

mine Lot # 44

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**LAKE POINT VILLAGE**

**Planned Unit Development**

**IN**

**DAVIS COUNTY, UTAH**

**WEST POINT TOWN CENTER, LLC**

**AS DECLARANT**

*Filed for Record on December 14, 2001  
<<Davis County Recorder>>*

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DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
LAKE POINT VILLAGE PLANNED UNIT DEVELOPMENT

THIS DECLARATION is made and executed this 12<sup>th</sup> day of December, 2001, by West Point Town Center, LLC, a Utah Limited Liability Company (hereinafter referred to as "Declarant").

*RECITALS:*

- A. Declarant is the record owner of that certain tract of Property located in Davis County, Utah more particularly described in Article II of this declaration (the "Tract" or "Property").
- B. Declarant desires to create on the Tract a Planned Unit Development with landscaped areas, open spaces, and other Common Areas. All of the construction is to be or has been performed in accordance with the plans contained in the Record of Plat Map to be recorded concurrently herewith.
- C. Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Tract, and a corresponding membership interest in the Homeowners Association (which shall own all Common Areas), subject to the Plat Map, and these covenants, conditions, and restrictions.
- D. Declarant desires to provide for the preservation for the values and amenities of the Property for maintenance of the Common Areas. To this end and for the benefit of the property and of the Owners thereof, Declarant desires to subject the Property described in Article II hereafter contained to the covenants, restrictions, easements, charges, and liens hereinafter set forth.
- E. Declarant, for the efficient preservation of the values and amenities of the Property, has created an entity which possesses the power to maintain and administer the Common Areas, to collect for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with the recordation of this Declaration, caused to be incorporated under the Laws of the State of Utah, as a nonprofit corporation, The Lake Point Village Homeowners Association.

*I. DEFINITIONS*

1. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions.
2. "Tract" or "Property" shall mean and refer to the described tract of land situated in Davis County, Utah together with all appurtenances thereto set forth in Article II hereof.
3. "Plat Map" shall refer to and mean the Plat Map or Maps of the Lake Point Village Planned Unit Development on file in the office of the Davis County Recorder as amended from time to time. The Plat Map will show the location of the Lots and Common Area with the exception of a walkway extending into the subdivision to the west of the project.
4. "Lot" shall mean and refer to any of the separately numbered and individually described plats of land described on a Plat
  - a. Which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Lots, and
  - b. Which is intended to be used as the site of one or more Living Units.
5. "Living Unit" or "Dwelling Unit" shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on or with respect to the concerned Lot which are used in connection with such residence.
6. "Subdivision" or "development" shall mean and refer to the entire residential development which is created and covered by a Plat.
7. "Owner" shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Davis County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
8. "Common Areas" shall mean and refer to all real property in the project in which the Association owns an interest for the common use and benefit of its members, their successors, assigns, tenants, families, guests, and invitees, including but not limited to the following items:
  - a. That part of the property which is not included in the Lots;
  - b. All common areas designated as such in the Plat Map or Maps;
  - c. All utility installations and all equipment connected with or related to the furnishing of utilities to the project and intended for the common use of all Lot owners; and
  - d. All other parts of the project normally in common use or necessary or convenient to the use, existence, maintenance, safety operation or management of the Property owned by the Association for the common benefit of its Members. In addition, Common Areas shall include a walkway extending beyond the Plat into the neighboring subdivision to the West of the development, as shown on such subdivision plat, but not on the Plat for this project.
9. "Association" shall mean and refer to Lake Point Village Homeowners Association, a Utah nonprofit corporation.

10. "Member" shall mean and refer to every person who holds membership in the Association.

11. "Mortgagee" shall mean any person named as a mortgagee or beneficiary under or holder of a deed of trust.

## *II. PROPERTY DESCRIPTIONS*

The Property which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Davis County, State of Utah.

See Exhibit "A" attached hereto and incorporated herein by this reference.

RESERVING UNTO DELARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration) to

a. Construct a Living Unit on each and every Lot and to improve the Common Areas with such facilities (including, but not limited to, roads, recreational facilities, walkways, and various landscaped areas) designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate;

b. Develop and improve, as Declarant may in its sole discretion determine to be appropriate, each and every portion of the Tract.

