

When Recorded, please mail to:  
DORCHESTER POINTE HOMEOWNERS' ASSOCIATION  
c/o Christopher F. Robinson  
139 East South Temple, Suite 310  
Salt Lake City, Utah 84111

6606692  
03/31/97 1:46 PM \$1.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
REC BY: B ROME DEPUTY - WI

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF DORCHESTER POINTE

WHEREAS, the undersigned, DORCHESTER PARTNERS, L.C., a Utah limited liability company (the "Declarant") is the legal and beneficial owner of a certain tract of land (the "Property") situated in Salt Lake County, State of Utah, as more fully described Exhibit "A" attached hereto, and

WHEREAS, Declarant desires to subject the Property to the provisions of this Declaration to provide covenants, conditions and restrictions applicable to the Property and the development thereof into a private residential community of single-family parcels; and

WHEREAS, Declarant intends to sell Lots (as defined herein) within Subdivisions within the Property, pursuant to a general plan of improvement and subject to certain covenants, conditions, restrictions and agreements between and among the several purchasers of said Lots, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the Property, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be sold, transferred, conveyed, used, leased, occupied, developed, resided upon, mortgaged, or otherwise hypothecated or otherwise encumbered, and held subject to the following covenants, conditions, restrictions, agreements, easements, assessments and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and Lots hereby or hereafter made subject hereto. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the Property and Lots now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every Owner of a Lot, and any owner of any other portion of the Property, including Declarant.

1. DEFINITIONS. The following words, when used in this Declaration shall have the following meanings:

1.1 "Alpha Lots" means those certain lots designated on the Property with alphabetical characters. Such lots shall not constitute Lots for purposes of this Declaration and shall not be entitled to any separate voting, assessment, or dwelling units or other rights of the Association.

THIS DOCUMENT IS BEING RE-RECORDED TO AFFECT DORCHESTER POINTE PLAT "B", PUD WHICH WAS NOT OWNED BY DECLARANT AT TIME OF ORIGINAL RECORDING.

BK 7640 PG 1391

6606692

6616504

ATC D 1752645

9K7631PG1027

1.2. "Assessment and Voting Unit" or "Unit(s)" means the value and/or vote assigned to a Lot. Each Lot is assigned one (1) Assessment and Voting Unit as provided in Sections 11 and 14.3 of this Declaration. The Unit(s) is/are permanently assigned to a Lot for assessment and voting purposes.

1.3. "Association" means and refers to the DORCHESTER POINTE HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation, its successors and assigns.

1.4. "By-Laws" means the By-Laws of the Association.

1.5. "Committee" means the Architectural and Structural Control Committee referred to in Section 8 of this Declaration.

1.6. "Common Property(ies)" means any and all real and personal property and easements as shown on any Subdivision plat consisting of any portion of the Property, and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7. "Declarant" means and refers to DORCHESTER PARTNERS, L.C., a Utah limited liability company, and the successors-in-title and assigns of DORCHESTER PARTNERS, L.C., provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

1.8. "Lot(s)" means each of those plots of land so designated upon any Subdivision plat filed in the Salt Lake County Recorder's Office, affecting the Property or any portion thereof, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of street improvements, a single family dwelling site as shown on such Subdivision plat. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, membership in the Association.

1.9. "Majority" means those eligible votes totaling more than fifty percent (50%) of the total eligible number.

1.10. "Mortgage" means any mortgage, deed of trust, or other instrument to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.11. "Mortgagee" means the holder of a Mortgage.

1.12. "Owner(s)" means and refers to the record owner, whether one or more Persons, of the fee simple title to any Lot, unless the Lot is being sold under contract, in which case the record owner and the contract buyer may, by written designation delivered to the Association, designate the contract buyer as the Owner. "Owner" does not include any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.13. "Person(s)" means any natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or other legal entity. If this Declaration allows or requires a vote, act or action, a "Person" which is a corporation, joint venture, partnership, association, limited liability company, trust or other legal entity, other than a natural person, may act by an officer, director, partner, trustee, manager, or other agent or legal representative designated in a properly executed writing delivered to the Association, Committee, or Declarant, as the case may be.

1.14. "Property" means the two tracts of land located in Salt Lake County, Utah, which are more fully described on Exhibit "A" attached hereto.

1.15. "Restricted Rear Yard Use" means that certain portion of Lots 126, 127, 128, 135, and 136 on the Subdivision plat on which no dwelling unit or substantial outbuilding may be built. Such areas are intended to preserve certain view corridors. Acceptable uses include landscaped yard area, swimming pools, tennis courts, sport courts, fences, small garden-type gazebos, and other similar uses or structures.

1.16. "Subdivision(s)" means the portion of the Property divided into Lots, each as a tract or parcel of real property for a single family dwelling, and for which a Subdivision plat is recorded in the office of the Salt Lake County Recorder.

1.17. "Trustee(s)" mean those individuals elected by the Owners to serve on the Board of Trustees (the "Board of Trustees") and to perform their duties and responsibilities as outlined in By-Laws and in this Declaration.

1.18. "Unit(s)" is defined in Section 1.2, above.

2. **PROPERTY SUBJECT TO THIS DECLARATION.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property located in Salt Lake County, Utah, described on Exhibit "A" to this Declaration.

3. **MUTUAL AND RECIPROCAL BENEFITS BETWEEN AND AMONG LOTS, OWNERS, DECLARANT AND THE PROPERTY.** All of the covenants, conditions, restrictions and agreements set forth in this Declaration are for the direct and mutual and reciprocal benefit of the Property and each and every Lot hereafter created from time to time and are intended to create reciprocal rights and obligations between and among the respective Owner(s) of each and all of the Lots and to create a privity of contract and estate between and among the Owners of each and all of the Lots, their heirs, successors and assigns, and shall, as to the Owner(s) of each Lot, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all other Lots.

4. **PERSONS BOUND BY THIS DECLARATION.** All covenants, conditions, and restrictions herein stated shall run with the land and all Owners, purchasers or occupants thereof shall, by acceptance of contracts or deeds, possession or occupancy, be conclusively deemed to have consented and agreed with the present and future Owner(s) of each Lot and Declarant, and with their respective successors and assigns to conform to and observe the following covenants, conditions, restrictions and stipulations as to the use thereof and construction of residences, structures and improvements thereon.

5. **DURATION.** The provisions of this Declaration shall be and remain effective for a period from the date hereof to January 1, 2021, at which time said covenants, conditions, restrictions, stipulations and agreements shall be automatically extended for successive periods of 10 years, unless, by an affirmative vote of seventy-five percent (75%) of the then eligible votes of Owners of Lots within recorded Subdivisions within the Property, it is agreed to amend or release said covenants in whole or in part and such agreement is evidenced by an appropriate written agreement specifying the restriction(s) amended or released, signed by the then Owners of said seventy-five percent (75%) of the eligible votes of Owners of Lots within recorded Subdivisions within the Property, and filed with the Office of the County Recorder of Salt Lake County, Utah. Every purchaser or grantee of any Lot or any interest in any of the Property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall be extended and renewed as provided in this Section.

6. **AMENDMENT.** These restrictions, conditions, covenants and agreements, however, may be changed, altered or amended at any time by the affirmative action of the Owners of seventy-five percent (75%) of the eligible votes of Owners of Lots within recorded Subdivisions within the Property. Such changes shall be evidenced by the execution of an appropriate agreement in writing signed by the Owners of seventy-five percent (75%) of the eligible votes and filed for record in the Office of the County Recorder of Salt Lake County, Utah.

Provided, however, that any amendment or release regarding paragraph 7.1 of this Declaration shall require a unanimous vote of all of the individual legal Owners of all of the Lots in all Subdivisions. Any such change shall be evidenced by the execution of an appropriate agreement in writing signed by one hundred percent (100%) of such Owners filed for record in the Office of the County Recorder of Salt Lake County, Utah.

7. RESTRICTIONS ON USE, CONSTRUCTION, LOCATION OF IMPROVEMENTS.

7.1. LAND USE. No Lot shall be used except for residential purposes, for a single-family dwelling and accessory buildings, structures and facilities for one family, including domestic help not to exceed three (3) persons in the service of such family. Not more than one single family dwelling shall be built on any Lot. No Lot shall be divided or subdivided to create any additional Lot or other parcel or site on which a single family dwelling may be built or located. In the event of any conflict between provisions of this Section and any other Section or provision of this Declaration, this Section shall predominate and prevail.

7.2. BUILDING TYPE, HEIGHT, GRADING, SIZE. No buildings shall be erected, altered, or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one half (2 1/2) stories, and a private garage for not less than two (2) nor more than four (4) vehicles and such accessory buildings, structures facilities and appurtenances as may be approved by the Committee. For purposes of this paragraph, an exposed basement shall be deemed a story and a half story means a story with at least two of its opposite sides situated in a sloping roof, the floor area of which does not exceed two-thirds of the floor immediately below it. Depending upon the design of the dwelling structure, the Committee may, if it deems such action advisable, approve parking inside the dwelling structure for more than four (4) vehicles. Notwithstanding the foregoing, unless approved in writing by the Committee, the height of any building, structure, facility or appurtenance thereto, at any point, shall not be higher than twenty-eight feet (28') above the Natural Grade of the Lot, except that no vertical building wall shall exceed twenty-five feet (25') in height as measured from the finished grade. Building height shall be measured as the vertical distance between the top of the roof and the Natural Grade at any given point of building coverage, as further shown on Exhibit "B" attached hereto. "Natural Grade" as used herein means the grade or slope of the Lot in its natural condition or, in the case where the Declarant modifies the grade before or immediately following the recordation of the Subdivision and as a part of the installation of the Subdivision improvements, the grade as contoured by the Declarant.

In the event that the building footprint area is on, over or immediately adjacent to a "Small Topographic Feature," as defined below, such Small Topographic Feature shall be ignored in calculating the height of the building structure, facility or appurtenance pursuant to this provision. In such event, the area affected by the Small Topographic Feature shall be deemed to have as a Natural Grade the grade which would be obtained by filling or removing the Small Topographic Feature to reflect the slope of the ground immediately adjacent to the Small Topographic Feature in question. A "Small Topographic Feature" is a natural hill or depression which (i) either rises above or falls below the natural slope of the land in the areas adjacent to such Small Topographic Feature and (ii) is both less than two-hundred (200) square feet in area and less than fifteen (15) horizontal feet in both length and width.

Structures may be designed to include foundation and/or roof steps or other design elements intended to parallel the Natural Grade (including grade change areas when treated as provided above) in order to meet the height limitation.

The Natural Grade of a Lot shall not be modified except as expressly approved in writing by the Committee as a part of the final approval of the Plans (as defined herein below) for the construction of a dwelling on the Lot; provided, however, in no instance shall the Natural Grade be modified in a manner which would circumvent the height limitation defined in this Section 7.2.

The Committee shall have power to further limit the number of stories and the height of structures upon any and all Lots in order to achieve compatibility of proposed design and improvements with the Natural Grade, slope, and features of the Lot, and to preserve the uphill and downhill views of other Lots in any Subdivision within the Property.

The Committee, in reviewing plans for proposed improvements, dwellings, buildings, structures, facilities and appurtenances, may consider the impact of such upon the views, including but not limited to uphill or downhill views, from other Lots, in approving, denying or conditionally approving the proposed dwelling, buildings, structures, facilities, appurtenances or improvements, or in granting any variance or exception thereto pursuant to Section 8.5 hereof.

Every detached single family dwelling, exclusive of garages and open porches, erected on any Lot shall have a minimum above grade finished living area, excluding garages, of two-thousand (2,000) square feet for a single level residence or three-thousand (3,000) square feet for a multi-level or two story dwelling provided, however, that a two story dwelling shall have a minimum of two-thousand (2,000) square feet on the first floor above grade.

7.3. **MOVING OF STRUCTURES.** No structure of any kind shall be moved from any other place to any Lot, except for new factory built or manufactured dwellings or accessory buildings specifically approved, prior to placement on the Lot, by the Committee.

7.4. **TEMPORARY STRUCTURES.** No trailer, basement, tent, shack or other out-building shall be placed upon any Lot or used at any time within any Subdivision as a temporary or permanent residence. Subject to ordinances of Salt Lake City, a trailer or other temporary building may be placed upon a Lot during construction solely for the purpose of facilitating construction management, but not as a residence or for overnight accommodation, and shall be removed from the Lot immediately upon completion of construction of the dwelling on the Lot.

7.5. **DILIGENCE IN BUILDING AND LANDSCAPING.** When the erection or remodeling of any residence or other structure is once begun, work thereon must be prosecuted diligently and completed within twelve (12) months, without deviation from the plans approved

by or approvals given by the Committee. No building shall remain incomplete or any remodeling unfinished for any reason for a period in excess of twelve (12) months from the date physical construction commenced.

Installation of all required landscaping in conformance with approved plans shall begin no later than one (1) month after a Certificate of Occupancy (C.O.) is issued by Salt Lake City; except that if the C.O. is issued between October 15th and the following April 1st, installation of landscaping shall begin no later than April 30th. Landscaping shall be substantially completed within six (6) months after landscaping is commenced.

**7.6. COMPLIANCE WITH ZONING AND BUILDING ORDINANCES OF SALT LAKE CITY.** All excavation work, foundations, construction, buildings, and landscaping in any Subdivision shall be done, performed, placed or constructed, as the case may be, in, on or upon each Lot in accordance with the provisions of Salt Lake City Zoning and Building Ordinances in effect when the buildings are constructed or remodeled. This provision shall not affect the applicability of the other provisions hereof.

In the event that a variance is needed from the Salt Lake City Zoning and Building Ordinances, then simultaneously with applying for said variance, the Lot Owner shall submit to the Committee the following: (a) a copy of the completed Salt Lake City variance application bearing signatures of the applicant as well as any adjacent Lot Owners whose consent is being sought and (b) the Dorchester Pointe CC&R Variance Request Form as described in Section 8.5 to this Declaration. In addition to receiving approval from Salt Lake City for any variance to Salt Lake City Zoning and Building Ordinances, such variances must be approved by the Committee.

**7.7. SET BACKS.** No dwelling house shall be located on Lots 101, 105, 112, 113, 114, 116, 118, 119, 121, and 123 nearer than eighteen feet (18') to the front property line or such further distance from the front property line as may be disclosed on the Subdivision plats. No dwelling house shall be located on any other Lots nearer than twenty five feet (25') to the front property line or such further distance from the property line as may be disclosed on the Subdivisions Plats. Such set backs must comply with all applicable zoning regulations and must be approved by the Committee prior to the start of construction. No dwelling shall be located on a Lot nearer than twenty feet (20') to any interior side Lot line. No dwelling shall be located on any Lot nearer than twenty feet (20') to the rear Lot line. Rear yard set backs on any Lot containing an "undevelopable area" must further comply with all Salt Lake City requirements for such Lot. The location of all dwellings and any permitted detached garage or other detached accessory buildings or structures must be approved in writing by the Committee prior to the start of construction and must comply with all applicable Salt Lake City regulations.

For the purpose of this covenant, eaves, steps and open porches without roofs will not be considered as a part of a building unless otherwise indicated by the Committee prior to approval of the Plans; provided, however, that this shall not be construed to permit any portion of any building on any Lot to encroach upon another Lot.

**7.8. DRAINAGE AND UTILITY EASEMENTS.** Easements and rights-of-way over portions of the Property as shown on any Subdivision plat have been or shall be dedicated as drainage and/or utility easements for the use of Salt Lake City, public or private utility companies or entities, and/or the Association (as the case may be) for the erection, construction, maintenance and operation therein or thereon of drainage conduits, ditches, or pipes and for pipes, conduits, poles, wires, cables, and other means of conveying to and from the Lots, gas, electricity, power, water, telephone, communication services, cable television, telegraph services, sanitary sewer, storm drainage, and other services for convenience of Owners of Lots.

