the Association and liability for the units' share of common expenses.

6. Rules and Regulations- means rules and regulations as the same may be adopted from time to time by the Association which rules and regulations control the use and enjoyment of the property for the common benefit of the owners.

(A) Use of Lots and Living Homes as Family Dwellings.

All lots are improved with home(s) and are a home each to be used only as a single-family residence. No lot home shall be used, occupied, or altered in violation of the 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 of the costs of any insurance covering the Common Areas.

Shadow Mountain Estates Residential Planned Development is designed and intended to be for adult living. Shadow Mountain Estates is designed to provide important housing opportunities for older persons. Residents of each home(s) shall be restricted and limited to at least one resident being fifty (50) years of age or older. No more than two (2) persons may occupy each Living Unit unless all

such persons are a family and are related by blood, marriage or adoption and then no more than four (4) such persons may so occupy each home. Of those who are so related, no more than two (2) of those persons may be children of one or both of the other said person, and such children shall be seventeen (17) years of age or older. This restriction is to be understood to limit the occupancy of each home to no more than four (4) persons. A person shall be deemed a resident for purposes of this section upon residing in the complex for a period of fourteen (14) days in any thirty (30) day period. Renters are considered to be residents and are subject to these restrictions except no more than two (2) renters shall occupy a home at one time, without written consent from the Associations Committee. The Associations Committee shall publish and provide to all resident copies of this Declaration and said Committee shall demonstrate an intent by the Home Owners to provide suitable and sufficient housing for persons 50 years or older.

B. HARDSHIP MODIFICATIONS OF OCCUPANCY RESTRICTIONS

The number of occupants and their age are restricted by the Declaration and Covenants of Shadow Mountain Estates. It is recognized that at times this will be a hardship on the home owner and their families and that under some circumstances there should be temporary modification of the restrictions.

Some of the reasons may be as follows:

- (a) Parents have temporary work transfer and their adult children over 17 would continue to live in home until parents return.
- (b) Owner is ill or disabled requiring help from family or others, with a maximum of 3 unrelated persons.
- (c) Owner is called to church or Government service and adult children continue to live in home.

This modification of rules can be granted for up to three years by the Trustees or 75% of the Home Owners.

7. Common Expenses - mean all sums incurred or expended on behalf of owner members by the Association in the performance and exercise of its duties and functions including:

- A. Expenses of administration of the Association.
- B. Expenses of maintaining and replacing improvements and facilities on common areas or providing common services to lot(s)/home (s) including driveways, walk ways, retaining walls

and landscaping and fences.

C. Expenses of outside building repairs and replacements and maintenance including roofs, and exterior walls. A separate account for the cost of water and maintenance of a water distribution system, including all pipes and meters, shall be maintained by the Association. One forty-third (1/43) of the cost divided as set forth before of all such water costs shall be assessed against each lot/home and the owners(s) thereof.

D. Expenses of obtaining and maintaining insurance providing the coverage required to be provided by the Association set forth below.

E. Any real property taxes which may be separately assessed against the common areas and facilities.

F. All other charges or costs expended by or on behalf of the Association for the benefit of the lot/home(s) owner-members as a group or to protect their mutual interests.

ARTICLE II

PROPERTY RIGHTS AND BURDENS

Section 1- Easements. Owners of lot(s)/home(s) shall have the right in common to use and enjoy all common areas and facilities in accordance with this Declaration and the Association's By-Laws and any Rules and Regulations established by the Association.

Section 2-Existing Building and Improvements- Alternation

The dimensions of each lot/home shall be a rectangle equal in each direction to the largest dimensions of the home and will be shown on the final plat. Existing improvements include the driveways, walks, and outside landscaped areas shown on the Plat. There are no recreational amenities in the Development excepting a small lake and associated water fall and stream. The buildings are wood frame structures with exterior brick and plaster with tile roofing. None of the common areas and improvements and facilities, including the culinary water system, shall be altered or changed by individual lot/home owners. Alterations or changes in these improvements may be made only by the Association. All lots(s)/home(s) are residential homes intended for separate private use. All lot(s)/home(s) are capable of being independently owned, encumbered and conveyed. Roofs, exterior walls homes shall not be altered, changed or maintained by individual lot/home owners. Alterations, changes and maintenance of these portions of homes shall be the sole and exclusive responsibility of the Association which shall maintain the same uniformly.

