

E 111225 B 0505 P 0316  
Date 7-MAY-1998 14:39pm  
Fee: 121.00 Charge  
DONNA S. MCKENDRICK, Recorder  
Filed By MRT  
For ASSOCIATED TITLE COMPANY  
TOOELE COUNTY CORPORATION

DECLARATION  
OF  
COVENANTS, CONDITION AND RESTRICTION  
APRIL 18, 1997

T-53606  
New Tax # 12.45.1 Unit 37

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**DECLARATION  
OF COVENANTS, CONDITIONS  
AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by Anderson Ranch, L.C., hereinafter referred to as "Declarant".

**WITNESSETH**

WHEREAS, Declarant is the owner of certain property in Tooele County, State of Utah described in the attached Exhibit "A".

NOW THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following Covenants, Conditions, and Restrictions which are established for the purpose of protecting the value, maintaining common area, enforcing property maintenance, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS AND EFFECT**

**ACC:** The Architectural Control Committee for the Subdivision.

**ACC Rules/ACC Standards:** The written rules and standards developed and adopted, in part by the Declarant and, subsequently by the ACC. Such ACC Rules/ACC Standards shall be developed and contain rules and standards which will promote both quality architectural, design, engineering and building standards.

**Anderson Ranch Owners Association:** is a non-profit Utah corporation charged with the duties and invested with powers prescribed by law and set forth in the Articles, the By-Laws and this Declaration. In the event of inconsistency between documents, the provisions of this Declaration shall prevail.

**Assessment:** A payment required of Association members, including Regular, Special or Limited Assessments as provided in this Declaration.

**Association:** Shall mean and refer to Anderson Ranch Owners Association, its successors and assigns.

**Board:** The duly elected and qualified Board of Directors of the Association.

**Building:** A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

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**By-Laws:** The By-Laws of the Association, including any amendments thereto duly adopted.

**Common Area:** All real property within the Subdivision in which the Association owns an interest or controls and which is held or controlled for the betterment of the Subdivision.

**Declarant:** The undersigned owner, and his successors and assigns, of the land comprising the Subdivision.

**Development:** The project to be undertaken by the Declarant resulting in the improvement of the Subdivision, including landscaping, amenities, construction of roadways, utility services and other improvements.

**Improvements:** All structures and appurtenances thereto of all kinds and types, including but not limited to buildings, roads, driveways, parking lots, sidewalks, walls, fences, screens, landscaping poles, signs, and lighting. Improvements shall not include those items which are located totally on the interior of a building and cannot be readily observed when outside thereof.

**Initial Construction:** The first construction of permanent Improvements on a Lot following the sale of that Lot by the Declarant to an Owner, and intended for residential occupancy.

**Limited Assessment:** An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or in violation of the Declaration hereunder.

**Lot:** A portion of the Property which is a legally described tract or parcel of land within the Subdivision or which is designated as a Lot on any recorded subdivision plat relating to the Property.

**Master Plan:** Shall mean the master development plan for the Property (as amended and expanded from time to time) to include additional plats.

**Member:** Any person(s) who is an Owner of a Lot within the Subdivision.

**Mortgage:** Any mortgage or deed of trust or other hypothecation of land located in the Subdivision to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to a "First Mortgage", including a First Deed of Trust", on a Lot in the Subdivision.

**Mortgagee:** The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed or Trust encumbers a Lot in the Subdivision owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Declaration shall be limited to a holder of a First Mortgage, including a beneficiary under a First Deed of Trust on a Lot.

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**Occupant:** Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised including their heirs, personal representatives, successors and assigns.

**Owner:** A person or persons or other legal entity or entities, including the Declarant, holding fee simple title to a Lot in the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any Mortgagee (of any priority) or other security holder provided said Mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such Mortgagee or other security holder by purchase at foreclosure sale or otherwise.

**Plat:** A final subdivision plat covering any real property in the Subdivision, as recorded in the office of the County Recorder, Tooele County, Utah, as the same may be amended by duly recorded amendments thereto.

**Properties:** Shall mean and refer to that certain real property described in Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association and under the provisions of the Declaration as amended.

**Regular Assessment:** An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

**Special Assessment:** An assessment levied by the Association other than a Regular or Limited Assessment.

**Supplemental Declaration:** The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Subdivision promulgated by the Declarant and recorded in the official records of Tooele County, Utah. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Declaration" shall include "Supplemental Declaration"

**Subdivision:** The whole of the Property including any such additional land as may be platted and annexed hereunder under a different name (also sometimes referred to herein as "Property").