Private streets for a private, common access road or street (within the area which is designated "Private Streets" area on any Subdivision plat) shall be granted to the Association for the use of the Association, its members, and their guests. The Private Street, including street surface and curbs, shall be maintained by the Association. Each Owner shall maintain (or if a dwelling is built, landscape), consistent with the provisions of Section 7.10, that portion of said Owner's Lot immediately adjacent to the Private Street within the area marked "Drainage and Public Utilities Easements" on the Subdivision plats. These areas may contain drainage swales, drainage ways and drainage facilities. No driveway, path or other structure shall be placed across any drainage swale or ditch unless the Owner shall first install in the drainage swale or ditch, at the flow line of the drainage swale or ditch and under such driveway, path or other structure, in accordance with the engineering and design of the storm drain system for the Subdivision, a pipe or other conduit of sufficient size and capacity to convey the storm drainage past such driveway, path or other structure. The size, material, plans and placement of all such pipes and/or conduit must be approved by the Committee prior to installation. Nothing shall be done or allowed which would impede drainage in the drainage swales or drainage ways adjacent to the street surface or which would impede or interfere with drainage facilities. The Association may regularly inspect all drainage swales and shall remove therefrom or otherwise correct any obstruction or other situation which may exist with potential to impede drainage within any drainage swale. The cost of such removal or correction shall be assessed to the Owner of the Lot from which such obstruction or situation has been removed.

**7.9. UNDEVELOPABLE AREA; OPEN SPACE EASEMENTS:** Each recorded Subdivision plat may include areas which are identified as "Undevelopable Area." Such areas have been or shall be dedicated to Salt Lake City as perpetual open space and vegetation preservation easements. Within these areas, no structures or development of any kind, other than fences as set forth in this Declaration, shall be placed or permitted to remain, nor shall any activities be undertaken which shall interfere with the natural vegetation, the established slopes, or the existing natural condition of the land, or damage or interfere with the established slope ratios, create erosion or sliding problems or retard the flow of water through any drainage channels. All such areas shall be kept clean and clear of any trash or debris by the Owner of the Lot within which such area is located.

**7.10. LANDSCAPING; NATURAL VIEWS.** On all vacant, unimproved Lots and until construction of an approved dwelling thereon commences, all vegetation shall be

maintained in its present, natural state or, at the Owner's option, be enhanced by landscaping with trees, lawns, shrubs or other plantings which shall be properly nurtured and maintained or replaced at the Owner's expense. Specifically, on vacant, unimproved Lots, the natural grasses and weeds located within any Lot shall be periodically maintained, mowed or trimmed in order to minimize the fire hazard and to enhance their appearance. The Owner of a Lot at such Owner's expense shall perform such maintenance, mowing or trimming within ten (10) days of receipt of written notice from the Association. If such maintenance is not performed within ten (10) days of such notice, the Association may undertake to do the work and recover payment from the Owner for the costs incurred by such action, and record a lien against the Owner's Lot to secure the repayment of all such costs.

Upon completion of a dwelling or other structure approved by the Committee, all Lots shall be landscaped with trees, lawns, shrubs, or other plantings which shall be properly nurtured and maintained or replaced at the Owner's expense.

Gravel, cinder or other "no plant" areas shall not be permitted in front yards or side yards except in the storm drainage swales as otherwise provided in Section 7.8 above.

All landscaping must be in accordance with the provisions of this Declaration, including approval as required by Section 8.2.

It is recognized by the Declarant that one of the important and valuable amenities attendant to many of the Lots is the natural view from the Lot afforded by the location and character of the individual Lot. It is the intention of the Declarant that these natural views be maintained, and even enhanced, to the extent possible while allowing the orderly development of an attractive residential community including appropriate buildings, lawns, trees, shrubs and other landscaping. All trees and other landscaping approved by the Committee prior to installation shall be permitted to remain, so long as such trees and other landscaping are installed in accordance with the approved landscaping plan and do not unreasonably obstruct the view(s) (uphill, downhill, or otherwise) or otherwise interfere with the reasonable use and enjoyment of the Owners or occupants of any other Lot(s) or potential Lot(s) within the Property. As to the restrictions set forth in the preceding sentence, the Committee shall, in its sole and exclusive judgment, determine if any tree(s) or other landscaping are in violation and may, in the event of a violation, request, in writing, that the Owner of the Lot on which such tree(s) or other landscaping are located remove or trim the same to a height that corrects said violation, whereupon such Owner shall do so within thirty (30) days. In the event such Owner fails to comply with such written request, the Association shall be empowered to trim such tree(s) or other landscaping to a height that corrects said violation, recover payment from the Owner for the costs incurred by such action, and record a lien against the Owner's property to secure the repayment of all such costs.

The Declarant and its successors (*i.e.* Lot Owners) recognizes that, by its very occurrence, development and landscaping will diminish and interfere with the original natural

BK 763 PG 1035

BK 764 PG 1399

views afforded by the location and character of the Property. However, attractive well-planned landscaping and trees add to the overall attractiveness and value of a community and largely mitigate the impacts of development. The intent of the restrictions contained in this Section 7.10 is not to prohibit or unnecessarily limit attractive development and landscaping, but rather, to encourage development and landscaping which is in harmony with, or improves upon, the natural vista and natural views, and enhances the natural appeal of the land.

7.11. PROHIBITION AGAINST SOIL EROSION AND RUNOFF. It shall be the responsibility of each Owner of a Lot to direct site work relative to such Lot in a manner to minimize erosion and runoff. Construction shall be conducted in such a manner as to maintain all soils on-site and prevent the movement of earth, runoff water, materials or construction debris onto neighboring property, including public streets, or into the storm drainage system.

7.12. SOILS, GEOTECHNICAL REQUIREMENTS. Soils and geotechnical reports for the property have been issued by Huntingdon Engineering & Environmental, Inc. (now known as Maxim Technologies, Inc.) entitled "Report of Geotechnical Investigation--Dorchester Pointe Development" dated April 5, 1995 (the "Report"). The Report has been filed with the Salt Lake City Planning Commission. All requirements of Salt Lake City and the Report must be complied with in the construction of all buildings, structures and facilities on all Lots. The design, and subsequently, the actual construction, of all footings and foundations must be certified by a qualified engineer registered with the State of Utah (the "Certificate of Geotechnical Compliance"). The Declarant makes no warranties of any kind relative to soils or geotechnical matters.

## 8. ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE.

8.1. MEMBERS; QUORUM. An Architectural and Structural Control Committee (hereinafter "the Committee"), consisting of three (3) members is hereby created. The members of the Committee shall be appointed by the Board of Trustees and the Board of Trustees may fill vacancies in the Committee and remove members thereof at their pleasure

The initial notice address of the Architectural and Structural Control Committee shall be:

Dorchester Pointe Subdivision  
Architectural and Structural Control Committee  
c/o William H. Adams  
370 E. South Temple, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84111-1240  
Tel: (801)359-1990  
Fax: (801)359-1980

This address shall serve as the notice address of the Committee until such time as a different address is recorded with reference to this Declaration with the Salt Lake County Recorder's Office.

The functions of the Committee shall be, in addition to the functions set forth elsewhere in this Declaration, to pass upon, approve or reject any plans or specifications for all structures and landscaping to be erected or remodeled on Lots in any Subdivisions within the Property, so that all structures and landscaping shall conform to the restrictions contained herein and to the general development plans of the Declarant and of the Committee, for the benefit, improvement and development of the Property. In exercising its duties as defined in this Declaration, the Committee shall use as its standards for approving or rejecting any plans or specifications the criteria contained in this Declaration, with particular attention to the impact of the proposed structure(s) or landscaping on the uphill and downhill views and the harmony of the development of all of the Property. In following the guidelines contained in this Declaration, the Committee shall act reasonably and not arbitrarily in approving or denying plans brought before it. Nothing in this paragraph shall be construed as authorizing or empowering said Committee to waive any restrictions which are set forth in this Declaration except as herein specifically provided.

The Committee may act by any two (2) of its members, and any authorization, approval or action taken by the Committee must be in writing signed by a minimum of two (2) members of said Committee and shall be in conformity with the procedure outlined in paragraph 8.2 below.

**8.2. ARCHITECTURAL AND STRUCTURAL CONTROL PROCEDURE, APPROVAL REQUIRED.** No building or structure, including a dwelling, garage, driveway (subject to Section 7.8), fence, wall, tennis court or swimming pool, or other facility, shall be erected, remodeled or placed on any Lot until the written approval of location, height, design, materials, colors of materials, harmony with existing structures, and landscaping plan has first been obtained from the Committee. No construction of any kind or nature on any of the Lots shall be commenced until curb grade has been established. Except for approval of a variance or exception consistent with the criteria of Section 8.5, approval by the Committee shall not affect, or constitute a waiver of, the rights of any Person, Owner, or of Declarant who may enforce the provisions of this Declaration.

Owners shall submit to the Committee at the notice address provided for in Section 8.1 hereof, in triplicate, the following design plans: (a) a site plan including topographic information and a footprint of all proposed structures or improvements, including fences, walls, garages, and other improvements. The site plan must be drawn to scale, include actual lot dimensions, show all street and public way improvements (existing and proposed) and show all easements and rights-of-way. The site plan must also show building footprint, roof overhangs, retaining walls, driveways, patios, sidewalks, fences, mechanical equipment, swimming pools, sport courts or similar recreational structures. The site plan must show all pertinent topographical

information including grade lines showing both existing and proposed grades. Existing grades will be shown with dashed lines and proposed grades with solid lines. All grades will be at 2' contour intervals. The topographic survey of existing grade on the lot must be prepared and signed by a surveyor licensed in the State of Utah. Basements floor elevation, main floor elevation and roof ridge elevation(s) relative to existing grades will be given; (b) floor plans and elevations of the front, rear, and all sides of all structures; (c) a fully completed "Dorchester Pointe Plan Submittal Worksheet," the form for which is attached hereto as Exhibit "C"; (d) a landscape plan(s), drawn to scale, which includes actual lot dimensions, easements and rights-of-way, street and public way improvements which affect landscaping, footprint of building(s), locations of retaining walls, and the extent of all hard surfaces that define landscape areas. The landscape plan(s) must show the following items as applicable (i) existing and proposed topographic grades with 2' contour intervals, including berms to be installed as part of landscaping, (ii) location and species of all trees and shrubs, showing individual plants and massings at their mature size, (iii) plant material schedule showing common and botanical names of trees and shrubs, installed size, and mature size (incl. height and width), (iv) extent of areas to be installed with ground cover, flowers, turf, natural vegetation and unplanted mulch coverage, (v) location and type of rockwork, retaining walls and fences to be installed as part of landscaping, (vi) location and type of landscape lighting, and (vii) location of paths, garden structures and water features; (e) a Certificate of Geotechnical Compliance from a soils engineer; (f) a check for Seven Hundred Fifty Dollars (\$750), increased annually as set forth on the Plan Submittal Worksheet for the years 1998-2001 and thereafter at an annual compounded escalator of 5% per annum every year, made payable to the Dorchester Pointe Homeowners' Association as a plan review fee (the "Plan Review Fee"); (g) fence or wall plans showing the dimensions and construction of any proposed fence and wall, including sections and elevations to show the structure's materials and appearance, and (h) if a variance or exception is being requested pursuant to Section 8.5 hereof, the "Dorchester Pointe CC&R Variance Request Form," a copy of which is attached as Exhibit "D" hereto; (hereafter collectively referred to as the "Plans").

Within thirty (30) days after receipt of the Plans by the Committee, the Committee shall approve or disapprove the Plans and shall evidence such approval or disapproval by the following: (a) by issuing a written approval or disapproval letter, signed by a Majority of the Committee, the form of which is attached hereto as Exhibit "E" (and in the case of a denial, shall indicate in writing the basis for the denial), and (b) by affixing "Stamp of Approval" or "Stamp of Disapproval" (as the case may be), the form of which is shown on Exhibit "F" attached hereto, on one set of the Plans and returning the same to the Owner/Applicant. Such approval shall only be valid if construction is commenced within nine (9) months of the date of such approval.

The submission of Plans shall be deemed received only when accompanied by three (3) complete sets of the Plans and by the Plan Review Fee as defined above. The Committee shall not permit any oral modification of the Plans, and all Plans so submitted will be evaluated based solely on the submitted Plans.

**8.3. ADDITIONAL ARCHITECTURAL AND SITE DEVELOPMENT GUIDELINES.** In addition to those requirements set forth elsewhere in this Declaration, the following architectural guidelines shall apply to all Lots:

- (a) **Harmony in Building.** The exterior material of all homes shall be either brick, stone, wood, stucco or other material approved by the Committee, or a combination thereof. The roofing materials shall be either tile, treated wood shingles or other fire resistant material approved by the Committee, in approved colors. All construction shall be of new materials except for "used brick" or "used stone" or other used specialty materials specifically approved by the Committee.
- (b) **Fences and Walls.** All fences and walls shall be in conformity with Salt Lake City ordinances. All fence and wall materials and placement must be harmonious with the natural environment and must be approved by the Committee prior to erection. No fence or wall shall be erected on any Lot nearer to the street improvements than the minimum front yard set back. No fence or wall shall be higher than six feet (6'). Notwithstanding anything in the foregoing to the contrary, the rear yard fence, if any, for Lots 112, 113, 114, 116, 118, 119, 121, 123, 128, 129, 131, 132, 133, 134, and 135 must be open, see-through fencing constructed of tubular steel, wrought iron or similar materials, finished with a flat black, non-reflective finish.
- (c) **Exterior Lighting.** The design of each home may include exterior lighting. All such exterior lighting shall require the prior approval of the Committee. All fixtures used on the home's exterior and all outdoor site lighting must be installed so as to control glare and light-spill onto adjacent properties.
- (d) **Samples.** If requested by the Committee, prior to the construction of any building or structure, appropriate building material samples and material colors must be provided to the Committee in order to determine if said materials comply with the terms and intent of these covenants, conditions and restrictions.
- (e) **Rockwork.** Boulders or rock used for decorative or structural purposes in the landscape or retaining walls should harmonize with the existing rock outcroppings of the site. Owners are encouraged to utilize the indigenous conglomerate rock material for landscape use rather than import other rock types, color and textures.
- (f) **Landscaping.** Landscaping should harmonize with the natural environment surrounding the Subdivision.

8.4. **ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE DECISION; LIABILITY.** All decisions of said Committee shall be final, and neither said Committee, nor its members, nor any designated representative shall be subject to any liability therefor. Any errors or omissions in the design of any building or landscaping, and any violations of city ordinances are the sole responsibility of the Lot Owners and/or their designer, architect or builder. The Committee's review of Plans shall in no way be concerned with the structural or mechanical integrity or ability of the building or with architectural or structural soundness thereof. Construction of any structure or improvement on a Lot in accordance with approval of the Committee shall constitute a waiver by any Lot Owner of any claim or cause of action against the Committee and/or its members that the approval of the Committee or any requirements or conditions of the approval are contrary to or inconsistent with the provisions of this Declaration.

8.5. **VARIANCE FROM OR EXCEPTION TO PROVISIONS OF THIS DECLARATION.** Subject to the provisions of Section 7.1, which provisions may not be waived, excepted or granted variance from, the Committee may, after receiving written application stating the basis therefore (on the attached Dorchester Pointe CC&R Variance Request Form), and upon written approval stating the basis therefore, at any time, grant variance from or exception to any of the requirements of Sections 7.2, 7.5, 7.6, 7.7, 7.8, 7.10, 8.2 and 8.3 of this Declaration, if the Committee finds, based upon the application or such further evidence or investigation as it may require: (a) the strict application of any provision would result in exceptional practical difficulties to, or undue hardship upon, the Owner, and (b) strict application of the provision or restriction is unnecessary to carry out the general purpose of this Declaration, and (c) the variance or exception would not be detrimental to the reasonable use and enjoyment of any other Lot within the Property by the Owners of such other Lots.

8.6 **INDEMNIFICATION OF COMMITTEE.** The Committee shall be indemnified by the Association to the maximum extent allowed under the By-Laws and Articles of Incorporation of the Association. Furthermore, the Board of Trustees may purchase liability insurance for the Committee as allowed under the By-Laws.

9. **NUISANCES.**

9.1. **NUISANCES.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood.

9.2. **PETS.** No barn, coop, shed, sty or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, rabbits, pigeons, poultry, or any other livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of the Property. Owners may keep only a reasonable number of common household pets. Pets shall at all times be under proper control and supervision of their owners.