Section 3- Percentage of Undivided Interest In Common Areas and Facilities. Each lot(s)/home(s) is deemed to own a one forty-third (1/43) undivided interest in all common areas and facilities. This interest in the common areas is appurtenant to each lot/home and cannot be separated therefrom. All transfers

and conveyances of lot(s)/home(s) are deemed to include such lot(s)/home(s)' undivided common ownership of common areas and facilities even though not specifically mentioned in the instrument of transfer.

Section 4- Patio and Driveways. Each home Patio and each home driveway immediately in front and patio immediately in back of each home is intended for the sole and exclusive use of the owner(s) of the Lot(s) home (s) they were designed to serve. Each lot (s)/home(s) owner shall, at such owner's sole cost and expense, keep the patio and driveway pertaining to such owner's home in a clean, sanitary and attractive condition at all times and shall not so use the same so as to increase the cost of its maintenance.

Section 5- Condition of Homes. Home owners shall, at the Home owner's sole cost and expense, keep the entrance to his home in a clean, sanitary and attractive condition. Each home owner shall, at his sole cost and expense, maintain, repair, paint, repaint, tile, wax, paper, finish, refinish, and decorate interior surfaces, walls, ceilings, floors, windows and doors of the owner(s)' home and keep the same in good repair. Each home owner shall properly maintain, repair and replace the plumbing fixtures, appliances, and fixtures in or connected with the owner(s) home(s). Each unit shall be continuously maintained so as not to detract from the appearance of the Development and so as not to

affect adversely the value or use of any other home(s).

Section 6- Association Membership. Membership in the Shadow Mountain Estates Residential Planned Unit Development Association is mandatory, appurtenant to the ownership of lot(s)/home(s) and cannot be separated therefrom.

Section 7-Easement For Possible Encroachments. If any part of a lot/home now encroaches or may hereafter encroach upon common areas or upon adjoining lot(s) / home (s) a permanent easement for such an encroachment and for the maintenance of the same is hereby imposed. Any such encroachment(s) shall not be considered to be encumbrances of the common areas or other home(s). Encroachments within the scope of this section include, but are not limited to, any caused by error in the original construction of the buildings, any caused by error in the Plat and any which are created by settling, rising or shifting of the earth or changes in position caused by repairs or reconstruction of any buildings or units or any part thereof or of any part of the project. This section shall not be construed to prohibit normal repairs or necessary reconstruction.

Section 8- Access For Repair of Common Areas and Facilities. To the extent that common areas or facilities, including portions of the culinary water system, are located within /patio(s) or are conveniently accessible through patio(s), the owners of other home(s)/patio(s) and the Association shall have access to such

patio(s) during reasonable business hours for performing maintenance and effecting repairs and replacements.

Section 9- Emergency Access. The Association shall have access to home(s)-patio(s) to make the emergency repairs or to prevent or limit damage. Damage to the interior of any part of home(s)- patio(s) arising from maintenance, repairs, emergency repairs or replacement of any of the common areas or facilities or resulting from an emergency or the need to make emergency repairs or take measures to prevent damage to other home(s) shall be the responsibility of the Association. (It is intended that damage caused by events concerning which insurance may be obtained will be covered entirely by insurance.)

Section 10 -Right of Ingress and Egress. Each owner shall have the right of the ingress and egress over, upon and across common areas for access to such owner(s) home(s)- patio(s).

Section 11- Pipes, Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Facilities and Support. Each home owner has an easement in common with the owners of all other homes to use all pipes, wires, ducts, cables, conduits, public utility lines and other facilities located in or passing through other patios(s) which service other home(s). Each home shall be subject to an easement in favor of the owners of all other homes to use the pipes, ducts, cables, wires, conduits, public utility lines and other common facilities serving such other home (s) and

located in such patio(s). The association shall have a right of access to each patio to inspect all such, to remove violations therefrom and to maintain, repair or replace all such common facilities.

Section 12- Association Easements. The Association has non-exclusive easements to make such use of the common areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform.