## ARTICLE II - PURPOSE

The Property is hereby made subject to the covenants, conditions, and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development,

improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements.

- (b) Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- (c) Securing and maintaining proper set-backs from streets and open areas in the Subdivision and adequate free spaces between Improvements.
- (d) The integration of development of the different Lots by setting common general standards consistent with the ACC Rules/ACC Standards existing from time to time.
- (e) Insuring attractive landscaping.
- (f) Taking advantage of and utilizing, for purposes of promoting all of the foregoing and further enhancing the value and quality of each Owner's and each Occupant's interest in the Subdivision or in any Lot or Lots therein, a planned residential community concept supportive of the overall planned community concepts envisioned by the Declaration.

As used hereafter, "Project Objectives" shall mean the forgoing specified purposes.

### ARTICLE III - PERMITTED USES AND PERFORMANCE STANDARDS

**SECTION 3.01. Use.** Unless otherwise specified in a Supplemental Declaration covering a particular Lot(s) or parcel(s), Lots shall be used only for residential purposes and such uses as are customarily incidental thereto and Common Area.

**SECTION 3.02. Building.** The Plan contemplates that, with certain exceptions which are now or may hereafter be designated in the Plan, no Lot shall be improved except with one (1) dwelling unit. Each detached dwelling unit shall have an attached or fully enclosed garage adequate for a minimum of two (2) and a maximum of five (5) standard size automobiles. No front-yard (meaning anywhere closer to the front property line of the lot than the front-most portion of the Building) parking shall be allowed other than on the paved driveway. Unless otherwise specified in a Supplemental Declaration recorded after the date of this Declaration, square footage of such detached dwelling unit (excluding basements) shall be, a minimum of 1,500 square feet on any single story (rambler) home or 1,300 square feet on the main floor for any 2 story home. Total square footage would include multi-level (except basements) living areas.

**SECTION 3.03. Approved Uses and Plans.** The overall architectural style and detailing of each Improvement (including each Building) and the associated landscaping and site use is subject to ACC review and approval. Extraordinarily stylized or unique building shapes, or styles, such as geodesic domes, A-Frames, or cubic block homes are prohibited. The determination of whether

or not a proposed Building is within this prohibited category of unique building styles shall rest with the ACC and such determinations shall be made in the sole and absolute discretion of the ACC, provided that in making such determination, the ACC may consult with Owners of Lots in the immediate surrounding area of the Lot where the subject Building is proposed. No Initial Construction, including any site preparation or excavation of the Lot or other preparatory construction of Improvements for such Initial Construction shall be undertaken, built, constructed, erected or placed on a Lot unless and until the plans, specifications and site plan therefor have been reviewed in advance and approved by the ACC in accordance with the provisions of this Declaration. After Initial Construction, no other work of construction, excavation, or any material alteration to Improvements on a Lot shall be undertaken without obtaining the same advance approvals as are required with respect to Initial Construction. Two sets of site, building, (all four elevations) fencing and landscaping plans are to be submitted to the ACC for approval.

**SECTION 3.04. Prohibited Building/Uses.** No trailer or other vehicle, tent, shack, garage, accessory building or out-building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done or any use made thereon or thereof which may be or become an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the excessive emission of fumes, odors, noise, vibration, gases, pollution, dust, liquid waste, smoke or noise.

Livestock, including horses, cattle, pigs and sheep and also including exotic animals typically kept outdoors, as well as other agricultural or farm animals (such as ducks, chickens and geese) are prohibited from any lot less than one acre in the property.

Lots of one acre or larger in size may maintain horses or other quiet livestock and animals subject to the City of Grantsville requirements, and that any barns or other structures used to hold such animals be approved by the ACC.

**SECTION 3.05. Set-Backs.** The Declarant has established building setbacks for the residences and structures, of Anderson Ranch which are more restrictive than the applicable governmental requirements.

- On lots less than one acre in size, the front building set-back line shall be fifty-five feet (55').
- On lots of one acre or more in size, the front building set-back line shall be sixty feet (60').
- Side yard set-backs for any garage, barn, out building, home or other structure shall be at least ten feet (10') or more (if Grantsville ordinances are more restrictive).
- Rear and side yard fencing shall be set back a minimum of ten feet (10') from any street right-of-way.

Driveway access to lots 101, 137, 135, 133, 132, 131, 130 and 129 shall be prohibited from Durfee Street and 800 East (East Street).