9.3. **STORAGE.** No storage of any articles, materials, equipment or vehicles (recreational or otherwise, including but not limited to boats, campers and trailers) of any nature is permitted in the front yard or side yard portion of any Lot, except that regularly used passenger cars properly licensed and in running order may be parked upon driveway areas. Trailers, trucks, campers, boats, and all types of accessory equipment are permitted to be stored or repaired only in garages.

9.4. **SIGNS.** Except for signs displayed by the Declarant, its agents, brokers, employees, or affiliates, or homebuilders during the sales and construction period of the development, no signs, other than name plates, shall be displayed to the public view on any Lot except one sign not exceeding five square feet advertising the availability for sale or lease of a Lot and the improvements thereon.

9.5. **DRILLING AND MINING.** There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any Lot.

9.6. **RUBBISH.** No rubbish shall be stored or allowed to accumulate anywhere in the Property, except in sanitary containers appropriately shielded from public view.

9.7. **TRANSMITTING AND RECEIVING EQUIPMENT.** No external radio, citizen's band, ham radio or any other transmitting and/or receiving antennas or equipment shall be placed upon any structure or Lot; provided, however, a television antenna or satellite dish receiver may be placed in a yard at a secluded location, at a height, and in a manner specifically approved by the Committee in writing prior to erection. Any antenna or receiver must be shielded from view from streets and other Lots.

9.8. **CONSTRUCTION DEBRIS.** All Owners shall properly maintain their Lots during the construction period so as to insure that no "spoils" or any other debris from construction shall be permitted to blow or otherwise be deposited upon any adjoining Lot or any other private or Common Property or Private Street right-of-way. Owners shall take whatever action is necessary to prevent run-off onto, and resultant erosion of, adjoining property. Owners agree that the Declarant and or the Association shall be empowered to clean up any and all "spoils" or construction debris which are located upon any adjoining property resulting from activities of an Owner, its builder, or any other person employed or otherwise controlled by an Owner, and record a lien against the Owner's property to secure the repayment of all sums expended by the Association or by the Declarant in cleaning up and removing said "spoils" and debris from adjoining public or private property if same is not voluntarily cleaned up and removed by the Owner within 48 hours of written notice from the Declarant, another Owner, or the Association, identifying the required clean up and removal work.

10. **ACCEPTANCE OF RESTRICTIONS.** All Owners and purchasers of Lots, by acceptance of contracts or deeds for any Lot or any portion thereof, and all occupants, by their

possession or occupancy, shall thereby be conclusively deemed to have consented and agreed to all provisions of this Declaration.

11. **MANNER OF VOTING.** In voting, pursuant to the provisions of this Declaration, the Owner of each Lot shall be entitled to one (1) vote. Any amendment or repeal of this Declaration resulting from any such vote shall be evidenced by an appropriate written instrument signed by the required number of Owners, which instrument shall be acknowledged and promptly recorded in the County Recorder's Office of the County of Salt Lake, State of Utah.

12. **VIOLATIONS OF RESTRICTIONS, PENALTIES.** Violation of any of the covenants, conditions, restrictions, or agreements herein contained shall give the Declarant, until Declarant has sold all the Lots, or the Association and their successors and assigns, the right to enter upon any Lot and any property on which said violation or breach exists, and to summarily abate and remove at the expense of the Owner, any erection, thing or condition that may be or exist thereon contrary to the provisions hereof, without being deemed guilty of trespass. The result of every action or omission whereby any covenant, condition, restriction or agreement of this Declaration is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be applicable against such condition. Such remedy shall be deemed cumulative and not exclusive.

13. **ASSOCIATION MEMBERSHIP.** The Owner of each Lot shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot within a recorded Subdivision within the Property. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, membership in the Association.

14. **ASSESSMENTS.**

14.1 **PURPOSE OF ASSESSMENT.** The assessments provided for herein shall be used for the general purposes of providing services for the convenience, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots contained in recorded Subdivisions within the Property, including but not limited to gate security personnel, guard services, snow removal, trash removal, landscaping and maintenance of Common Properties, Private Streets, entry facilities, water, sanitary sewer, storm drain and utility systems, curb, gutter, sidewalk, fences, landscaping and other real and personal property and/or easements owned by the Association, all as may be more specifically authorized from time to time by the Association.

14.2. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration or the By-Laws. All such assessments, together with late charges, interest at eighteen percent (18%) per annum, compounded monthly (or such lower rate fixed by the Association, or so as not to exceed the maximum legal rate), costs, and reasonable attorneys' fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Owner(s) of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee(s) shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any bona fide first Mortgage holder until such first Mortgage holder or other person takes title through foreclosure proceedings or deed in lieu of foreclosure.

Assessments shall be paid in such manner and on such dates as may be fixed by the Association, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment in any case where any installment is delinquent. Unless otherwise provided by the Association, the assessment shall be paid in advance in semi-annual installments, one-half of the total annual assessment on January 1 and July 1 of each year.

14.3. ALLOCATION OF ASSESSMENT AMOUNT. Since there are 40 Lots, each Lot shall bear an assessment equal to 1/40 (or .025%) of the total amount assessed.

14.4. ANNUAL BUDGET; COMPUTATION OF LOT ASSESSMENT. It shall be the duty of the Association to prepare a budget covering the estimated costs of operating the Association during the next calendar year, which shall include anticipated operating costs and a capital contribution or reserve for repair and/or replacement of physical improvements in accordance with a capital budget separately prepared. The Association shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved by a Majority of Owners at a meeting of the Owners held prior to December 31 of the current year. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Association fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year(s). Within one-hundred twenty (120) days following the end of each calendar year the Association shall prepare a reconciliation of the prior year's operating

budget and actual receipts and expenditures and shall deliver such reconciliation to each Owner in written form. If the Association has surplus funds in its operating budget on hand from prior year(s), the total of such funds on hand shall be deposited in the Capital Improvements Reserve (as defined below).

14.5. SPECIAL ASSESSMENTS. In addition to the other assessments authorized herein, the Association may levy special assessments in any calendar year. So long as the total amount of special assessments allocable to each Unit does not exceed Two Thousand Dollars (\$2,000.00) (plus an annual compounded escalator of 5% per annum every year commencing in 1998) in any one fiscal year, the Association may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Unit to exceed this limitation shall be effective only if approved by a Majority of Owners. Special assessments shall be paid as determined by the Association, and the Association may permit special assessments to be paid in installments extending beyond the calendar year in which the special assessment is imposed.

14.6. LIEN FOR ASSESSMENTS. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of real property ad valorem taxes, and (b) liens for all sums unpaid on a bona fide first Mortgage or on any Mortgage to Declarant duly recorded in the office of the County Recorder of Salt Lake County, Utah and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such Mortgage.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in the records of the Salt Lake County Recorder's Office shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

14.7. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount, as the Association may from time to time determine, not less than five percent (5%) nor more than ten percent (10%) of the amount due. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall automatically attach and, in addition, the lien shall include the late charge, interest at the rate of eighteen percent (18%) per annum compounded monthly, or such lower rate so as not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid sixty (60)

days after the due date, the Association may, as the Association shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this paragraph shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action or inaction by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments made by Owners shall be applied first to costs and attorneys' fees, then to late charges, then interest and then to unpaid assessments.

14.8. DATE OF COMMENCEMENT OF ASSESSMENTS. An assessment for the second half of 1997 shall be due from Owners of then-existing Lots on July 1, 1997 in an amount determined by the Association not to exceed one-half of the total amount of the 1997 budget. Notice of the assessment shall be sent by mail or given personally on or before June 20, 1997 to Owner(s) of then-existing Lots in then existing Subdivision(s) within the Property.

The first full annual assessments for all then-existing Lots subject to assessment under this Declaration shall be for the calendar year 1998. The assessments for 1998 and subsequent years shall be due and payable semi-annually or in a manner and on a schedule as the Board of Trustees may otherwise provide as set forth in Section 14.2.

14.9. ASSESSMENT OBLIGATION OF DECLARANT. Declarant, on behalf of itself and its successors and assigns, covenants and agrees to pay the full amount of the assessments provided herein for each Lot it owns.

14.10. SPECIAL ASSESSMENT AGAINST A PARTICULAR OWNER OF LOT. In the event an Owner of any Lot shall fail to maintain the premises and the improvements situate d thereon in a manner satisfactory to the Board of Trustees, the Association, after approval by two-thirds (2/3) of the Board of Trustees, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot, and the exterior of the buildings and any other improvements erected thereon. The costs of such repair, maintenance and/or restoration shall be added to and become part of the annual assessment to which such Lot

is subject; and said assessment shall be enforced in the same manner as provided for in Section 14.7.

**14.11. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the assessments provided for herein shall, as to each Lot, be superior to all other liens and encumbrances on such Lot, save and except (a) liens of real property ad valorem taxes, and (b) liens for all sums unpaid on a bona fide first Mortgage or on any Mortgage to Declarant duly recorded in the office of the County Recorder of Salt Lake County, Utah and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such Mortgage.

**14.12. NO ASSESSMENTS FOR INITIAL SUBDIVISION IMPROVEMENTS.** Neither the Association nor any of its Owners shall be assessed to pay for any capital expenditures for initial Subdivision improvements unless otherwise agreed to in writing. Pursuant to Section 16 below, the Declarant shall bear the cost of installing and construction all initial Subdivision improvements and other Common Properties/facilities. The Association and its Owner members shall perpetually maintain and operate such improvements and Common Properties, subject to Declarant's warranty in Section 16.1. below.

**14.13. ASSESSMENTS FOR THE CAPITAL IMPROVEMENTS RESERVE.** Pursuant to Section 14.4 above, the Association may assess, as a part of its annual assessment, a capital contribution to fund an accumulating reserve for present and future repairs and/or replacement of the physical improvements (hereafter the "Capital Improvements Reserve").

**15. RECORDATION OF SUBDIVISION PLATS.** Membership of the Association will consist of Lots in the two (2) Subdivision plats (DORCHESTER POINTE SUBDIVISION PLATS "A" and "B," P.U.D.), and there will be a total forty (40) Lots within said plats. No further expansion of subdivisions under this Declaration or on the Property will occur.

**16. SUBDIVISION IMPROVEMENTS.**

**16.1. WARRANTY BY DECLARANT.** In developing each Subdivision, Declarant shall install (a) water, sewer and storm drain lines or facilities to service or provide service to the Lots, (b) streets within the areas identified as Private Streets, and (c) street lights as required by Salt Lake City or as Declarant deems appropriate. Declarant hereby warrants all of the improvements, lines and facilities installed or to be installed by Declarant referred to in the next preceding sentence (but not those installed by Salt Lake City or others) for a period of one (1) year from the date of substantial completion, as reasonably determined by Declarant, of each against faulty materials and workmanship. This warranty is in lieu of all other warranties, including warranties of merchantability, fitness for purpose, or other warranties, express, implied, or otherwise regarding the improvements, lines and facilities referred to in this Section. Any implied warranty is limited to the one-year period of the above written warranty. Should any failure to conform to this warranty occur or appear within the warranty period, Declarant shall, upon written notification from the Association of such failure, correct the defect or non-conformity by repairing, replacing, or correcting the faulty materials or workmanship. Declarant

shall not be liable for special, indirect or consequential damages. The remedies set forth herein are exclusive.

**16.2 SUBDIVISION IMPROVEMENTS THE PROPERTY OF ASSOCIATION.**

All improvements, streets, gates, water lines, sewer lines, storm drains, and other lines and facilities installed by Declarant as referred to in Section 16.1, except those owned by Salt Lake City or any private or public utility companies, shall be or become the property of the Association upon the date of completion of each. The Association shall be responsible for the maintenance, repair and replacement of all such improvements, lines and facilities owned by the Association, and, if Declarant's warranty is breached, the Association may make demand upon Declarant to repair, replace or correct the faulty materials or workmanship and may seek appropriate legal remedies against Declarant to obtain Declarant's performance.

**16.3. DAMAGE TO SUBDIVISION IMPROVEMENTS.** Any Owner or person who directly or through an agent, contractor, subcontractor, or employee, causes damage to any of the Association's improvements, lines, or facilities, including damage by heavy equipment or construction vehicles, shall pay to the Association the cost to repair such damage and any and all costs, including reasonable attorneys' fees, incurred by the Association as a result of such damage, or in pursuing legal action to recover the costs of such damage or in connection with pursuing any remedy provided in this Section 16 or otherwise in this Declaration.

**17. GENERAL PROVISIONS.**

**17.1. ENFORCEMENT OF COVENANTS.** The Association, the Committee, any Owner, and Declarant, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Committee, or by any Owner, or by Declarant, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**17.2. EFFECT OF WAIVER OR BREACH OR FAILURE TO ENFORCE.** Each and all of the covenants, conditions, restrictions and agreements contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto and those who become subject to the provisions hereof, that no waiver of a breach of any of the covenants, conditions, restrictions, and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions, and agreements contained herein, nor shall failure to enforce any one of such covenants, conditions, restrictions, or agreements either by forfeiture or otherwise, be construed as a waiver of any other covenant, condition, restriction or agreement.

17.3. SEVERABILITY. Invalidation of any one of or any portion of any one of these covenants, conditions, restrictions and agreements by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

17.4. PARAGRAPH CAPTIONS. The paragraph captions and phrases as to the contents of particular paragraphs are inserted herein only as a matter of convenience and for reference and in no way are intended to be part of this Declaration or in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

17.5. ATTORNEYS' FEES AND COSTS. In the event any claim, demand or lawsuit is made or instituted to enforce any of the provisions contained in this Declaration, the defaulting Owner, purchaser, person or entity agrees to pay all costs and expenses of enforcing the same, or collecting any penalties or damages, including the payment of a reasonable attorneys' fee and all court costs.

17.6. RELATIONSHIP TO CITY, COUNTY AND STATE ORDINANCES. The provisions contained in this Declaration are in addition to the effective laws and ordinances of Salt Lake City, Salt Lake County, and the State of Utah. In the event of any conflict between the provisions of this Declaration and the effective laws and ordinances of Salt Lake City, Salt Lake County, or the State of Utah, the most restrictive provision shall apply.

17.7. COUNTERPARTS. This Declaration may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by affixing of the signatures of each of the parties to one such counterpart signature page; all such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned has executed this document this 3rd day of MARCH, 1997.

DORCHESTER PARTNERS, L.C., a Utah limited liability company

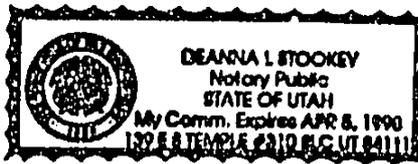
By: Christopher F. Robinson  
Christopher F. Robinson  
Manager

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

On the 3<sup>RD</sup> day of MARCH, A.D. 1997, personally appeared before me CHRISTOPHER F. ROBINSON who being by me duly sworn did say is a manager of Dorchester Partners, L.C.. and that the within and foregoing instrument was signed on behalf of said limited liability company.

*Deanna L. Stookey*  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_



**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

**PARCEL A:**

A Tract of land located in the West 1/2 of Section 30, Township 1 North, 1 East and in the East 1/2 of Section 25, Township 1 North, Range 1 West, Salt Lake Base and Meridian, being further described as follows:

BEGINNING at a point with the state plane rectangular coordinates of  $X=1,893,322.622$ ,  $Y=896,103.236$  based on the Lambert Conformal Projection, Utah Central Zone. Said point is further described as being due West 3231.181 feet and due South 2380.066 feet from the North Quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence South  $51^{\circ}55'25''$  East 41.121 feet along the West property line of said Capitol Hills Subdivisions; thence South  $13^{\circ}51'58''$  West 290.236 feet; thence South  $20^{\circ}25'33''$  East 305.697 feet; thence South  $24^{\circ}25'06''$  East 188.683 feet; thence South  $24^{\circ}33'08''$  East 180.868 feet; thence South  $31^{\circ}48'16''$  East 314.176 feet; thence North  $68^{\circ}01'44''$  East 149.246 feet; thence North  $81^{\circ}31'44''$  East 171.503 feet; thence South  $89^{\circ}52'14''$  East 59.956 feet; thence South  $14^{\circ}04'19''$  West 556.805 feet; thence South  $88^{\circ}52'28''$  West 281.094 feet; thence North  $62^{\circ}04'05''$  West 165.348 feet; thence North  $40^{\circ}11'03''$  West 1003.030 feet; thence North  $19^{\circ}03'58''$  West 865.488 feet; thence Due East 736.126 feet to the point of BEGINNING.