Section 13- Easement For Utility Services. A blanket easement exists upon, across, over and under the common areas and all lot(s) patio(s) for ingress, egress, installation, replacement, repairing and maintaining all utilities, including but not limited to water, sewer, gas, telephone, electricity and other utility services. This easement right may be exercised by lot/home owners, the Association and by providers of utility services.

Section 14- Use of Lot(s)/Home(s) And Common Areas.

A. Each lot/home(s)/patio(s) in the Development shall be used for single family residential housing. Each is restricted to such use and to office/type home business use to the extent the latter is permitted by the City of Logan.

B. There shall be no obstruction of the common areas by owners or their tenants, guests or invitee without the prior

written consent of the Association. The Association may, by Rules and Regulation, prohibit or limit the use of the common areas as may be reasonably necessary for protecting the interests of all owners or protecting the use or value of lot(s)/home(s). Nothing shall be kept or stored on any part of the common areas without the prior written consent of the Association, except as may be permitted by Rules of the Association. Nothing shall be altered, constructed or removed from the common areas without the prior written consent of the Association.

C. Nothing shall be done or kept in any unit or in the common areas or any part thereof which could result in cancellation of insurance or increase the insurance rates in excess of rates otherwise available for the Association or owners.

D. Nothing shall be done or kept in any home/patio or in the common areas or any part thereof which violates any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

E. No damage to, or waste of, the common areas or any part thereof shall be committed by any owner or any invitee of any owner. No noxious, destructive or offensive activity shall be carried on in any home or in the common areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully residing in the project.

Section 15- Obligation to Abide By Rules and Regulations.

No owner shall violate the Rules and Regulations for use of the Home(s)-Patio(s) and for the common areas adopted from time to time by the Association.

Section 16- Outside Parking. No recreational vehicles (boats, campers, trailers, motor homes or similar items) shall be parked on any portion of the common areas or limited common areas except for temporary parking and except as may be permitted by Rules and Regulations of the Association.

Section 17- Signs. Signs indicating a unit is for sale or for rent shall be displayed and located only in such manner as Association may, by Rule or Regulation, determine.

ARTICLE III

STATUS AND AUTHORITY OF ASSOCIATION

Section 1 Shadow Mountain Estates Residential Planned Unit Development Association. Shadow Mountain Estates Residential Planned Unit Development Association is a Utah non-profit corporation formed to be controlled by and serve the interests of the owners/members. The Association shall be operated by a Governing Board of three Trustees. The Trustees shall select such officers and agents having such duties and responsibilities in respect to managing the business and affairs of the Association as the Governing Board shall determine or as determined by the By-Law. A President or Project Manager may be selected who is qualified or willing to become qualified to keep appropriate books and records, to make budgets and to undertake such other actions as may be

reasonable and appropriate in the exercise of the duties of the Association to maintain common areas and facilities and to protect and preserve the interests of the owners. Each owner shall exercise the vote pertaining to such owner's lot(s)/home(s) in electing Trustees to serve on the Governing Board in accordance with the Articles of Incorporation and By-Laws of the Association and shall exercise the vote pertaining to such owner's home(s)-patio(s) with respect to each and every other matter which may properly be submitted to a vote of the members of the Association. The present owners whose signatures are affixed to this Declaration shall designate the three persons who will initially serve as Trustees of the Shadow Mountain Estates Residential Planned Unit Development Association. These three persons are named in the Articles of Incorporation. Such person initially so designated shall serve for terms of one, two and three years respectively as the Articles provided. Each year the owners/members shall, in the manner provided by the By-Laws, select a Trustee to replace the Trustee whose term has expired. In the event a Trustee dies or resigns during his term of office, such Trustee's successor shall be selected as provided in the By-Laws. Trustees must own one or more lot(s)/ home(s).

Section 2- Authority of Association. The Association, as representative of an agent for the owners, may undertake any act reasonably necessary or appropriate to execute and enforce this Declaration. The authority of the Association includes exercise

of the following functions:

A. Granting utility and similar easements over, under, across and through the common areas and facilities.

B. Preparing , executing and recording, on behalf of Owners, amendments to this Declaration or to the Plat which have been approved by the owners of three-fourths (3/4ths) of the lot(s)/home(s).