If, pursuant to the foregoing reservations, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust, all visible easements and right-of-way; and all easements and right-of-way of record.

## *III. MEMBERSHIP AND VOTING RIGHTS*

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following-described two classes of voting membership:

a. Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

b. Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the

interest required for membership in the Association. The Class B Membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

- i. When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member;
- ii. The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

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

#### *IV. PROPERTY RIGHTS IN COMMON AREAS*

1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

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

Lot No. \_\_\_\_\_ contained within the Lake Point Village Planned Unit Development, as the same is identified in the Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ as Entry No. \_\_\_\_\_, of the Official Records of Davis County, Utah. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions, and Restrictions.

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

3. **Transfer of Title.** Declarant agrees that it shall convey to the Association title to the Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

4. **Limitation on Easement.** A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- a. The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment

on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such Member of the Provisions of this Declaration or of any rule or regulation promulgated by the Association.

b. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas,

c. The right of the West Point City, the County of Davis, and any other governmental or quasi-governmental body having jurisdiction over the property to access the rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service, and

d. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members being present in person or by proxy are entitled to cast at a meeting duly called for the purpose.

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

## V. ASSESSMENTS

1. Personal Obligation and Lien. Each owner shall, by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with applicable interest and costs of collection. All such amounts shall constitute a charge and continuing lien upon the Lot with respect to which the assessment is made, and the personal obligation of the person who is the owner of the Lot at the time the assessment falls due. No owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney fees, which shall be charged on the Lot at the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Assessments shall be fixed at a uniform rate for all Lots.

2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the welfare, safety, recreation and health of the residents of the Property. The use of the assessments may include payment of the costs of taxes, insurance, maintenance, repair and improvement of the Common Areas management and supervision of the Common Areas; establishing and funding reserves to cover the repair and replacement of improvements within the Common Areas; and any



expense necessary or desirable to perform or fulfill its obligations, functions or purposes under this Declaration or its Charter.

3. **Special Assessment.** The Association may levy special assessments for the purpose of defraying in whole or part:

a. Any expense or expenses not reasonably capable of being fully paid through monthly assessments; or

b. The cost of any construction, reconstruction, or unexpected required repair or replacement in connection with the Common Areas

Any such special assessment must be approved by the Members at a duly noticed meeting.

4. **Areas of Responsibility.** Each owner shall maintain the interior and exterior of each Lot and Living Unit so as not to detract from the appearance of the Property or to decrease the value of any other Lot. The Association shall have no obligation regarding maintenance except as provided elsewhere herein. Without limiting the foregoing, each Owner shall maintain the following:

a. His/her dwelling unit and garage, including but not limited to the roof, foundation, footings, columns, girders, beams, supports and main walls thereof;

b. All utility servicing his/her Lot and dwelling unit, such as power, light, gas, hot and cold water, heating, refrigeration and air conditioning systems;

c. All fixtures, furnishings, windows, doors, patios, balconies & decks, garage doors & garage door systems located in his/her Lot or dwelling unit;

d. His/her driveway, walkways leading to the dwelling unit or garage, stairs, porches, pedestrian areas and entryways leading to his garage or dwelling unit.

5. **Operation and Maintenance by the Association.** The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair.

6. **Maintenance or Repair Caused by Owner.** Notwithstanding the forgoing, any maintenance or repair caused by the negligent or willful act of an Owner, his family, guests or invitees, shall be performed at the sole cost and expense of the Lot Owner, and shall become part of the assessment to which the Lot is subject.

7. **Utilities.** The Association shall be responsible for all utilities related to the Common Areas. All utility charges related to individual Living Units shall be the responsibility of the homeowner.