The following description is the mathematical equivalent to the proceeding description with all description terms rotated to match the bearing base of the recorded plats of Ensign Downs Subdivision Plats "A" through "L".

BEGINNING at a point that is North  $89^{\circ}43'45''$  West 3231.181 feet and South  $00^{\circ}16'15''$  East 2380.066 feet from the North quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence South  $51^{\circ}39'10''$  East 41.121 feet along the West property line of said Capitol Hill Subdivisions; thence South  $14^{\circ}08'13''$  West 290.236 feet thence South  $20^{\circ}09'18''$  East 305.697 feet; thence South  $24^{\circ}08'51''$  East 188.683 feet; thence South  $24^{\circ}24'53''$  East 180.868 feet; thence South  $31^{\circ}32'01''$  East 314.176 feet; thence North  $68^{\circ}17'59''$  East 149.246 feet; thence North  $81^{\circ}47'59''$  East 171.503 feet; thence South  $89^{\circ}35'59''$  East 59.956 feet; thence South  $14^{\circ}20'34''$  West 556.805 feet; thence South  $89^{\circ}08'43''$  West 281.094 feet; thence North  $61^{\circ}47'50''$  West 165.348 feet; thence North  $39^{\circ}54'48''$  West 1003.030 feet; thence North  $18^{\circ}47'43''$  West 865.488 feet; thence South  $89^{\circ}43'45''$  East 736.126 feet to the point of BEGINNING.

Being the proposed plat of Dorchester Pointe Plat "A", P.U.D.



ASSOCIATED TITLE COMPANY

BK 7640 PG 1414

BK 7631 PG 1050

ALSO:

**PARCEL B:**

A Tract of Land located in Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian, being further described as follows:

BEGINNING at a point with the state plane rectangular coordinates of  $X = 1,893,322.622$ ,  $Y + 896,103.236$  based on the Lambert Conformal Projection, Utah Central Zone. Said point is further described as being due West 3231.181 feet and due South 2380.066 feet from the North Quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence Due West 736.126 feet; thence North  $19^{\circ}03'58''$  West 71.232 feet; thence South  $89^{\circ}59'34''$  East 78.810 feet; thence North  $00^{\circ}08'37''$  West 451.900 feet; thence North  $13^{\circ}36'56''$  East 266.090.090 feet; thence North  $47^{\circ}52'45''$  East 1460.030 feet thence South  $22^{\circ}34'20''$  West 631.627 feet; thence South  $08^{\circ}28'35''$  West 1282.342 feet to the point of BEGINNING.

The following description is the mathematical equivalent to the proceeding description with all description terms rotated to match the bearing base of the recorded plats of Ensign Downs Subdivision Plats "A" through "L".

BEGINNING at a point that is North  $89^{\circ}43'45''$  West 3231.181 feet and South  $00^{\circ}16'15''$  East 2380.066 feet from the North quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence South  $89^{\circ}43'45''$  West 736.126 feet; thence North  $19^{\circ}20'13''$  East 71.232 feet; thence North  $89^{\circ}44'11''$  East 78.810 feet; thence North  $00^{\circ}22'52''$  West 451.900 feet; thence North  $13^{\circ}20'41''$  East 266.090 feet; thence North  $47^{\circ}36'30''$  East 1460.030 feet; thence South  $22^{\circ}18'05''$  West 631.627 feet; thence South  $08^{\circ}12'20''$  West 1282.342 feet to the point of BEGINNING.

Being the proposed plat of Dorchester Pointe Plat "B", P.U.D.



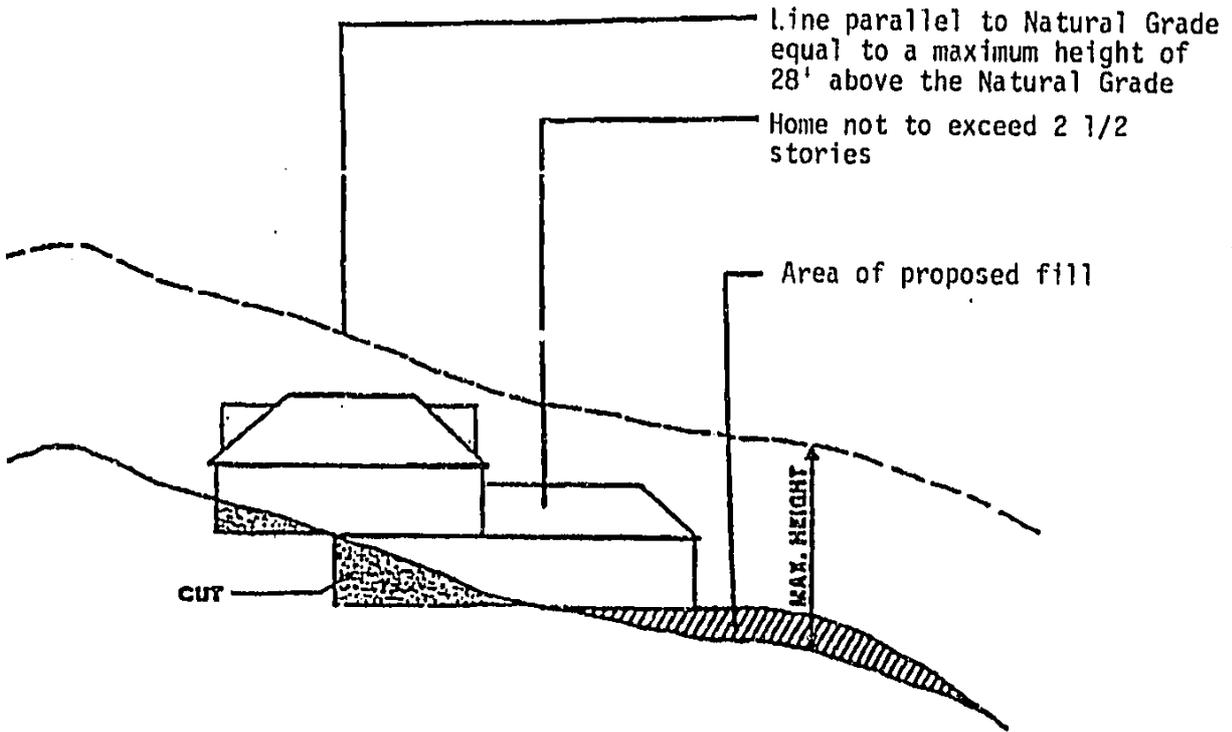
ASSOCIATED TITLE COMPANY

BK 7640PG1415

BK 7631PG1051

EXHIBIT "B"

HEIGHT MAP



3K7631PG1052

BK7640PG1416

**EXHIBIT "C"**  
**PLAN SUBMITTAL WORKSHEET**

~~BK7631PG1053~~

BK7640PG1417

**DORCHESTER POINTE PLAN SUBMITTAL WORKSHEET**

(Refer to Section 8.2 of CC&Rs)

Dorchester Pointe Lot No. \_\_\_\_\_

**Section 1: Owner Information**

Owner's Name \_\_\_\_\_  
Current Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Architect's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Builder's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

**Section 2: Dates**

Plan Submittal Date: \_\_\_\_\_  
Construction Commencement Date: \_\_\_\_\_ (within 9 mos. of approval)  
Construction Completion Date \_\_\_\_\_ (within 12 mos. of beginning)

**Section 3: Site Plan Information** (measurements in feet; see CC&R's for complete information)

Front Setback \_\_\_\_\_ (greater than 25' or 18' on designated lots)(see  
Recorded Plat for your lot's minimum)  
[if corner lot] \_\_\_\_\_  
Left Side Yard (facing lot) \_\_\_\_\_ (greater than 20')  
Right Side Yard \_\_\_\_\_ (greater than 20')  
Rear Yard Setback \_\_\_\_\_ (greater than 20')  
No. Of Stories \_\_\_\_\_ (not to exceed 2 1/2, including basement)

**Section 4: Structure Information** (see CC&R's for complete information)

Height (elevation calculated from a designated point on the lot):  
Basement Floor Elevation \_\_\_\_\_ Main floor Elevation \_\_\_\_\_  
Upper Floor Elevation \_\_\_\_\_  
Elevation of Lowest Point of Footprint of Structure at Existing Natural Grade \_\_\_\_\_  
Top of Roof \_\_\_\_\_ (must be less than 28 feet above Natural Grade at any  
given point, as defined in CC&R's)

Square Footage of Mainfloor \_\_\_\_\_ (must exceed 2,000 sq. ft.)  
Square Footage of Basement \_\_\_\_\_  
Square Footage of Additional Level \_\_\_\_\_  
TOTAL SQUARE FOOTAGE \_\_\_\_\_ (must exceed 3,000 sq. ft. for multi-level or two  
story or 2,000 sq. ft. for a single level)  
Garage Square Footage \_\_\_\_\_  
No. Of Car Garage \_\_\_\_\_ (not less than 2 nor more than 4)

SK 7631PG1054

Information on Additional Structures (attach additional sheets if necessary)(must contain same information as home, e.g. square footage, materials, location, setbacks, elevations, etc...)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Exterior Building Material--Siding \_\_\_\_\_ (samples to be provided on request of Committee)

Exterior Building Color-- Siding \_\_\_\_\_ (samples to be provided on request of Committee)

Exterior Building Material--Trim \_\_\_\_\_

Exterior Building Color--Trim \_\_\_\_\_ (samples to be provided on request of Committee)

Roof Material or Type \_\_\_\_\_

Roof Color \_\_\_\_\_

Driveway Material \_\_\_\_\_

Fencing Type/Material \_\_\_\_\_

Fence Color \_\_\_\_\_ Fence Maximum Height \_\_\_\_\_

(a separate fencing plan must also be provided)

**Submittal Checklist:** (Refer to appropriate CC&R Sections)

- 3 complete site plans as required by Section 8.2 (a).
- 3 complete sets of floor plans and elevations as required by Section 8.2 (b).
- 3 completed Dorchester Pointe Plan Submittal Worksheets as required by Section 8.2 (c).
- 3 complete sets of landscape plans as required by Section 8.2 (d).
- 3 copies of the Certificate of Geotechnical Compliance as required by the Plat and Sections 7.12 and 8.2 (e).
- A check for the Plan Review Fee payable to "Dorchester Pointe Homeowners' Association" as required by Section 8.2 (f).
- 3 complete sets of fence or wall plans as required by Sections 8.2 (g), 8.3 (b), and 8.3 (e).
- (If needed) 3 copies of the Dorchester Pointe CC&R Variance Request Form pursuant to Sections 7.6, 8.2 (h) and 8.5. A variance from Salt Lake City Ordinances also requires this form (See Section 7.6).

**Plan Review Fee Schedule:**

Year Submitted	Amount
1997	\$750
1998	\$790
1999	\$825
2000	\$870
2001	\$915

Thereafter increasing at an annual compounded escalator of 5%

Submitted By \_\_\_\_\_  
(Owner's Signature(s))

BK7631PG1055

**EXHIBIT "D"**  
**VARIANCE REQUEST FORM**

~~BK 764.0 PG 1420~~

BK 764.0 PG 1420

**DORCHESTER POINTE**

**CC&R VARIANCE REQUEST FORM**

Dorchester Pointe Lot No. \_\_\_\_\_

**Section 1: Owner Information**

Owner's Name \_\_\_\_\_

Current Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Architect's Name \_\_\_\_\_

Builder's Name \_\_\_\_\_

**Section 2: Variance Requested** (attach addition sheets if necessary)

Are you requesting a variance from the Salt Lake City Zoning and Building Ordinances? \_\_\_\_\_.

If you are, please describe in detail the specific nature of the variance sought (including the applicable Salt Lake City code section), and attach a copy of the completed Salt Lake City application for variance signed by you and any adjacent Lot Owners whose consent Salt Lake City may require. Please refer to Section 7.6 in the CC&Rs. \_\_\_\_\_

If this is a variance request to the CC&Rs, please indicated the applicable CC&R Section and Page No. \_\_\_\_\_

1. Explain the general purpose of the CC&R Provision or SLC Ordinance for which a variance is requested (e.g. side yard restriction) \_\_\_\_\_

2. Explain in detail the nature of the variance requested: \_\_\_\_\_

3. Explain why the strict application of this CC&R or SLC provision would result in exceptional practical difficulties to, or undue hardship upon, the Owner: \_\_\_\_\_

BK 7640 PG 1057

4. Explain why the strict application of this provision or restriction is unnecessary to carry out the general purpose of the CC&Rs: \_\_\_\_\_

5. Explain why granting the variance or exception would not be detrimental to the use and enjoyment of any other Lot within the Property: \_\_\_\_\_

Submitted By \_\_\_\_\_  
(Owner's Signature(s))

Date: \_\_\_\_\_

Variance Approved

Variance Approved Subject to the Conditions Below\*

Variance Disapproved

**Dorchester Pointe Architectural and Structural Control Committee:**  
(two signatures required)

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

Dated \_\_\_\_\_

cc: DPHOA Board of Trustees

\*Conditions of Approval (if any): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

377631PG1058

BK7640PG1422

EXHIBIT "E"

**DORCHESTER POINTE  
ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE**

139 E. South Temple, Suite 310

Salt Lake City, Utah 84111

Tel: (801)328-1600

Fax: (801)328-1616

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Plans submitted for construction and landscaping of a home on Lot \_\_\_\_\_, Dorchester Pointe, dated \_\_\_\_\_

Dear Lot Owner,

- The plans have not been reviewed and are being returned due to the fact they are incomplete. Please complete the items specified below\*\* and re-submit the plans.
- We hereby grant approval of the above referenced plans.
- We hereby grant approval of the above referenced plans subject to satisfaction of the conditions specified below\*\*.
- We hereby disapprove of the above referenced plans for the reasons specified below\*\*. Please correct the plans appropriately and re-submit them for an additional review by this Committee.

In the event the plans are approved as indicated above, please understand that the approval by this Committee does not include structural or soils analysis, nor does it assume your plans are in compliance with Salt Lake City requirements or the Report of Geotechnical Investigation - Dorchester Pointe Development, dated April 5, 1995. These matters are your responsibility and a specific condition of this approval is that you do comply with all zoning, structural, landscaping, fencing, and other requirements of Salt Lake City and the State of Utah in the construction and landscaping of this home.

As provided in the CC&R's, although we are approving your landscaping plans at this time, should vegetation and trees grow to block the view(s) of neighbors in an unreasonable manner, it may be necessary to cut back, trim or even remove the offending plants. Furthermore, please be advised that unless specifically indicated on a CC&R Variance Request Form, this approval shall in no way waive any provisions of the CC&R's.

BK 7631 PG 1059

Plan Approval/Disapproval Letter  
Page 2

**\*\*Items not included, conditions for approval, or reason(s) for disapproval (if any):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have questions, need additional information or need our help in any way, please contact us at your convenience.

Very truly yours,

**Dorchester Pointe Architectural and Structural Control Committee:**  
(two signatures required)

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

cc: DPHOA Board of Trustees

~~5K7631PG1050~~

**EXHIBIT "F"**

**STAMP OF APPROVAL/DISAPPROVAL**

Form of "Stamp of Approval"

Owner: _____
Lot Number: _____
<b>APPROVED</b>
DORCHESTER POINTE ARCHITECTURAL & STRUCTURAL CONTROL COMMITTEE
By: _____
By: _____
Date: _____

Form of "Stamp of Disapproval"

Owner: _____
Lot Number: _____
<b>DISAPPROVED</b>
DORCHESTER POINTE ARCHITECTURAL & STRUCTURAL CONTROL COMMITTEE
By: _____
By: _____
Date: _____

04/10/97 1152 PM 6616504 81.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
REC BY: B ROHE DEPUTY - WZ

BK 7631 PG 1051

BK 7640 PG 1425

When Recorded, please mail to:  
DORCHESTER POINTE HOMEOWNERS' ASSOCIATION  
c/o Christopher F. Robinson  
139 East South Temple, Suite 310  
Salt Lake City, Utah 84111

03/31/97 6606692 1:46 PM 81.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
REC BY: B ROME DEPUTY - HI

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
DORCHESTER POINTE**

WHEREAS, the undersigned, DORCHESTER PARTNERS, L.C., a Utah limited liability company (the "Declarant") is the legal and beneficial owner of a certain tract of land (the "Property") situated in Salt Lake County, State of Utah, as more fully described Exhibit "A" attached hereto, and

WHEREAS, Declarant desires to subject the Property to the provisions of this Declaration to provide covenants, conditions and restrictions applicable to the Property and the development thereof into a private residential community of single-family parcels; and

WHEREAS, Declarant intends to sell Lots (as defined herein) within Subdivisions within the Property, pursuant to a general plan of improvement and subject to certain covenants, conditions, restrictions and agreements between and among the several purchasers of said Lots, as hereinafter set forth.