C. Making appropriate demand on behalf of owners and filing and responding to suits pertaining to the development, and entering into contracts for the common benefit of lot/home members.

D. Purchasing or otherwise acquiring and accepting title to property for the benefit of owners/members.

E. Borrowing money to meet the reasonable expenses of operating the Association, provided however that no indebtedness for borrowed funds shall exceed at any given time the sum of \$5,000.00 without the prior approval of the owners of three-fourths (3/4ths) of the lot(s) /home(s).

F. Promulgating such reasonable Rules and Regulations and procedures as may be necessary or desirable to regulate use of common areas or to insure that the Development is maintained and used in a manner consistent with the interest of all owner/members.

G. Making annual and special budgets and assessments for common expense and imposing and enforcing expense assessments against the owner/members and the respective lot(s) /home(s).

ARTICLE IV

ASSESSMENTS-- ASSOCIATION LIEN AND OTHER COLLECTION RIGHTS

Section 1- Duty to Pay Assessments. The present owners, for each lot/home each respectively owns, hereby covenant and each future owner or any lot(s)/home(s) by the acceptance of a Deed or contract for purchase or assignment of interest or other means of transfer of ownership, is deemed to covenant and agree with all of the lot/home owner/members of the Association and with the Association to pay assessments to the Association for expenses incurred for the purposes set forth in this Declaration and in the By-Laws, including special assessments for capital purposes as may be determined and imposed from time to time by the Association.

Section 2- Budgeting and Notice of Assessments. Assessments shall be fixed, established and collected as follows:

A. Annual Budget Assessments. An equal annual assessment against each lot/home and the owner(s) thereof shall be based upon an advance budget adopted by the Association which shall provide for payment of the estimated costs and expenses of operating the Association and paying all of the expenses of maintaining and operating common areas and facilities. The annual budget shall include expenses of management, landscaping, maintenance, improvements and replacements, maintenance of driveways, walks, patio fences, exteriors including roofs, gutters, and downspouts, maintenance of the common mailbox structure, premiums for all

insurance coverage which the Association is required or permitted to maintain pursuant to this Declaration, common lighting repairs, maintenance and replacement of the culinary water system, expense of snow removal, wages for any Association employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus and/or sinking fund and all other reasonably foreseeable expenses and liabilities which may be incurred by the Association for the common benefit of lot/home(s) owner-members. Window glass is not deemed a part of the building exteriors, but is deemed part of the privately owned lot/home for which the lot/home owner is solely responsible. A separate section of the annual budget shall be prepared for expenses and assessments related to the Development's water system.

B. Apportionment of Annual Assessments. The annual budgeted assessment shall be apportioned one forty-third (1/43) to each lot/ home and the owner(s) thereof.

C. Notice of Annual Assessments and Installment Payments. Annual assessments shall be made on a calendar or fiscal year basis as the Association shall determine. The Association shall send or deliver a copy of the budget and notification of each owner's assessment with respect to such owner's home(s) at least thirty (30) days prior to the beginning of the assessment year. The assessment shall be due and payable in twelve (12) equal monthly installments with payment due on the first day of each and every month of the assessment year. The first assessment may be

budgeted and assessed for only the balance of calendar year 1993 which remains after recordation of this Declaration. Unpaid monthly assessments shall bear interest at the rate of twelve (12%) per annum from the date due. No failure of the Association to make demand for any unpaid, delinquent monthly assessment installment shall affect the liability of the lot/home owner(s) to pay the installment with interest.

D. Special Assessments for Capital Improvements. In addition to regular annual assessments, the Association may impose special capital improvement assessments payable over such period of time as the Association may determine for the purpose of deferring in whole or in part the cost of construction or reconstruction, unexpected repair or replacement of common areas or improvements or common facilities or for any other unusual non-recurring expenses. This section shall not be construed as an independent source of authority for the Association to incur expenses. Amounts assessed pursuant hereto shall be assessed equally-- (1/43) to each lot/home and the owner(s) thereof. Reasonable notice in writing of the amount of each special assessment and the time for payment thereof shall be given to the owners. No special assessment payment shall be due sooner than thirty (30) days after such notice shall have been given. Unpaid special assessment installments shall bear interest at the rate of twelve percent (12%) per annum from the due date. Special assessments for

improvements costing no more than \$2,500.00 may be authorized by Governing Board of Trustees. Additions or capital improvements exceeding \$2,500.00 must, prior to being constructed, be authorized by those owning seventy-five percent (75%) of the Home(s).