8. **Insurance.**

a. The Association shall secure and maintain the following insurance coverage:

i. A policy of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured shall be substantially: The Lake Point Village Homeowners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.

ii. A policy insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of

liability under such insurance shall be not less than \$500,000 for any one person injured, \$1,000,000 for all persons injured in any one accident and \$250,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

b. The Association shall also procure and maintain any additional insurance against such risks as are or hereafter may be customary in connection with developments similar to the property in construction, nature and use. All policies shall be written by a company holding a financial rating of Class VI or better from Best's Insurance Reports. The Association shall have authority to adjust losses. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by individual Owners or their mortgagees.

c. Each policy of insurance shall if reasonably permissible, provide a waiver of the insurer's subrogation rights with respect to the Association, Owners and their respective directors, officers, agents, employees, invitees, tenants, and guests. The policies shall provide that they shall not be cancelled, suspended or invalidated due to the conduct of any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured. Any policy that contains a "no other insurance" provision shall also provide that such does not apply to insurance held individually by the Owners.

d. Notwithstanding any provision to the contrary herein, so long as the Federal National Mortgage Association ("FNMA") or Government National Mortgage Association ("GNMA") hold a mortgage or beneficial interest in a trust/deed on a Living Unit in the project, or owns a Living Unit, and such Living Units are insured under a blanket or master type casualty insurance policy maintained by the Association, then such policy shall insure the Living Units with fire and extended coverage for the full insurable value, with replacement cost coverage and agreed value endorsement. Such policy shall also meet all other requirements and contain such other coverage and endorsements as may be required from time to time by FNMA or GNMA. The Association shall also maintain in effect a fidelity bond meeting all FNMA or GNMA requirements.

## *VI. USE RESTRICTIONS*

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

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

Areas. The Association shall have the right to reasonably limit the number of guests and occupants. No structural alteration to the Lot or dwelling unit shall be allowed without prior written consent of the Association. It shall be the responsibility of every Owner and resident to prevent the creation or maintenance of a nuisance in, on, or about the Property. This includes without limitation, the following:

- a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in, or about a Lot or the Common Areas;
- b. The storage of any item, property, or thing that will cause any Lot or the Common Areas to appear to be an unclean or untidy condition or that will be noxious to the senses;
- c. The storage of any substance, thing, or material upon any Lot or in the Common Areas that will emit any foul, unpleasant, or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Property;
- d. The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress, or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- f. Maintaining any plants animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, diminish or destroy the enjoyment of the Property by other residents, their guests, or invitees;
- g. Too much noise in, on, or about any Lot or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.;
- h. Too much traffic in, on, or about any Lot or the Common Areas, especially after 10:00 p.m. and before 7:00 a.m.

3. Unsightly Work, Hobbies, or Unkempt Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property.

4. Removing Garbage, Dust & Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon.

5. Firearms, Incendiary Devices, and Graffiti. The use of firearms and incendiary devices, other paintings or graffiti, within the Property is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist rockets, blow-dart guns, and other firearms of all types, regardless of size.

6. Pets. No animals other than household pets shall be kept or allowed on any Lot, in any Living Unity, or within any part of the Common Area. Whenever a pet is allowed to leave a Lot it shall be either on a leash or in a cage.

7. No Leasing of Common Areas. None of the Common Areas, recreational facilities, parking space or other amenities contemplated as a part of the development shall be leased to the Owners or to the Association nor shall the same be subject to any

other restrictions in favor of the Declarant or any affiliate of such Declarant except as herein expressly provided.

8. Exception for Declarant. Notwithstanding the restrictions contained herein, for the seven (7) year period following the date on which this Declaration was filed for record in the office of the County Recorder of Davis County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Developer.

## VII. MORTGAGE PROTECTION

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform any of his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's lot.

2. Abandonment, Termination, Etc. Unless all of the Mortgagees of the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled to act, omission or otherwise:

- a. To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the project;
- b. To partition or subdivide any Lot or the Common Areas;
- c. To abandon, partition, subdivide, encumber, sell, hypothecate, transfer, or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or
- d. To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

3. Notice of Substantial Damage or Destruction. The Association shall notify all institutional holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of the same.

4. Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all institutional holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same.