NOW, THEREFORE, Declarant hereby declares that all of the Property, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be sold, transferred, conveyed, used, leased, occupied, developed, resided upon, mortgaged, or otherwise hypothecated or otherwise encumbered, and held subject to the following covenants, conditions, restrictions, agreements, easements, assessments and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and Lots hereby or hereafter made subject hereto. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the Property and Lots now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every Owner of a Lot, and any owner of any other portion of the Property, including Declarant.

1. DEFINITIONS. The following words, when used in this Declaration shall have the following meanings:

1.1 "Alpha Lots" means those certain lots designated on the Property with alphabetical characters. Such lots shall not constitute Lots for purposes of this Declaration and shall not be entitled to any separate voting, assessment, or dwelling units or other rights of the Association.

6606692

1.2. "Assessment and Voting Unit" or "Unit(s)" means the value and/or vote assigned to a Lot. Each Lot is assigned one (1) Assessment and Voting Unit as provided in Sections 11 and 14.3 of this Declaration. The Unit(s) is/are permanently assigned to a Lot for assessment and voting purposes.

1.3. "Association" means and refers to the DORCHESTER POINTE HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation, its successors and assigns.

1.4. "By-Laws" means the By-Laws of the Association.

1.5. "Committee" means the Architectural and Structural Control Committee referred to in Section 8 of this Declaration.

1.6. "Common Property(ies)" means any and all real and personal property and easements as shown on any Subdivision plat consisting of any portion of the Property, and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7. "Declarant" means and refers to DORCHESTER PARTNERS, L.C., a Utah limited liability company, and the successors-in-title and assigns of DORCHESTER PARTNERS, L.C., provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

1.8. "Lot(s)" means each of those plots of land so designated upon any Subdivision plat filed in the Salt Lake County Recorder's Office, affecting the Property or any portion thereof, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of street improvements, a single family dwelling site as shown on such Subdivision plat. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, membership in the Association.

1.9. "Majority" means those eligible votes totaling more than fifty percent (50%) of the total eligible number.

1.10. "Mortgage" means any mortgage, deed of trust, or other instrument to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

1.11. "Mortgagee" means the holder of a Mortgage.

1.12. "Owner(s)" means and refers to the record owner, whether one or more Persons, of the fee simple title to any Lot, unless the Lot is being sold under contract, in which case the record owner and the contract buyer may, by written designation delivered to the Association, designate the contract buyer as the Owner. "Owner" does not include any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.13. "Person(s)" means any natural person, as well as a corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or other legal entity. If this Declaration allows or requires a vote, act or action, a "Person" which is a corporation, joint venture, partnership, association, limited liability company, trust or other legal entity, other than a natural person, may act by an officer, director, partner, trustee, manager, or other agent or legal representative designated in a properly executed writing delivered to the Association, Committee, or Declarant, as the case may be.

1.14. "Property" means the two tracts of land located in Salt Lake County, Utah, which are more fully described on Exhibit "A" attached hereto.

1.15. "Restricted Rear Yard Use" means that certain portion of Lots 126, 127, 128, 135, and 136 on the Subdivision plat on which no dwelling unit or substantial outbuilding may be built. Such areas are intended to preserve certain view corridors. Acceptable uses include landscaped yard area, swimming pools, tennis courts, sport courts, fences, small garden-type gazebos, and other similar uses or structures.

1.16. "Subdivision(s)" means the portion of the Property divided into Lots, each as a tract or parcel of real property for a single family dwelling, and for which a Subdivision plat is recorded in the office of the Salt Lake County Recorder.

1.17. "Trustee(s)" mean those individuals elected by the Owners to serve on the Board of Trustees (the "Board of Trustees") and to perform their duties and responsibilities as outlined in By-Laws and in this Declaration.

1.18. "Unit(s)" is defined in Section 1.2, above.

2. **PROPERTY SUBJECT TO THIS DECLARATION.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property located in Salt Lake County, Utah, described on Exhibit "A" to this Declaration.

**3. MUTUAL AND RECIPROCAL BENEFITS BETWEEN AND AMONG LOTS, OWNERS, DECLARANT AND THE PROPERTY.** All of the covenants, conditions, restrictions and agreements set forth in this Declaration are for the direct and mutual and reciprocal benefit of the Property and each and every Lot hereafter created from time to time and are intended to create reciprocal rights and obligations between and among the respective Owner(s) of each and all of the Lots and to create a privity of contract and estate between and among the Owners of each and all of the Lots, their heirs, successors and assigns, and shall, as to the Owner(s) of each Lot, their heirs, successors and assigns, operate as covenants running with the land for the benefit of all other Lots.

**4. PERSONS BOUND BY THIS DECLARATION.** All covenants, conditions, and restrictions herein stated shall run with the land and all Owners, purchasers or occupants thereof shall, by acceptance of contracts or deeds, possession or occupancy, be conclusively deemed to have consented and agreed with the present and future Owner(s) of each Lot and Declarant, and with their respective successors and assigns to conform to and observe the following covenants, conditions, restrictions and stipulations as to the use thereof and construction of residences, structures and improvements thereon.

**5. DURATION.** The provisions of this Declaration shall be and remain effective for a period from the date hereof to January 1, 2021, at which time said covenants, conditions, restrictions, stipulations and agreements shall be automatically extended for successive periods of 10 years, unless, by an affirmative vote of seventy-five percent (75%) of the then eligible votes of Owners of Lots within recorded Subdivisions within the Property, it is agreed to amend or release said covenants in whole or in part and such agreement is evidenced by an appropriate written agreement specifying the restriction(s) amended or released, signed by the then Owners of said seventy-five percent (75%) of the eligible votes of Owners of Lots within recorded Subdivisions within the Property, and filed with the Office of the County Recorder of Salt Lake County, Utah. Every purchaser or grantee of any Lot or any interest in any of the Property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall be extended and renewed as provided in this Section.

**6. AMENDMENT.** These restrictions, conditions, covenants and agreements, however, may be changed, altered or amended at any time by the affirmative action of the Owners of seventy-five percent (75%) of the eligible votes of Owners of Lots within recorded Subdivisions within the Property. Such changes shall be evidenced by the execution of an appropriate agreement in writing signed by the Owners of seventy-five percent (75%) of the eligible votes and filed for record in the Office of the County Recorder of Salt Lake County, Utah.

Provided, however, that any amendment or release regarding paragraph 7.1 of this Declaration shall require a unanimous vote of all of the individual legal Owners of all of the Lots in all Subdivisions. Any such change shall be evidenced by the execution of an appropriate agreement in writing signed by one hundred percent (100%) of such Owners filed for record in the Office of the County Recorder of Salt Lake County, Utah.

**7. RESTRICTIONS ON USE, CONSTRUCTION, LOCATION OF IMPROVEMENTS.**

**7.1. LAND USE.** No Lot shall be used except for residential purposes, for a single-family dwelling and accessory buildings, structures and facilities for one family, including domestic help not to exceed three (3) persons in the service of such family. Not more than one single family dwelling shall be built on any Lot. No Lot shall be divided or subdivided to create any additional Lot or other parcel or site on which a single family dwelling may be built or located. In the event of any conflict between provisions of this Section and any other Section or provision of this Declaration, this Section shall predominate and prevail.

**7.2. BUILDING TYPE, HEIGHT, GRADING, SIZE.** No buildings shall be erected, altered, or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one half (2 1/2) stories, and a private garage for not less than two (2) nor more than four (4) vehicles and such accessory buildings, structures facilities and appurtenances as may be approved by the Committee. For purposes of this paragraph, an exposed basement shall be deemed a story and a half story means a story with at least two of its opposite sides situated in a sloping roof, the floor area of which does not exceed two-thirds of the floor immediately below it. Depending upon the design of the dwelling structure, the Committee may, if it deems such action advisable, approve parking inside the dwelling structure for more than four (4) vehicles. Notwithstanding the foregoing, unless approved in writing by the Committee, the height of any building, structure, facility or appurtenance thereto, at any point, shall not be higher than twenty-eight feet (28') above the Natural Grade of the Lot, except that no vertical building wall shall exceed twenty-five feet (25') in height as measured from the finished grade. Building height shall be measured as the vertical distance between the top of the roof and the Natural Grade at any given point of building coverage, as further shown on Exhibit "B" attached hereto. "Natural Grade" as used herein means the grade or slope of the Lot in its natural condition or, in the case where the Declarant modifies the grade before or immediately following the recordation of the Subdivision and as a part of the installation of the Subdivision improvements, the grade as contoured by the Declarant.

In the event that the building footprint area is on, over or immediately adjacent to a "Small Topographic Feature," as defined below, such Small Topographic Feature shall be ignored in calculating the height of the building structure, facility or appurtenance pursuant to this provision. In such event, the area affected by the Small Topographic Feature shall be deemed to have as a Natural Grade the grade which would be obtained by filling or removing the Small Topographic Feature to reflect the slope of the ground immediately adjacent to the Small Topographic Feature in question. A "Small Topographic Feature" is a natural hill or depression which (i) either rises above or falls below the natural slope of the land in the areas adjacent to such Small Topographic Feature and (ii) is both less than two-hundred (200) square feet in area and less than fifteen (15) horizontal feet in both length and width.

Structures may be designed to include foundation and/or roof steps or other design elements intended to parallel the Natural Grade (including grade change areas when treated as provided above) in order to meet the height limitation.

The Natural Grade of a Lot shall not be modified except as expressly approved in writing by the Committee as a part of the final approval of the Plans (as defined herein below) for the construction of a dwelling on the Lot; provided, however, in no instance shall the Natural Grade be modified in a manner which would circumvent the height limitation defined in this Section 7.2.

The Committee shall have power to further limit the number of stories and the height of structures upon any and all Lots in order to achieve compatibility of proposed design and improvements with the Natural Grade, slope, and features of the Lot, and to preserve the uphill and downhill views of other Lots in any Subdivision within the Property.

The Committee, in reviewing plans for proposed improvements, dwellings, buildings, structures, facilities and appurtenances, may consider the impact of such upon the views, including but not limited to uphill or downhill views, from other Lots, in approving, denying or conditionally approving the proposed dwelling, buildings, structures, facilities, appurtenances or improvements, or in granting any variance or exception thereto pursuant to Section 8.5 hereof.

Every detached single family dwelling, exclusive of garages and open porches, erected on any Lot shall have a minimum above grade finished living area, excluding garages, of two-thousand (2,000) square feet for a single level residence or three-thousand (3,000) square feet for a multi-level or two story dwelling provided, however, that a two story dwelling shall have a minimum of two-thousand (2,000) square feet on the first floor above grade.

**7.3. MOVING OF STRUCTURES.** No structure of any kind shall be moved from any other place to any Lot, except for new factory built or manufactured dwellings or accessory buildings specifically approved, prior to placement on the Lot, by the Committee.

**7.4. TEMPORARY STRUCTURES.** No trailer, basement, tent, shack or other out-building shall be placed upon any Lot or used at any time within any Subdivision as a temporary or permanent residence. Subject to ordinances of Salt Lake City, a trailer or other temporary building may be placed upon a Lot during construction solely for the purpose of facilitating construction management, but not as a residence or for overnight accommodation, and shall be removed from the Lot immediately upon completion of construction of the dwelling on the Lot.

**7.5. DILIGENCE IN BUILDING AND LANDSCAPING.** When the erection or remodeling of any residence or other structure is once begun, work thereon must be prosecuted diligently and completed within twelve (12) months, without deviation from the plans approved

by or approvals given by the Committee. No building shall remain incomplete or any remodeling unfinished for any reason for a period in excess of twelve (12) months from the date physical construction commenced.

Installation of all required landscaping in conformance with approved plans shall begin no later than one (1) month after a Certificate of Occupancy (C.O.) is issued by Salt Lake City; except that if the C.O. is issued between October 15th and the following April 1st, installation of landscaping shall begin no later than April 30th. Landscaping shall be substantially completed within six (6) months after landscaping is commenced.

**7.6. COMPLIANCE WITH ZONING AND BUILDING ORDINANCES OF SALT LAKE CITY.** All excavation work, foundations, construction, buildings, and landscaping in any Subdivision shall be done, performed, placed or constructed, as the case may be, in, on or upon each Lot in accordance with the provisions of Salt Lake City Zoning and Building Ordinances in effect when the buildings are constructed or remodeled. This provision shall not affect the applicability of the other provisions hereof.

In the event that a variance is needed from the Salt Lake City Zoning and Building Ordinances, then simultaneously with applying for said variance, the Lot Owner shall submit to the Committee the following: (a) a copy of the completed Salt Lake City variance application bearing signatures of the applicant as well as any adjacent Lot Owners whose consent is being sought and (b) the Dorchester Pointe CC&R Variance Request Form as described in Section 8.5 to this Declaration. In addition to receiving approval from Salt Lake City for any variance to Salt Lake City Zoning and Building Ordinances, such variances must be approved by the Committee.

**7.7. SET BACKS.** No dwelling house shall be located on Lots 101, 105, 112, 113, 114, 116, 118, 119, 121, and 123 nearer than eighteen feet (18') to the front property line or such further distance from the front property line as may be disclosed on the Subdivision plats. No dwelling house shall be located on any other Lots nearer than twenty five feet (25') to the front property line or such further distance from the property line as may be disclosed on the Subdivisions Plats. Such set backs must comply with all applicable zoning regulations and must be approved by the Committee prior to the start of construction. No dwelling shall be located on a Lot nearer than twenty feet (20') to any interior side Lot line. No dwelling shall be located on any Lot nearer than twenty feet (20') to the rear Lot line. Rear yard set backs on any Lot containing an "undevelopable area" must further comply with all Salt Lake City requirements for such Lot. The location of all dwellings and any permitted detached garage or other detached accessory buildings or structures must be approved in writing by the Committee prior to the start of construction and must comply with all applicable Salt Lake City regulations.

For the purpose of this covenant, eaves, steps and open porches without roofs will not be considered as a part of a building unless otherwise indicated by the Committee prior to approval of the Plans; provided, however, that this shall not be construed to permit any portion of any building on any Lot to encroach upon another Lot.

**7.8. DRAINAGE AND UTILITY EASEMENTS.** Easements and rights-of-way over portions of the Property as shown on any Subdivision plat have been or shall be dedicated as drainage and/or utility easements for the use of Salt Lake City, public or private utility companies or entities, and/or the Association (as the case may be) for the erection, construction, maintenance and operation therein or thereon of drainage conduits, ditches, or pipes and for pipes, conduits, poles, wires, cables, and other means of conveying to and from the Lots, gas, electricity, power, water, telephone, communication services, cable television, telegraph services, sanitary sewer, storm drainage, and other services for convenience of Owners of Lots.

Private streets for a private, common access road or street (within the area which is designated "Private Streets" area on any Subdivision plat) shall be granted to the Association for the use of the Association, its members, and their guests. The Private Street, including street surface and curbs, shall be maintained by the Association. Each Owner shall maintain (or if a dwelling is built, landscape), consistent with the provisions of Section 7.10, that portion of said Owner's Lot immediately adjacent to the Private Street within the area marked "Drainage and Public Utilities Easements" on the Subdivision plats. These areas may contain drainage swales, drainage ways and drainage facilities. No driveway, path or other structure shall be placed across any drainage swale or ditch unless the Owner shall first install in the drainage swale or ditch, at the flow line of the drainage swale or ditch and under such driveway, path or other structure, in accordance with the engineering and design of the storm drain system for the Subdivision, a pipe or other conduit of sufficient size and capacity to convey the storm drainage past such driveway, path or other structure. The size, material, plans and placement of all such pipes and/or conduit must be approved by the Committee prior to installation. Nothing shall be done or allowed which would impede drainage in the drainage swales or drainage ways adjacent to the street surface or which would impede or interfere with drainage facilities. The Association may regularly inspect all drainage swales and shall remove therefrom or otherwise correct any obstruction or other situation which may exist with potential to impede drainage within any drainage swale. The cost of such removal or correction shall be assessed to the Owner of the Lot from which such obstruction or situation has been removed.