Section 3- Collection of Assessments.

A. Association Lien Rights. All assessments against a lot/home and the owner(s) thereof, together with interest thereon, are hereby secured by and shall forever be secured by a lien on the lot(s)/unit(s) in favor of the Association. Such lien is and shall be and remain superior in right and priority to all other liens and encumbrances. To enforce said assessment lien, the Association shall prepare a written notice of assessment lien setting forth the amount of the assessments, the amount(s) remaining unpaid, the interest accrued the names of the owners of the lot(s)/home(s) assessed and the legal description of the lot(s)/home(s) affected. All such notices shall be signed by or on behalf of the Association and shall be recorded in the office of the County Recorder of Cache County, Utah. No notice of lien shall be recorded until there is a three-month's delinquency in payment of the assessment or an installment thereof. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages or mechanic's liens on real property are foreclosed in Utah, or by notice and sale in the

manner provided by the Trust Deed law of the State of Utah with respect to Trust Deeds, in which case the Association shall be a deemed trustee of the legal title to the lot(s) /home(s) in default. In any proceeding, the lot (s) / home (s) and the owner (s) thereof shall be liable for and shall pay all costs and expenses of filing the notice of lien and all reasonable attorney's fees and costs of court, whether incurred before or after suit or before or after judgement. All such costs, expense and fees are also secured by the lien. The lot (s) / home (s) and the owner (s) thereof shall continue to be liable to pay the Association all assessments becoming due during the period of foreclosure or lien enforcement including accruing interest thereon and all such unpaid accrued and accruing assessments to the date of sale with interest shall be included in the amount secured by the lien and subject to the foreclosure proceeding and all of the amounts must be paid before the Association shall be required to release the lien or to release the lien enforcement procedure. The Association shall have the right and power to bid an amount equal to all sums secured by its lien at the lien foreclosure sale for the lot(s) / home(s) affected by the lien and the Association may acquire, hold, convey, lease, rent, encumber use and otherwise deal with lot(s) / home(s) acquired at the sale as the owner thereof. A release of notice of lien shall be executed by or on behalf of the Association and recorded in the office of the County Recorder of Cache County upon payment of all sums secured by the lien including accrued and accruing monthly

assessments and interest thereon. Any holder of a mortgage, Trust Deed or other encumbrance upon a lot/home may pay the Association all unpaid assessments secured by the Association's lien and upon such payment shall be deemed subrogated to all rights of the Association with respect to the Association's lien against the lot(s) /home (s) owner (s) who fail to pay the assessment(s). The Association shall report the amount of unpaid assessments to the holder of an encumbrance upon a lot/home receiving written requests and satisfactory proof of interest.

B. Personal Obligation of Lot/Home Owners-Members.

The amount of annual and special assessments shall be a personal obligation of the lot/home owners-members in favor of the Association. Suit to recover a judgment upon such personal obligation or unpaid assessments including interest, court costs, and reasonable attorney's fees may be brought by the Association without first recording, foreclosing or otherwise pursuing the Association's assessment lien rights. No lot/home owner(s) may avoid or diminish such owner(s) personal obligation to pay assessments by waiving the use and enjoyment of such owner's lot(s) / home (s) or its appurtenant interest in the common areas or facilities or any portion thereof or by abandoning said owner's lot/home. Transferee of title and the right to possession of lot(s) / home(s) are jointly and severally liable with the transferor(s) for accrued unpaid assessments against the lot/home transferred. Such liability does not prejudice any right of a transferee to recover such from the transferor.