5. Hazard Policy to Include Standard Mortgage Clause. Each hazard policy of the insurance shall include the standard Mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of the

Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interest of Mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each Mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

6. Right of Inspection of Records, Statements, Etc. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice to:

a. Inspect the books and records of the Development during normal business hours;

b. Receive annual audited financial statement of the development within ninety (90) days following the end of any fiscal year of the development; and

c. Receive fifteen (15) days written notice of all meetings of the Association.

7. Rights Upon Foreclosure of Mortgage. Each holder of a first mortgage (or deed or trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges in all Lots including the mortgaged Lot.

8. Mortgagee's Rights Concerning Amendments. No material amendment to the Declaration, By-laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such an amendment.

### *VIII. MISCELLANEOUS*

1. Notices. Any notice required or permitted to be given to any Owner or Member under the provision of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

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

3. Amendment.

a. Any amendment to the Declaration shall require

i. The affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at meeting duly called for such purpose and so long as the Class B membership exists;

ii. The written consent of the Declarant.

b. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but no more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows.

i. At the first meeting called, the presence of Members or of proxies entitled to cast sixty (60) percent of all the votes of the Class A membership shall constitute a quorum.

ii. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement as set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half (1/2) of the quorum which was required in the immediately preceding meeting.

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

c. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Consent in lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section

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

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

c. Except as provided in the following sentence, any changing in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his/her consent.

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

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

6. Lease Provisions. Any owner may lease his Lot; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide <word?> that

a. The terms of the lease shall in all respect be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the By-laws; and

b. Any failure by the Lessee to comply with the terms of such document shall <constitute?> default under the lease.

7. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration may be assigned.

8. Interpretation. The captions which precede the Articles and Sections of the Declaration are for convenience only and shall in no ways affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

9. Property Part of Development. The Property shall comprise a part of the West Point Town Center Planned Unit Development.

10. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the Land of equitable servitudes, as the case may be, and shall be binding upon and shall <run?> to the benefit of Developer, all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration and failure to comply with any of the foregoing shall be ground for an action by the Association or any aggrieved Owner for the recovery of damages or for injury relief or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interests consents to, and agrees to be bound by, each and every provision of this declaration.

11. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.

EXECUTED the day and year <words smudged> above written  
"Declarant" <words smudged> West Point Town Center, LLC

<<SIGNED>>

Charles Osman, Member

STATE OF UTAH  
COUNTY OF DAVIS

On this 12 day of December 2001, personally appeared before me Charles Osman, who being by me duly sworn, did say that he is a Member of West Point Town Center, LLC, a Utah Limited Liability Company, and that the foregoing Declaration of Covenants, Conditions, and Restrictions of the Lake Point Village Planned Development was signed on behalf of West Point Town Center, LLC, and said Charles Osman acknowledged to me that he executed the same for and in behalf of said LLC.

<<SIGNED>>

Jenae B. Osman

NOTARY PUBLIC (Commission Expires 11/01/05)

Residing at 1515 N. 2250 E., Layton, UT 84041

**EXHIBIT A**

September 19, 2001

Revised: December 4, 2001

Revised: December 14, 2001

**LAKE POINT VILLAGE P.U.D. SUBDIVISION**

A part of the Southeast Quarter of Section 32, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey;

Beginning at a point on the North boundary line of West Point Towne Center <the word "*Commercial*" written in> Subdivision, a subdivision in West Point City, Davis County, Utah which is 699.56 feet North 89°56'47" West along the Section line and 676.56 feet North 0°03'13" East; the Southeast corner of said Section 32, said point also being on the East right-of-way line of 3150 West Street and running thence the following two (2) courses along said North boundary South 77°17'52" West 67.67 feet and North 89°56'16" West 540.29 feet; thence North 0°12'44" East 601.70 feet; thence North 23°23'40" West 65.41 feet; thence South 69°55'44" East 965.20 feet to a point on the West boundary of Equestrian Ranchelles, a subdivision in West Point City, Davis County, Utah; thence South 0°02'04" East 646.60 feet along said West boundary to the Northeast corner of said West Point Towne Center <the word "*Commercial*" written in> Subdivision; thence North 89°56'16" West 335.55 feet along said North boundary to the point of beginning.

Contains 14.176 acres