**7.9. UNDEVELOPABLE AREA; OPEN SPACE EASEMENTS:** Each recorded Subdivision plat may include areas which are identified as "Undevelopable Area." Such areas have been or shall be dedicated to Salt Lake City as perpetual open space and vegetation preservation easements. Within these areas, no structures or development of any kind, other than fences as set forth in this Declaration, shall be placed or permitted to remain, nor shall any activities be undertaken which shall interfere with the natural vegetation, the established slopes, or the existing natural condition of the land, or damage or interfere with the established slope ratios, create erosion or sliding problems or retard the flow of water through any drainage channels. All such areas shall be kept clean and clear of any trash or debris by the Owner of the Lot within which such area is located.

**7.10. LANDSCAPING; NATURAL VIEWS.** On all vacant, unimproved Lots and until construction of an approved dwelling thereon commences, all vegetation shall be

maintained in its present, natural state or, at the Owner's option, be enhanced by landscaping with trees, lawns, shrubs or other plantings which shall be properly nurtured and maintained or replaced at the Owner's expense. Specifically, on vacant, unimproved Lots, the natural grasses and weeds located within any Lot shall be periodically maintained, mowed or trimmed in order to minimize the fire hazard and to enhance their appearance. The Owner of a Lot at such Owner's expense shall perform such maintenance, mowing or trimming within ten (10) days of receipt of written notice from the Association. If such maintenance is not performed within ten (10) days of such notice, the Association may undertake to do the work and recover payment from the Owner for the costs incurred by such action, and record a lien against the Owner's Lot to secure the repayment of all such costs.

Upon completion of a dwelling or other structure approved by the Committee, all Lots shall be landscaped with trees, lawns, shrubs, or other plantings which shall be properly nurtured and maintained or replaced at the Owner's expense.

Gravel, cinder or other "no plant" areas shall not be permitted in front yards or side yards except in the storm drainage swales as otherwise provided in Section 7.8 above.

All landscaping must be in accordance with the provisions of this Declaration, including approval as required by Section 8.2.

It is recognized by the Declarant that one of the important and valuable amenities attendant to many of the Lots is the natural view from the Lot afforded by the location and character of the individual Lot. It is the intention of the Declarant that these natural views be maintained, and even enhanced, to the extent possible while allowing the orderly development of an attractive residential community including appropriate buildings, lawns, trees, shrubs and other landscaping. All trees and other landscaping approved by the Committee prior to installation shall be permitted to remain, so long as such trees and other landscaping are installed in accordance with the approved landscaping plan and do not unreasonably obstruct the view(s) (uphill, downhill, or otherwise) or otherwise interfere with the reasonable use and enjoyment of the Owners or occupants of any other Lot(s) or potential Lot(s) within the Property. As to the restrictions set forth in the preceding sentence, the Committee shall, in its sole and exclusive judgment, determine if any tree(s) or other landscaping are in violation and may, in the event of a violation, request, in writing, that the Owner of the Lot on which such tree(s) or other landscaping are located remove or trim the same to a height that corrects said violation, whereupon such Owner shall do so within thirty (30) days. In the event such Owner fails to comply with such written request, the Association shall be empowered to trim such tree(s) or other landscaping to a height that corrects said violation, recover payment from the Owner for the costs incurred by such action, and record a lien against the Owner's property to secure the repayment of all such costs.

The Declarant and its successors (*i.e.* Lot Owners) recognizes that, by its very occurrence, development and landscaping will diminish and interfere with the original natural

views afforded by the location and character of the Property. However, attractive well-planned landscaping and trees add to the overall attractiveness and value of a community and largely mitigate the impacts of development. The intent of the restrictions contained in this Section 7.10 is not to prohibit or unnecessarily limit attractive development and landscaping, but rather, to encourage development and landscaping which is in harmony with, or improves upon, the natural vista and natural views, and enhances the natural appeal of the land.

**7.11. PROHIBITION AGAINST SOIL EROSION AND RUNOFF.** It shall be the responsibility of each Owner of a Lot to direct site work relative to such Lot in a manner to minimize erosion and runoff. Construction shall be conducted in such a manner as to maintain all soils on-site and prevent the movement of earth, runoff water, materials or construction debris onto neighboring property, including public streets, or into the storm drainage system.

**7.12. SOILS, GEOTECHNICAL REQUIREMENTS.** Soils and geotechnical reports for the property have been issued by Huntingdon Engineering & Environmental, Inc. (now known as Maxim Technologies, Inc.) entitled "Report of Geotechnical Investigation--Dorchester Pointe Development" dated April 5, 1995 (the "Report"). The Report has been filed with the Salt Lake City Planning Commission. All requirements of Salt Lake City and the Report must be complied with in the construction of all buildings, structures and facilities on all Lots. The design, and subsequently, the actual construction, of all footings and foundations must be certified by a qualified engineer registered with the State of Utah (the "Certificate of Geotechnical Compliance"). The Declarant makes no warranties of any kind relative to soils or geotechnical matters.

## **8. ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE.**

**8.1. MEMBERS; QUORUM.** An Architectural and Structural Control Committee (hereinafter "the Committee"), consisting of three (3) members is hereby created. The members of the Committee shall be appointed by the Board of Trustees and the Board of Trustees may fill vacancies in the Committee and remove members thereof at their pleasure

The initial notice address of the Architectural and Structural Control Committee shall be:

Dorchester Pointe Subdivision  
Architectural and Structural Control Committee  
c/o William H. Adams  
370 E. South Temple, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84111-1240  
Tel: (801)359-1990  
Fax: (801)359-1980

This address shall serve as the notice address of the Committee until such time as a different address is recorded with reference to this Declaration with the Salt Lake County Recorder's Office.

The functions of the Committee shall be, in addition to the functions set forth elsewhere in this Declaration, to pass upon, approve or reject any plans or specifications for all structures and landscaping to be erected or remodeled on Lots in any Subdivisions within the Property, so that all structures and landscaping shall conform to the restrictions contained herein and to the general development plans of the Declarant and of the Committee, for the benefit, improvement and development of the Property. In exercising its duties as defined in this Declaration, the Committee shall use as its standards for approving or rejecting any plans or specifications the criteria contained in this Declaration, with particular attention to the impact of the proposed structure(s) or landscaping on the uphill and downhill views and the harmony of the development of all of the Property. In following the guidelines contained in this Declaration, the Committee shall act reasonably and not arbitrarily in approving or denying plans brought before it. Nothing in this paragraph shall be construed as authorizing or empowering said Committee to waive any restrictions which are set forth in this Declaration except as herein specifically provided.

The Committee may act by any two (2) of its members, and any authorization, approval or action taken by the Committee must be in writing signed by a minimum of two (2) members of said Committee and shall be in conformity with the procedure outlined in paragraph 8.2 below.

**8.2. ARCHITECTURAL AND STRUCTURAL CONTROL PROCEDURE, APPROVAL REQUIRED.** No building or structure, including a dwelling, garage, driveway (subject to Section 7.8), fence, wall, tennis court or swimming pool, or other facility, shall be erected, remodeled or placed on any Lot until the written approval of location, height, design, materials, colors of materials, harmony with existing structures, and landscaping plan has first been obtained from the Committee. No construction of any kind or nature on any of the Lots shall be commenced until curb grade has been established. Except for approval of a variance or exception consistent with the criteria of Section 8.5, approval by the Committee shall not affect, or constitute a waiver of, the rights of any Person, Owner, or of Declarant who may enforce the provisions of this Declaration.

Owners shall submit to the Committee at the notice address provided for in Section 8.1 hereof, in triplicate, the following design plans: (a) a site plan including topographic information and a footprint of all proposed structures or improvements, including fences, walls, garages, and other improvements. The site plan must be drawn to scale, include actual lot dimensions, show all street and public way improvements (existing and proposed) and show all easements and rights-of-way. The site plan must also show building footprint, roof overhangs, retaining walls, driveways, patios, sidewalks, fences, mechanical equipment, swimming pools, sport courts or similar recreational structures. The site plan must show all pertinent topographical

information including grade lines showing both existing and proposed grades. Existing grades will be shown with dashed lines and proposed grades with solid lines. All grades will be at 2' contour intervals. The topographic survey of existing grade on the lot must be prepared and signed by a surveyor licensed in the State of Utah. Basements floor elevation, main floor elevation and roof ridge elevation(s) relative to existing grades will be given; (b) floor plans and elevations of the front, rear, and all sides of all structures; (c) a fully completed "Dorchester Pointe Plan Submittal Worksheet," the form for which is attached hereto as Exhibit "C"; (d) a landscape plan(s), drawn to scale, which includes actual lot dimensions, easements and rights-of-way, street and public way improvements which affect landscaping, footprint of building(s), locations of retaining walls, and the extent of all hard surfaces that define landscape areas. The landscape plan(s) must show the following items as applicable (i) existing and proposed topographic grades with 2' contour intervals, including berms to be installed as part of landscaping, (ii) location and species of all trees and shrubs, showing individual plants and massings at their mature size, (iii) plant material schedule showing common and botanical names of trees and shrubs, installed size, and mature size (incl. height and width), (iv) extent of areas to be installed with ground cover, flowers, turf, natural vegetation and unplanted mulch coverage, (v) location and type of rockwork, retaining walls and fences to be installed as part of landscaping, (vi) location and type of landscape lighting, and (vii) location of paths, garden structures and water features; (e) a Certificate of Geotechnical Compliance from a soils engineer; (f) a check for Seven Hundred Fifty Dollars (\$750), increased annually as set forth on the Plan Submittal Worksheet for the years 1998-2001 and thereafter at an annual compounded escalator of 5% per annum every year, made payable to the Dorchester Pointe Homeowners' Association as a plan review fee (the "Plan Review Fee"); (g) fence or wall plans showing the dimensions and construction of any proposed fence and wall, including sections and elevations to show the structure's materials and appearance, and (h) if a variance or exception is being requested pursuant to Section 8.5 hereof, the "Dorchester Pointe CC&R Variance Request Form," a copy of which is attached as Exhibit "D" hereto; (hereafter collectively referred to as the "Plans").

Within thirty (30) days after receipt of the Plans by the Committee, the Committee shall approve or disapprove the Plans and shall evidence such approval or disapproval by the following: (a) by issuing a written approval or disapproval letter, signed by a Majority of the Committee, the form of which is attached hereto as Exhibit "E" (and in the case of a denial, shall indicate in writing the basis for the denial), and (b) by affixing "Stamp of Approval" or "Stamp of Disapproval" (as the case may be), the form of which is shown on Exhibit "F" attached hereto, on one set of the Plans and returning the same to the Owner/Applicant. Such approval shall only be valid if construction is commenced within nine (9) months of the date of such approval.

The submission of Plans shall be deemed received only when accompanied by three (3) complete sets of the Plans and by the Plan Review Fee as defined above. The Committee shall not permit any oral modification of the Plans, and all Plans so submitted will be evaluated based solely on the submitted Plans.

**8.3. ADDITIONAL ARCHITECTURAL AND SITE DEVELOPMENT GUIDELINES.** In addition to those requirements set forth elsewhere in this Declaration, the following architectural guidelines shall apply to all Lots:

- (a) **Harmony in Building.** The exterior material of all homes shall be either brick, stone, wood, stucco or other material approved by the Committee, or a combination thereof. The roofing materials shall be either tile, treated wood shingles or other fire resistant material approved by the Committee, in approved colors. All construction shall be of new materials except for "used brick" or "used stone" or other used specialty materials specifically approved by the Committee.
- (b) **Fences and Walls.** All fences and walls shall be in conformity with Salt Lake City ordinances. All fence and wall materials and placement must be harmonious with the natural environment and must be approved by the Committee prior to erection. No fence or wall shall be erected on any Lot nearer to the street improvements than the minimum front yard set back. No fence or wall shall be higher than six feet (6'). Notwithstanding anything in the foregoing to the contrary, the rear yard fence, if any, for Lots 112, 113, 114, 116, 118, 119, 121, 123, 128, 129, 131, 132, 133, 134, and 135 must be open, see-through fencing constructed of tubular steel, wrought iron or similar materials, finished with a flat black, non-reflective finish.
- (c) **Exterior Lighting.** The design of each home may include exterior lighting. All such exterior lighting shall require the prior approval of the Committee. All fixtures used on the home's exterior and all outdoor site lighting must be installed so as to control glare and light-spill onto adjacent properties.
- (d) **Samples.** If requested by the Committee, prior to the construction of any building or structure, appropriate building material samples and material colors must be provided to the Committee in order to determine if said materials comply with the terms and intent of these covenants, conditions and restrictions.
- (e) **Rockwork.** Boulders or rock used for decorative or structural purposes in the landscape or retaining walls should harmonize with the existing rock outcroppings of the site. Owners are encouraged to utilize the indigenous conglomerate rock material for landscape use rather than import other rock types, color and textures.
- (f) **Landscaping.** Landscaping should harmonize with the natural environment surrounding the Subdivision.

8.4. ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE DECISION; LIABILITY. All decisions of said Committee shall be final, and neither said Committee, nor its members, nor any designated representative shall be subject to any liability therefor. Any errors or omissions in the design of any building or landscaping, and any violations of city ordinances are the sole responsibility of the Lot Owners and/or their designer, architect or builder. The Committee's review of Plans shall in no way be concerned with the structural or mechanical integrity or ability of the building or with architectural or structural soundness thereof. Construction of any structure or improvement on a Lot in accordance with approval of the Committee shall constitute a waiver by any Lot Owner of any claim or cause of action against the Committee and/or its members that the approval of the Committee or any requirements or conditions of the approval are contrary to or inconsistent with the provisions of this Declaration.

8.5. VARIANCE FROM OR EXCEPTION TO PROVISIONS OF THIS DECLARATION. Subject to the provisions of Section 7.1, which provisions may not be waived, excepted or granted variance from, the Committee may, after receiving written application stating the basis therefore (on the attached Dorchester Pointe CC&R Variance Request Form), and upon written approval stating the basis therefore, at any time, grant variance from or exception to any of the requirements of Sections 7.2, 7.5, 7.6, 7.7, 7.8, 7.10, 8.2 and 8.3 of this Declaration, if the Committee finds, based upon the application or such further evidence or investigation as it may require: (a) the strict application of any provision would result in exceptional practical difficulties to, or undue hardship upon, the Owner, and (b) strict application of the provision or restriction is unnecessary to carry out the general purpose of this Declaration, and (c) the variance or exception would not be detrimental to the reasonable use and enjoyment of any other Lot within the Property by the Owners of such other Lots.

8.6 INDEMNIFICATION OF COMMITTEE. The Committee shall be indemnified by the Association to the maximum extent allowed under the By-Laws and Articles of Incorporation of the Association. Furthermore, the Board of Trustees may purchase liability insurance for the Committee as allowed under the By-Laws.

## 9. NUISANCES.

9.1. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be an annoyance or nuisance to the neighborhood.

9.2. PETS. No barn, coop, shed, sty or building of any type shall be constructed for the purpose of housing pigs, cows, sheep, goats, horses, rabbits, pigeons, poultry, or any other livestock, and none of the foregoing shall be kept, maintained or permitted at any place within the limits of the Property. Owners may keep only a reasonable number of common household pets. Pets shall at all times be under proper control and supervision of their owners.

9.3. **STORAGE.** No storage of any articles, materials, equipment or vehicles (recreational or otherwise, including but not limited to boats, campers and trailers) of any nature is permitted in the front yard or side yard portion of any Lot, except that regularly used passenger cars properly licensed and in running order may be parked upon driveway areas. Trailers, trucks, campers, boats, and all types of accessory equipment are permitted to be stored or repaired only in garages.