ARTICLE V
STATEMENT OF ACCOUNT

Upon payment of a reasonable fee of not to exceed \$ 25.00, or such lesser amount as the Association may deem reasonable and upon written request of any owner or holder or any lien or encumbrance, and upon written request of any prospective lender or purchaser of any lot/home, the Association shall issue a written statement of account setting forth the amount of any unpaid assessments, the amount of the current yearly assessment, monthly payment and any credits for prepaid expenses such as prepaid insurance premiums. Such statement shall be conclusive upon The Association in favor of persons who rely thereon in good faith.

ARTICLE VI
INSURANCE

Section 1- Required Insurance. The Association shall secure and maintain the following insurance coverage:

A. A master or blanket policy of property casualty insurance, with extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for developments similar in construction, location and use on a replacement-cost basis in an amount not less than ninety percent (90%) of insurable value (based upon estimated replacement cost of the Home(s) in the Development and other

insurable improvements in the common areas). Each such policy shall contain a mortgagee clause providing that proceeds shall be paid to the Association for the use and benefit of mortgagees holding liens on homes and lot(s)/home(s) owners as their interests may appear. Such insurance must provide protection against loss by fire and other hazards covered by reasonably available standard extended coverage.

B. A comprehensive policy of personal injury and property damage liability insurance covering events and occurrences in, about or pertaining to common areas insuring the Association and lot(s) home(s) owners and their agents, guests and invitee against liability incident to the ownership, use or operation of the common areas of the Development and also insuring lot/home owners and their agents, guests, tenants and invitees against liability incident to the ownership, use, control or occupancy of lot(s) / home(s). Limits of liability under such policy shall be at least One Million Dollars (\$1,000,000.00) per event. Such coverage shall include protection against water damage liability and against liability arising out of the use of non-owned and hired automobiles. Such insurance policy shall contain a provision precluding the insurer from denying the claim of an injured or damaged lot/home owner because of any negligent act or acts of the claimant, the Association or other lot/home owners or their agents, guests, tenants or invitees.

C. A bond or policy providing fidelity coverage protection against loss from embezzlement and other dishonest acts of

Association Trustees, officers and agents, including unpaid volunteers, particularly those responsible for collecting or disbursing funds or managing property belonging to the Association or lot/home owners. The fidelity bond or insurance must name the Association and lot/home owners as the obligees and shall be written in an amount sufficient to provide protection which in no event shall be less than the full amount of the Association's estimated annual operating expenses and reserves. Such bond or insurance shall provide that such may not be cancelled, including cancellation for non-payment of premium, or substantially modified, without at least thirty-days prior written notice to the Association.

D. Additional Insurance Requirements:

1) Each hazard insurance policy shall be written by a company acceptable to area mortgage lenders and Federal National Mortgage Association (FNMA). Each insurer must be licensed to transact business within the State of Utah. Policies are unacceptable where a) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the borrower or FNMA or its designee; for b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or c) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA or the borrower from collecting insurance proceeds.

2) Insurance secured and maintained by the Association shall

not be brought into contribution with contents or other insurance obtained by lot(s)/home(s) owners or their lenders.

3) The Association and lot/home owners are deemed to waive their rights to recover, directly or indirectly, personal injury and property damage losses to the extent coverage by and paid by insurance provided by the Association or provided by owner(s). It is the intent of this section to pass the entire risk of loss to insurers and to preclude insurers from seeking to exercise rights of subrogation or impose direct personal liability upon any insured alleged to have negligently caused a loss insured against.

4) Each policy of insurance obtained by the Association shall provide a mortgagee clause commonly accepted by private institutional mortgage investors in the area: a waiver of the insurer's subrogation rights with respect to the Association, the lot(s)/home(s) owners and all other insured; a provision that it cannot be cancelled, suspended or invalidated due to the conduct of any individual in any insured class or group: a provision that any "no other insurance clause" therein shall not apply to insurance held individually by lot/home owners: and a provision requiring the insurer to notify the Association in writing at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of coverage.

5) All insurance policies shall be reviewed at least annually by the Governing Board to ascertain that the coverage is as required by this Declaration.

Section 2- Lot /Home Owners Insurance. Any lot/home owner(s) may obtain whatever insurance coverage such owner(s) desire including contents coverage at such owner(s) own individual expense. No such additional insurance shall have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Lot/home owner(s) who individually obtain insurance shall furnish the Association a copy of such owner's policy within thirty (30) days after it is acquired.