9.4. **SIGNS.** Except for signs displayed by the Declarant, its agents, brokers, employees, or affiliates, or homebuilders during the sales and construction period of the development, no signs, other than name plates, shall be displayed to the public view on any Lot except one sign not exceeding five square feet advertising the availability for sale or lease of a Lot and the improvements thereon.

9.5. **DRILLING AND MINING.** There shall be no oil drilling, mining, quarrying or related operations of any kind permitted upon any Lot.

9.6. **RUBBISH.** No rubbish shall be stored or allowed to accumulate anywhere in the Property, except in sanitary containers appropriately shielded from public view.

9.7. **TRANSMITTING AND RECEIVING EQUIPMENT.** No external radio, citizen's band, ham radio or any other transmitting and/or receiving antennas or equipment shall be placed upon any structure or Lot; provided, however, a television antenna or satellite dish receiver may be placed in a yard at a secluded location, at a height, and in a manner specifically approved by the Committee in writing prior to erection. Any antenna or receiver must be shielded from view from streets and other Lots.

9.8. **CONSTRUCTION DEBRIS.** All Owners shall properly maintain their Lots during the construction period so as to insure that no "spoils" or any other debris from construction shall be permitted to blow or otherwise be deposited upon any adjoining Lot or any other private or Common Property or Private Street right-of-way. Owners shall take whatever action is necessary to prevent run-off onto, and resultant erosion of, adjoining property. Owners agree that the Declarant and or the Association shall be empowered to clean up any and all "spoils" or construction debris which are located upon any adjoining property resulting from activities of an Owner, its builder, or any other person employed or otherwise controlled by an Owner, and record a lien against the Owner's property to secure the repayment of all sums expended by the Association or by the Declarant in cleaning up and removing said "spoils" and debris from adjoining public or private property if same is not voluntarily cleaned up and removed by the Owner within 48 hours of written notice from the Declarant, another Owner, or the Association, identifying the required clean up and removal work.

10. **ACCEPTANCE OF RESTRICTIONS.** All Owners and purchasers of Lots, by acceptance of contracts or deeds for any Lot or any portion thereof, and all occupants, by their

possession or occupancy, shall thereby be conclusively deemed to have consented and agreed to all provisions of this Declaration.

11. **MANNER OF VOTING.** In voting, pursuant to the provisions of this Declaration, the Owner of each Lot shall be entitled to one (1) vote. Any amendment or repeal of this Declaration resulting from any such vote shall be evidenced by an appropriate written instrument signed by the required number of Owners, which instrument shall be acknowledged and promptly recorded in the County Recorder's Office of the County of Salt Lake, State of Utah.

12. **VIOLATIONS OF RESTRICTIONS, PENALTIES.** Violation of any of the covenants, conditions, restrictions, or agreements herein contained shall give the Declarant, until Declarant has sold all the Lots, or the Association and their successors and assigns, the right to enter upon any Lot and any property on which said violation or breach exists, and to summarily abate and remove at the expense of the Owner, any erection, thing or condition that may be or exist thereon contrary to the provisions hereof, without being deemed guilty of trespass. The result of every action or omission whereby any covenant, condition, restriction or agreement of this Declaration is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law against a nuisance, either public or private, shall be applicable against such condition. Such remedy shall be deemed cumulative and not exclusive.

13. **ASSOCIATION MEMBERSHIP.** The Owner of each Lot shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot within a recorded Subdivision within the Property. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, membership in the Association.

14. **ASSESSMENTS.**

14.1 **PURPOSE OF ASSESSMENT.** The assessments provided for herein shall be used for the general purposes of providing services for the convenience, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots contained in recorded Subdivisions within the Property, including but not limited to gate security personnel, guard services, snow removal, trash removal, landscaping and maintenance of Common Properties, Private Streets, entry facilities, water, sanitary sewer, storm drain and utility systems, curb, gutter, sidewalk, fences, landscaping and other real and personal property and/or easements owned by the Association, all as may be more specifically authorized from time to time by the Association.

14.2. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration or the By-Laws. All such assessments, together with late charges, interest at eighteen percent (18%) per annum, compounded monthly (or such lower rate fixed by the Association, or so as not to exceed the maximum legal rate), costs, and reasonable attorneys' fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Owner(s) of such Lot at the time the assessment fell due. Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee(s) shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any bona fide first Mortgage holder until such first Mortgage holder or other person takes title through foreclosure proceedings or deed in lieu of foreclosure.

Assessments shall be paid in such manner and on such dates as may be fixed by the Association, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment in any case where any installment is delinquent. Unless otherwise provided by the Association, the assessment shall be paid in advance in semi-annual installments, one-half of the total annual assessment on January 1 and July 1 of each year.

14.3. ALLOCATION OF ASSESSMENT AMOUNT. Since there are 40 Lots, each Lot shall bear an assessment equal to 1/40 (or .025%) of the total amount assessed.

14.4. ANNUAL BUDGET; COMPUTATION OF LOT ASSESSMENT. It shall be the duty of the Association to prepare a budget covering the estimated costs of operating the Association during the next calendar year, which shall include anticipated operating costs and a capital contribution or reserve for repair and/or replacement of physical improvements in accordance with a capital budget separately prepared. The Association shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved by a Majority of Owners at a meeting of the Owners held prior to December 31 of the current year. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Association fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year(s). Within one-hundred twenty (120) days following the end of each calendar year the Association shall prepare a reconciliation of the prior year's operating

budget and actual receipts and expenditures and shall deliver such reconciliation to each Owner in written form. If the Association has surplus funds in its operating budget on hand from prior year(s), the total of such funds on hand shall be deposited in the Capital Improvements Reserve (as defined below).

**14.5. SPECIAL ASSESSMENTS.** In addition to the other assessments authorized herein, the Association may levy special assessments in any calendar year. So long as the total amount of special assessments allocable to each Unit does not exceed Two Thousand Dollars (\$2,000.00) (plus an annual compounded escalator of 5% per annum every year commencing in 1998) in any one fiscal year, the Association may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Unit to exceed this limitation shall be effective only if approved by a Majority of Owners. Special assessments shall be paid as determined by the Association, and the Association may permit special assessments to be paid in installments extending beyond the calendar year in which the special assessment is imposed.

**14.6. LIEN FOR ASSESSMENTS.** All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens of real property ad valorem taxes, and (b) lien for all sums unpaid on a bona fide first Mortgage or on any Mortgage to Declarant duly recorded in the office of the County Recorder of Salt Lake County, Utah and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such Mortgage.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in the records of the Salt Lake County Recorder's Office shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

**14.7. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.** Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount, as the Association may from time to time determine, not less than five percent (5%) nor more than ten percent (10%) of the amount due. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall automatically attach and, in addition, the lien shall include the late charge, interest at the rate of eighteen percent (18%) per annum compounded monthly, or such lower rate so as not to exceed the maximum legal rate, on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid sixty (60)

days after the due date, the Association may, as the Association shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this paragraph shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action or inaction by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments made by Owners shall be applied first to costs and attorneys' fees, then to late charges, then interest and then to unpaid assessments.

**14.8. DATE OF COMMENCEMENT OF ASSESSMENTS.** An assessment for the second half of 1997 shall be due from Owners of then-existing Lots on July 1, 1997 in an amount determined by the Association not to exceed one-half of the total amount of the 1997 budget. Notice of the assessment shall be sent by mail or given personally on or before June 20, 1997 to Owner(s) of then-existing Lots in then existing Subdivision(s) within the Property.

The first full annual assessments for all then-existing Lots subject to assessment under this Declaration shall be for the calendar year 1998. The assessments for 1998 and subsequent years shall be due and payable semi-annually or in a manner and on a schedule as the Board of Trustees may otherwise provide as set forth in Section 14.2.

**14.9. ASSESSMENT OBLIGATION OF DECLARANT.** Declarant, on behalf of itself and its successors and assigns, covenants and agrees to pay the full amount of the assessments provided herein for each Lot it owns.

**14.10. SPECIAL ASSESSMENT AGAINST A PARTICULAR OWNER OF LOT.** In the event an Owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees, the Association, after approval by two-thirds (2/3) of the Board of Trustees, shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain, and restore the Lot, and the exterior of the buildings and any other improvements erected thereon. The costs of such repair, maintenance and/or restoration shall be added to and become part of the annual assessment to which such Lot

is subject; and said assessment shall be enforced in the same manner as provided for in Section 14.7.

**14.11. SUBORDINATION OF THE LIEN TO MORTGAGES.** The lien of the assessments provided for herein shall, as to each Lot, be superior to all other liens and encumbrances on such Lot, save and except (a) liens of real property ad valorem taxes, and (b) liens for all sums unpaid on a bona fide first Mortgage or on any Mortgage to Declarant duly recorded in the office of the County Recorder of Salt Lake County, Utah and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such Mortgage.

**14.12. NO ASSESSMENTS FOR INITIAL SUBDIVISION IMPROVEMENTS.** Neither the Association nor any of its Owners shall be assessed to pay for any capital expenditures for initial Subdivision improvements unless otherwise agreed to in writing. Pursuant to Section 16 below, the Declarant shall bear the cost of installing and construction all initial Subdivision improvements and other Common Properties/facilities. The Association and its Owner members shall perpetually maintain and operate such improvements and Common Properties, subject to Declarant's warranty in Section 16.1. below.

**14.13. ASSESSMENTS FOR THE CAPITAL IMPROVEMENTS RESERVE.** Pursuant to Section 14.4 above, the Association may assess, as a part of its annual assessment, a capital contribution to fund an accumulating reserve for present and future repairs and/or replacement of the physical improvements (hereafter the "Capital Improvements Reserve").

**15. RECORDATION OF SUBDIVISION PLATS.** Membership of the Association will consist of Lots in the two (2) Subdivision plats (DORCHESTER POINTE SUBDIVISION PLATS "A" and "B," P.U.D.), and there will be a total forty (40) Lots within said plats. No further expansion of subdivisions under this Declaration or on the Property will occur.

**16. SUBDIVISION IMPROVEMENTS.**

**16.1. WARRANTY BY DECLARANT.** In developing each Subdivision, Declarant shall install (a) water, sewer and storm drain lines or facilities to service or provide service to the Lots, (b) streets within the areas identified as Private Streets, and (c) street lights as required by Salt Lake City or as Declarant deems appropriate. Declarant hereby warrants all of the improvements, lines and facilities installed or to be installed by Declarant referred to in the next preceding sentence (but not those installed by Salt Lake City or others) for a period of one (1) year from the date of substantial completion, as reasonably determined by Declarant, of each against faulty materials and workmanship. This warranty is in lieu of all other warranties, including warranties of merchantability, fitness for purpose, or other warranties, express, implied, or otherwise regarding the improvements, lines and facilities referred to in this Section. Any implied warranty is limited to the one-year period of the above written warranty. Should any failure to conform to this warranty occur or appear within the warranty period, Declarant shall, upon written notification from the Association of such failure, correct the defect or non-conformity by repairing, replacing, or correcting the faulty materials or workmanship. Declarant

shall not be liable for special, indirect or consequential damages. The remedies set forth herein are exclusive.

**16.2 SUBDIVISION IMPROVEMENTS THE PROPERTY OF ASSOCIATION.**

All improvements, streets, gates, water lines, sewer lines, storm drains, and other lines and facilities installed by Declarant as referred to in Section 16.1, except those owned by Salt Lake City or any private or public utility companies, shall be or become the property of the Association upon the date of completion of each. The Association shall be responsible for the maintenance, repair and replacement of all such improvements, lines and facilities owned by the Association, and, if Declarant's warranty is breached, the Association may make demand upon Declarant to repair, replace or correct the faulty materials or workmanship and may seek appropriate legal remedies against Declarant to obtain Declarant's performance.

**16.3. DAMAGE TO SUBDIVISION IMPROVEMENTS.**

Any Owner or person who directly or through an agent, contractor, subcontractor, or employee, causes damage to any of the Association's improvements, lines, or facilities, including damage by heavy equipment or construction vehicles, shall pay to the Association the cost to repair such damage and any and all costs, including reasonable attorneys' fees, incurred by the Association as a result of such damage, or in pursuing legal action to recover the costs of such damage or in connection with pursuing any remedy provided in this Section 16 or otherwise in this Declaration.

**17. GENERAL PROVISIONS.**

**17.1. ENFORCEMENT OF COVENANTS.**

The Association, the Committee, any Owner, and Declarant, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, the Committee, or by any Owner, or by Declarant, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**17.2. EFFECT OF WAIVER OR BREACH OR FAILURE TO ENFORCE.**

Each and all of the covenants, conditions, restrictions and agreements contained herein shall be deemed and construed to be continuing, and the extinguishment of any right of re-entry or reversion for any breach shall not impair or affect any of the covenants, conditions, restrictions or agreements, so far as any future or other breach is concerned. It is understood and agreed by and between the parties hereto and those who become subject to the provisions hereof, that no waiver of a breach of any of the covenants, conditions, restrictions, and agreements herein contained shall be construed to be a waiver of any other breach of the same, or other covenants, conditions, restrictions, and agreements contained herein, nor shall failure to enforce any one of such covenants, conditions, restrictions, or agreements either by forfeiture or otherwise, be construed as a waiver of any other covenant, condition, restriction or agreement.

17.3. SEVERABILITY. Invalidation of any one of or any portion of any one of these covenants, conditions, restrictions and agreements by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

17.4. PARAGRAPH CAPTIONS. The paragraph captions and phrases as to the contents of particular paragraphs are inserted herein only as a matter of convenience and for reference and in no way are intended to be part of this Declaration or in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

17.5. ATTORNEYS' FEES AND COSTS. In the event any claim, demand or lawsuit is made or instituted to enforce any of the provisions contained in this Declaration, the defaulting Owner, purchaser, person or entity agrees to pay all costs and expenses of enforcing the same, or collecting any penalties or damages, including the payment of a reasonable attorneys' fee and all court costs.

17.6. RELATIONSHIP TO CITY, COUNTY AND STATE ORDINANCES. The provisions contained in this Declaration are in addition to the effective laws and ordinances of Salt Lake City, Salt Lake County, and the State of Utah. In the event of any conflict between the provisions of this Declaration and the effective laws and ordinances of Salt Lake City, Salt Lake County, or the State of Utah, the most restrictive provision shall apply.

17.7. COUNTERPARTS. This Declaration may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. In addition, this Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by affixing of the signatures of each of the parties to one such counterpart signature page; all such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

IN WITNESS WHEREOF, the undersigned has executed this document this 3rd day of MARCH, 1997.

DORCHESTER PARTNERS, L.C., a Utah limited liability company

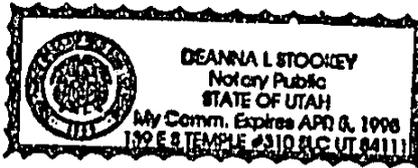
By: Christopher F. Robinson  
Christopher F. Robinson  
Manager

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

On the 3<sup>RD</sup> day of MARCH, A.D. 1997, personally appeared before me CHRISTOPHER F. ROBINSON who being by me duly sworn did say is a manager of Dorchester Partners, L.C.. and that the within and foregoing instrument was signed on behalf of said limited liability company.

*Deanna L. Stockey*  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_



**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

**PARCEL A:**

A Tract of land located in the West 1/2 of Section 30, Township 1 North, 1 East and in the East 1/2 of Section 25, Township 1 North, Range 1 West, Salt Lake Base and Meridian, being further described as follows:

**BEGINNING** at a point with the state plane rectangular coordinates of  $X=1,893,322.622$ ,  $Y=896,103.236$  based on the Lambert Conformal Projection, Utah Central Zone. Said point is further described as being due West 3231.181 feet and due South 2380.066 feet from the North Quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence South  $51^{\circ}55'25''$  East 41.121 feet along the West property line of said Capitol Hills Subdivisions; thence South  $13^{\circ}51'58''$  West 290.236 feet; thence South  $20^{\circ}25'33''$  East 305.697 feet; thence South  $24^{\circ}25'06''$  East 188.683 feet; thence South  $24^{\circ}33'08''$  East 180.868 feet; thence South  $31^{\circ}48'16''$  East 314.176 feet; thence North  $68^{\circ}01'44''$  East 149.246 feet; thence North  $81^{\circ}31'44''$  East 171.503 feet; thence South  $89^{\circ}52'14''$  East 59.956 feet; thence South  $14^{\circ}04'19''$  West 556.805 feet; thence South  $88^{\circ}52'28''$  West 281.094 feet; thence North  $62^{\circ}04'05''$  West 165.348 feet; thence North  $40^{\circ}11'03''$  West 1003.030 feet; thence North  $19^{\circ}03'58''$  West 865.488 feet; thence Due East 736.126 feet to the point of **BEGINNING**.