ARTICLE VII

DAMAGE TO DEVELOPMENT

In the event of damage of or destruction of part or all of the home or improvements in the Development, the procedure set forth below shall apply:

A. If proceeds of the insurance coverage maintained by the Association are alone sufficient to repair or reconstruct the damage or destroyed improvements, repair or reconstruction shall be carried out as promptly as practicable utilizing the insurance proceeds.

B. If less than seventy-five percent (75%) of the Development's home and other improvements are destroyed or damaged, and if the proceeds of insurance are insufficient to accomplish repair or reconstruction, restoration shall be carried out and the lot/home owners shall be assessed equally for the deficiency.

C. If seventy-five percent (75%) or more of the

Development's homes and other improvements are destroyed or damaged, and if proceeds of insurance are not alone sufficient to accomplish restoration, and if the lot/home owners, within one hundred (100) days after destruction or damage by affirmative vote of the owners of at least 75% of the home elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (B) above.

D. If 75% or more of the project's improvements are destroyed or substantially damaged, and if proceeds of insurance are insufficient to accomplish restoration, and if the owners of 75% of the lots/ homes do not, within 90 days after the destruction or damage, elect to repair or reconstruct the affected improvements, the Association shall promptly record with the Cache County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of S57-8-31, Utah Code Annotated, 1953, shall be deemed to apply to the Association of lot/home owners and shall govern the rights of all parties having an interest in the Development or any of its lot(s)/home(s) and the property shall be sold and the net proceeds shall be paid to lien holders and lot/home owners in accordance with their respective interests.

E. If the extent of damage is unclear, the fact of the matter shall be as determined by appraisal. Three qualified appraisers selected by the Association shall appraise the damage. The good faith decision of any two of such appraisers shall be conclusive.

ARTICLE VIII

AMENDMENTS

The affirmative vote of the owners of at least seventy-five percent (75%) of the lot(s) / home(s) shall be required to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation of an appropriate instrument executed by the Association. In such instrument, the Governing Board shall certify the amendment was approved by the minimum affirmative vote required by this Article.

ARTICLE IX

WRITTEN CONSENTS

On all matters upon which lot(s)/home(s) are entitled to vote, the Association may act upon receiving consents in writing to such action from lot(s)/home(s) owner(s) who collectively hold the voting power required to authorize the action if all owners are given equal reasonable notice and opportunity to communicate their position on the matter to the Governing Board.

ARTICLE X

APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The person authorized to serve as process agent for the

Association shall be Dean Candland or his agent who shall serve as process agent until his successor shall be duly selected by the Governing Board. Said process agent is so designated in the Articles of Incorporation of the Cache County Planned Unit Development Association.

ARTICLE XI

TAXES

Each lot/home and its individual one forty-third (1/43) interest in the common areas and facilities is subject to separate assessment and taxation. As a result, no separate real property taxes should be assessed or levied against the property as a whole or against the common areas and facilities. Each unit owner shall pay and discharge any and all taxes and assessments levied against such owners lot(s)/ home(s)/ Home owners shall pay their respective personal property taxes. In the event taxes are separately assessed against common areas or facilities. The cost thereof shall be deemed a common expense.

ARTICLE XII

BINDING EFFECT OF COVENANTS

All of the terms of this Declaration of Covenants, Conditions and Restrictions constitute covenants, conditions, and restrictions which run with the land or are easements or are equitable servitude running with the land and all are absolutely binding upon and all insure to the benefit of the present owners

and all future owners of lot(s) / home(s) in the Shadow Mountain Estates Planned Unit Development. All lot(s)/home(s) owner(s) and their grantees, transferees, heirs, designees, personal representatives, successors and assigns shall be bound hereby. By acquiring an ownership interest in a lot/home in the Development, such transferee is deemed to consent to and agree to be bound by each and every provision of this Declaration. Each owner or occupant of a lot/home shall comply with and all owners of interest in all lot(s) /home(s) are subject to this Declaration and the Articles, By-Laws, Rules and Regulations and assessments of the Association.

ARTICLE XIII

ACTIONS AT LAW

Any failure to comply with this Declaration, the Articles of Incorporation or By-Laws or Rules and Regulations of the Association is grounds for an action at law to recover sums due, damages or for injunctive or other appropriate relief. All such actions may be brought by the Association acting on behalf of lot/home owners or in a proper case by any aggrieved lot/home owner on behalf of other owners and the Association, provided, however, that no owner shall bring an action on behalf of the Association or other owner members without first requesting the Association to so do in writing. If the Association fails to bring appropriate action within thirty (30) days after receiving such demand, suit may then be commenced and prosecuted by one or

more owner-members.

ARTICLE XIV

DUTY TO FURNISH INFORMATION REGARDING TRANSFEREES

Lot/home owners who sell, lease or otherwise transfer lot(s) home(s) shall submit pertinent information concerning the transferee including new tenants to the Association within one week of the transfer of title or possession, using any form for such purpose as may be furnished by the Association.

ARTICLE XV

INDEMNIFICATION

Each person performing any duty on behalf of the Association shall be indemnified and held harmless by the Association and by the lot(s)/home(s) owners against all costs, expenses and attorney's fees reasonably incurred by such person in connection with defending any proceeding against him arising by reason of his actions of behalf of the Association in the manner provided by the Article of Incorporation or by the By-Laws.

ARTICLE XVI

OTHER PROVISIONS

Section 1- Severability. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and all other provisions of this Declaration shall continue in full force and effect as if such invalid

provision had never been included herein.

Section 2- Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 3- Effective Date. This Declaration shall take effect upon the date it is recorded in the office of the County Recorder of Cache County, State of Utah.

Section 4- Conditions During Development And Construction

Item 1 The Declarations of which this is a part were written for 43 homes, since it is impossible to predict future economic conditions. The homes will be built as they are sold. Phase I as shown in plat will be completed before Phase II starts, and so on to Phase III.

The total number of home in Shadow Mountain Estates will be determined by economic conditions and the market place for homes but will not exceed 43.

Item II During construction of Phase I the three trustees shall be made up of Mr. Candland (or his representative) Mr. Spindler (or his representative) and one of the home owner's selected by the Home Owners. Phase II until the project is complete the trustees shall be Mr. Candland or Mr. Spindler or

their representative and two home owners selected by the Home Owners Association. After completion of construction the trustees will be selected as written in Declaration and Covenants.

Item III The Contractors will have the right to use the roads and access roads during construction. Should they cause any damage to roads, grounds, fences, homes or any association or home owners property the contractor will be responsible to repair it.

The contractor shall have the right to use water and any power for the continued construction activities and shall pay the association for the portion uses.

IN WITNESS WHEREOF, the undersigned, begin all of the Trustees of the Governing Board of Shadow Mountain Estates Residential Planned Unit Development Association, do hereby adopt these By-Laws which shall become effective this 22 day of

July, 1994.

Buyer of Lot/Home Shadow Mountain Residential Planned Unit Development I/We attest that I have read this Declaration of Covenants, and Restrictions and I am willing to comply with each of the conditions.


TRUSTEES OF THE GOVERNING BOARD OF THE SHADOW MOUNTAIN ESTATES RESIDENTIAL PLANNED UNIT DEVELOPMENT ASSOCIATION:

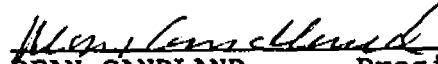
Walter C. ... PRES.
John ...

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed by its duly authorized officers this 26th day of July A.D. 1994.

Attest:

CANDLAND & SPINDLER, INC.
BY


JAMES LYNN SPINDLER Secretary.


DEAN CANDLAND President.

STATE OF UTAH)
County of Cache) SS

On the 26th day of July
A.D. 1994, personally appeared before me,

DEAN CANDLAND AND JAMES LYNN SPINDLER

who, being by me duly sworn, did say
that they are the
PRESIDENT AND SECRETARY

respectively of the CANDLAND & SPINDLER, INC.
and that the said instrument was signed in
behalf of said corporation by authority of
a resolution of its board of directors and
the aforesaid officers acknowledged to me
that said corporation executed the same.


Notary Public

Commission expires: 11-13-95
Residing in Smithfield, Utah