The following description is the mathematical equivalent to the preceding description with all description terms rotated to match the bearing base of the recorded plats of Ensign Downs Subdivision Plats "A" through "L".

**BEGINNING** at a point that is North  $89^{\circ}43'45''$  West 3231.181 feet and South  $00^{\circ}16'15''$  East 2380.066 feet from the North quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence South  $51^{\circ}39'10''$  East 41.121 feet along the West property line of said Capitol Hill Subdivisions; thence South  $14^{\circ}08'13''$  West 290.236 feet thence South  $20^{\circ}09'18''$  East 305.697 feet; thence South  $24^{\circ}08'51''$  East 188.683 feet; thence South  $24^{\circ}24'53''$  East 180.868 feet; thence South  $31^{\circ}32'01''$  East 314.176 feet; thence North  $68^{\circ}17'59''$  East 149.246 feet; thence North  $81^{\circ}47'59''$  East 171.503 feet; thence South  $89^{\circ}35'59''$  East 59.956 feet; thence South  $14^{\circ}20'34''$  West 556.805 feet; thence South  $89^{\circ}08'43''$  West 281.094 feet; thence North  $61^{\circ}47'50''$  West 165.348 feet; thence North  $39^{\circ}54'48''$  West 1003.030 feet; thence North  $18^{\circ}47'43''$  West 865.488 feet; thence South  $89^{\circ}43'45''$  East 736.126 feet to the point of **BEGINNING**.

Being the proposed plat of Dorchester Pointe Plat "A", P.U.D.



ASSOCIATED TITLE COMPANY

SK 7631 PG 1050

ALSO:

PARCEL B:

A Tract of Land located in Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian, being further described as follows:

BEGINNING at a point with the state plane rectangular coordinates of  $X = 1,893,322.622$ ,  $Y + 896,103.236$  based on the Lambert Conformal Projection, Utah Central Zone. Said point is further described as being due West 3231.181 feet and due South 2380.066 feet from the North Quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence Due West 736.126 feet; thence North  $19^{\circ}03'58''$  West 71.232 feet; thence South  $89^{\circ}59'34''$  East 78.810 feet; thence North  $00^{\circ}06'37''$  West 451.900 feet; thence North  $13^{\circ}36'56''$  East 266.090.090 feet; thence North  $47^{\circ}52'45''$  East 1460.030 feet thence South  $22^{\circ}34'20''$  West 631.627 feet; thence South  $08^{\circ}28'35''$  West 1282.342 feet to the point of BEGINNING.

The following description is the mathematical equivalent to the proceeding description with all description terms rotated to match the bearing base of the recorded plats of Ensign Downs Subdivision Plats "A" through "L".

BEGINNING at a point that is North  $89^{\circ}43'45''$  West 3231.181 feet and South  $00^{\circ}16'15''$  East 2380.066 feet from the North quarter corner of Section 30, Township 1 North, Range 1 East, Salt Lake Base and Meridian; thence South  $89^{\circ}43'45''$  West 736.126 feet; thence North  $19^{\circ}20'13''$  East 171.232 feet; thence North  $89^{\circ}44'11''$  East 78.810 feet; thence North  $00^{\circ}22'52''$  West 451.900 feet; thence North  $13^{\circ}20'41''$  East 266.090 feet; thence North  $47^{\circ}36'30''$  East 1460.030 feet; thence South  $22^{\circ}18'05''$  West 631.627 feet; thence South  $08^{\circ}12'20''$  West 1282.342 feet to the point of BEGINNING.

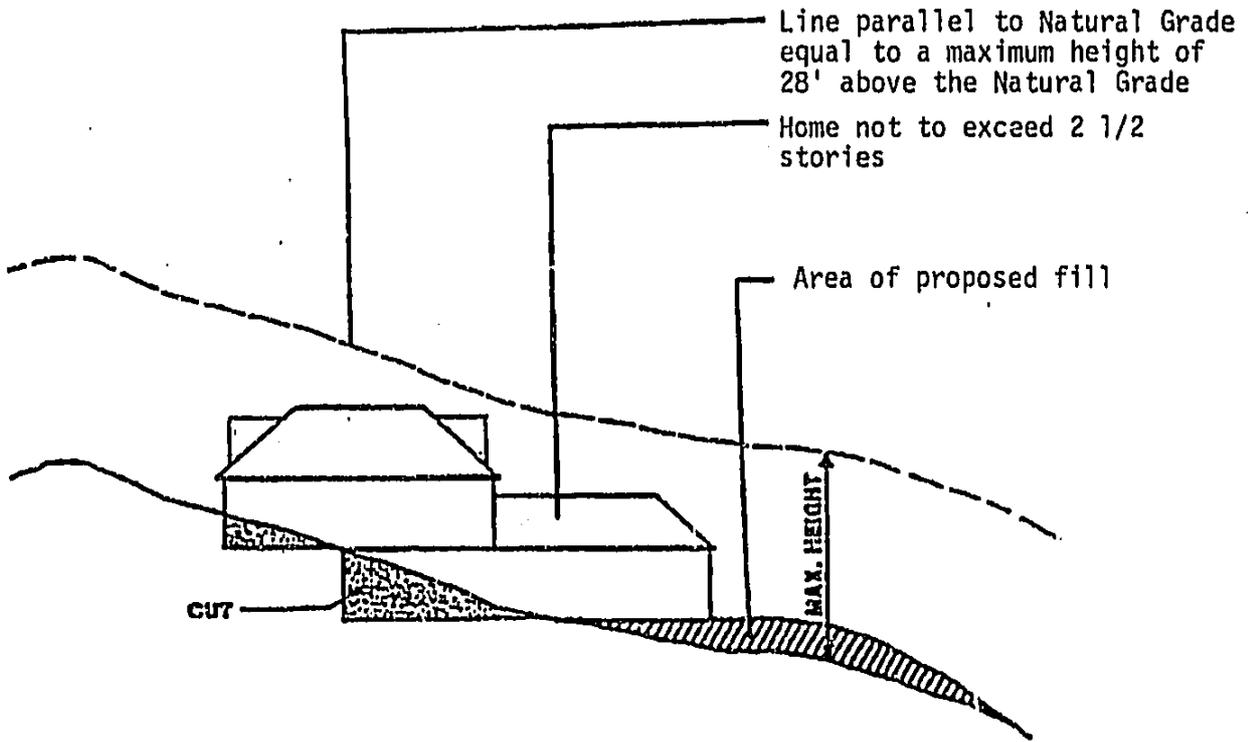
Being the proposed plat of Dorchester Pointe Plat "B", P.U.D.



ASSOCIATED TITLE COMPANY

SK7631PG1051

EXHIBIT "B"  
HEIGHT MAP



**EXHIBIT "C"**

**PLAN SUBMITTAL WORKSHEET**

BK7631PG1053

**DORCHESTER POINTE PLAN SUBMITTAL WORKSHEET**

(Refer to Section 8.2 of CC&Rs)

Dorchester Pointe Lot No. \_\_\_\_\_

**Section 1: Owner Information**

Owner's Name \_\_\_\_\_

Current Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Architect's Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Builder's Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

**Section 2: Dates**

Plan Submittal Date: \_\_\_\_\_

Construction Commencement Date: \_\_\_\_\_ (within 9 mos. of approval)

Construction Completion Date \_\_\_\_\_ (within 12 mos. of beginning)

**Section 3: Site Plan Information** (measurements in feet; see CC&R's for complete information)

Front Setback \_\_\_\_\_ (greater than 25' or 18' on designated lots)(see Recorded Plat for your lot's minimum)

[if corner lot] \_\_\_\_\_

Left Side Yard (facing lot) \_\_\_\_\_ (greater than 20')

Right Side Yard \_\_\_\_\_ (greater than 20')

Rear Yard Setback \_\_\_\_\_ (greater than 20')

No. Of Stories \_\_\_\_\_ (not to exceed 2 1/2, including basement)

**Section 4: Structure Information** (see CC&R's for complete information)

Height (elevation calculated from a designated point on the lot):

Basement Floor Elevation \_\_\_\_\_ Main floor Elevation \_\_\_\_\_

Upper Floor Elevation \_\_\_\_\_

Elevation of Lowest Point of Footprint of Structure at Existing Natural Grade \_\_\_\_\_

Top of Roof \_\_\_\_\_ (must be less than 28 feet above Natural Grade at any given point, as defined in CC&R's)

Square Footage of Mainfloor \_\_\_\_\_ (must exceed 2,000 sq. ft.)

Square Footage of Basement \_\_\_\_\_

Square Footage of Additional Level \_\_\_\_\_

TOTAL SQUARE FOOTAGE \_\_\_\_\_ (must exceed 3,000 sq. ft. for multi-level or two story or 2,000 sq. ft. for a single level)

Garage Square Footage \_\_\_\_\_

No. Of Car Garage \_\_\_\_\_ (not less than 2 nor more than 4)

Information on Additional Structures (attach additional sheets if necessary)(must contain same information as home, e.g. square footage, materials, location, setbacks, elevations, etc...)

\_\_\_\_\_

\_\_\_\_\_

Exterior Building Material--Siding \_\_\_\_\_ (samples to be provided on request of Committee)

Exterior Building Color-- Siding \_\_\_\_\_  
 Exterior Building Material--Trim \_\_\_\_\_ (samples to be provided on request of Committee)

Exterior Building Color--Trim \_\_\_\_\_  
 Roof Material or Type \_\_\_\_\_ (samples to be provided on request of Committee)

Roof Color \_\_\_\_\_  
 Driveway Material \_\_\_\_\_

Fencing Type/Material \_\_\_\_\_  
 Fence Color \_\_\_\_\_ Fence Maximum Height \_\_\_\_\_  
 (a separate fencing plan must also be provided)

<b>Submittal Checklist: (Refer to appropriate CC&amp;R Sections)</b>		<b>Plan Review Fee Schedule:</b>	
		<u>Year Submitted</u>	<u>Amount</u>
<input type="checkbox"/>	3 complete site plans as required by Section 8.2 (a).	1997	\$750
<input type="checkbox"/>	3 complete sets of floor plans and elevations as required by Section 8.2 (b).	1998	\$790
<input type="checkbox"/>	3 completed Dorchester Pointe Plan Submittal Worksheets as required by Section 8.2 ( c ).	1999	\$825
<input type="checkbox"/>	3 complete sets of landscape plans as required by Section 8.2 (d).	2000	\$870
<input type="checkbox"/>	3 copies of the Certificate of Geotechnical Compliance as required by the Plat and Sections 7.12 and 8.2 (e).	2001	\$915
<input type="checkbox"/>	A check for the Plan Review Fee payable to "Dorchester Pointe Homeowners' Association" as required by Section 8.2 (f).	Thereafter increasing at an annual compounded escalator of 5%	
<input type="checkbox"/>	3 complete sets of fence or wall plans as required by Sections 8.2 (g), 8.3 (b), and 8.3 (e).		
<input type="checkbox"/>	(If needed) 3 copies of the Dorchester Pointe CC&R Variance Request Form pursuant to Sections 7.6, 8.2 (h) and 8.5. A variance from Salt Lake City Ordinances also requires this form (See Section 7.6).		

Submitted By \_\_\_\_\_  
 (Owner's Signature(s))

BK 7631 PG 1055

**EXHIBIT "D"**  
**VARIANCE REQUEST FORM**

BK 7631 PG 1056

**DORCHESTER POINTE**

**CC&R VARIANCE REQUEST FORM**

Dorchester Pointe Lot No. \_\_\_\_\_

**Section 1: Owner Information**

Owner's Name \_\_\_\_\_

Current Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Architect's Name \_\_\_\_\_

Builder's Name \_\_\_\_\_

**Section 2: Variance Requested** (attach addition sheets if necessary)

Are you requesting a variance from the Salt Lake City Zoning and Building Ordinances? \_\_\_\_\_.

If you are, please describe in detail the specific nature of the variance sought (including the applicable Salt Lake City code section), and attach a copy of the completed Salt Lake City application for variance signed by you and any adjacent Lot Owners whose consent Salt Lake City may require. Please refer to Section 7.6 in the CC&Rs. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If this is a variance request to the CC&Rs, please indicated the applicable CC&R Section and Page No. \_\_\_\_\_

1. Explain the general purpose of the CC&R Provision or SLC Ordinance for which a variance is requested (e.g. side yard restriction) \_\_\_\_\_

\_\_\_\_\_

2. Explain in detail the nature of the variance requested: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Explain why the strict application of this CC&R or SLC provision would result in exceptional practical difficulties to, or undue hardship upon, the Owner: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5K7631PG1057

4. Explain why the strict application of this provision or restriction is unnecessary to carry out the general purpose of the CC&Rs: \_\_\_\_\_

5. Explain why granting the variance or exception would not be detrimental to the use and enjoyment of any other Lot within the Property: \_\_\_\_\_

Submitted By \_\_\_\_\_  
(Owner's Signature(s))

Date: \_\_\_\_\_

- Variance Approved
- Variance Approved Subject to the Conditions Below\*
- Variance Disapproved

**Dorchester Pointe Architectural and Structural Control Committee:**  
(two signatures required)

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

Dated \_\_\_\_\_

cc: DPHOA Board of Trustees

\*Conditions of Approval (if any): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT "E"**

**DORCHESTER POINTE  
ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE**

139 E. South Temple, Suite 310

Salt Lake City, Utah 84111

Tel: (801)328-1600

Fax: (801)328-1616

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Plans submitted for construction and landscaping of a home on Lot \_\_\_\_\_, Dorchester Pointe, dated \_\_\_\_\_

Dear Lot Owner,

- The plans have not been reviewed and are being returned due to the fact they are incomplete. Please complete the items specified below\*\* and re-submit the plans.
- We hereby grant approval of the above referenced plans.
- We hereby grant approval of the above referenced plans subject to satisfaction of the conditions specified below\*\*.
- We hereby disapprove of the above referenced plans for the reasons specified below\*\*. Please correct the plans appropriately and re-submit them for an additional review by this Committee.

In the event the plans are approved as indicated above, please understand that the approval by this Committee does not include structural or soils analysis, nor does it assume your plans are in compliance with Salt Lake City requirements or the Report of Geotechnical Investigation - Dorchester Pointe Development, dated April 5, 1995. These matters are your responsibility and a specific condition of this approval is that you do comply with all zoning, structural, landscaping, fencing, and other requirements of Salt Lake City and the State of Utah in the construction and landscaping of this home.

As provided in the CC&R's, although we are approving your landscaping plans at this time, should vegetation and trees grow to block the view(s) of neighbors in an unreasonable manner, it may be necessary to cut back, trim or even remove the offending plants. Furthermore, please be advised that unless specifically indicated on a CC&R Variance Request Form, this approval shall in no way waive any provisions of the CC&R's.

Plan Approval/Disapproval Letter  
Page 2

**\*\*Items not included, conditions for approval, or reason(s) for disapproval (if any):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you have questions, need additional information or need our help in any way, please contact us at your convenience.

Very truly yours,

**Dorchester Pointe Architectural and Structural Control Committee:**  
(two signatures required)

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

\_\_\_\_\_  
Committee Member

cc: DPHOA Board of Trustees

BK 7631 PG 1060

**EXHIBIT "F"**

**STAMP OF APPROVAL/DISAPPROVAL**

Form of "Stamp of Approval"

Owner: _____
Lot Number: _____
<b>APPROVED</b>
DORCHESTER POINTE ARCHITECTURAL & STRUCTURAL CONTROL COMMITTEE
By: _____
By: _____
Date: _____

Form of "Stamp of Disapproval"

Owner: _____
Lot Number: _____
<b>DISAPPROVED</b>
DORCHESTER POINTE ARCHITECTURAL & STRUCTURAL CONTROL COMMITTEE
By: _____
By: _____
Date: _____