**SECTION 3.06. Antennae.** No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the ACC.

**SECTION 3.07. Easements.** There is hereby reserved for the use and benefit of the Developer and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the property the following easements:

- (a) For the installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded subdivision plat(s) for the Subdivision.
- (b) For the purpose of conveying drainage, easements are placed along most of the roads. Lot owners may not regrade the swales, in that these swales are constructed to convey storm water. Additionally, culvert drainage openings are sized and designed to pass storm water under driveways and roads. These must be maintained by each lot owner and should be kept free from debris. Orifice plates are not to be modified. Should any lot owner fail to maintain the drainage swale, modify the swale to change its function or modify the culverts to change their function, the Association retains the right to access the property, do required maintenance, and invoice the Lot Owner accordingly.
- (c) Bridal paths are located along many of the Andersen Ranch lots. Use of the paths by equestrian or pedestrian users shall automatically indemnify the Association for any liability or accidents. Lot owners along the path areas should take care in planting and landscaping or other improvements along the paths in order to protect their landscape materials from passing horses.
- (d) Any additional easements, if any, as shown and designated on the recorded subdivision plat for the Subdivision.

The easement areas herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

**SECTION 3.08. Lighting.** All exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on a neighboring Lot(s).

SECTION 3.09. Septic Tanks/Cesspools. No septic tanks and/or cesspools shall be allowed within the Subdivision.

SECTION 3.10. Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows unbroken and glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (c) A building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals.
- (d) Subdivided Lots shall not be exempt from the provisions of this Declaration. These provisions shall not apply to subdivided land owned by Builders or by the Declarant, that is used for agriculture, open space, or in a predevelopment status.
- (e) All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (f) All drainage easements and drainage swales shall be maintained as initially designed and constructed by the Project Engineer and approved by Grantsville.
- (g) Any event or condition on a Lot which, in the sole discretion of the ACC, creates an unsightly or blighting influence, shall be, in a manner satisfactory to the ACC, corrected, removed or screened from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.
- (h) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board and/or its assignees, upon thirty (30) days prior written notice to the Owner of such Lot, shall have the right to correct such condition and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's

Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as other assessments set forth in the Articles of this Declaration.

**SECTION 3.11. Mining and Drilling.** No Lots shall be used for the purpose of mining, quarrying, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Declarant or the Association retains the right to drill for and extract water and Declarant or the Association may conduct excavation as required for any improvements.

**SECTION 3.12. Boats, Campers and Other Vehicle.** The parking or storage of commercial equipment, including, but not limited to, truck trailers or cabs, construction or excavation equipment, is prohibited. No conversion of a garage, which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which it is designed, shall be permitted. Parking on the lawn or unpaved portion of the Lot is prohibited. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. A minimum of two (2) garage spaces shall be provided.

**SECTION 3.13. Exterior Materials and Colors.** Exteriors shall be 80% masonry material. The 80% is calculated by taking the square feet of all four elevations total - minus square feet of all doors and windows - times .80 = required minimum masonry. All exterior materials and colors shall be selected and used as approved by the ACC. All exterior finishes and/or colors shall be earthtone, provided that subtle blue and gray tones may also be permitted, as approved by the ACC. No gravel roofs shall be permitted. Roof pitch shall be no less than 6/12.

**SECTION 3.14. External Energy Devices.** No energy producing devices including, but not limited to, generators of any kind shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC. Solar panel use and location shall not be permitted unless the ACC has provided written approval of size, placement, and nature of the installation.

**SECTION 3.15. Signs.** No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for rent or for sale by displaying a single, neat, reasonable sized vacancy sign or "For Sale" sign. Signs advertising the name of the builder and the name of the institution providing financing therefor may be displayed on a Lot during construction of the Improvements. Moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign in the Subdivision shall be permitted, provided the same is approved by the ACC prior to installation. The ACC may promulgate sign guidelines that would regulate project and builder signage.

**SECTION 3.16. Subdividing.** Except for Lot 134, no Lot which has been platted and approved as a final building or residential lot (whether for single-family buildings or otherwise) may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the ACC, provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the ACC therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

**SECTION 3.17. Fences.** No fence, wall, hedge, high planting, obstruction or other visual or privacy barrier (hereafter collectively "fence") of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design material and color thereof have been approved in writing by the ACC prior to the construction or installation. OWNERS SHOULD NOT ORDER FENCE MATERIALS PRIOR TO ACC APPROVAL. All fences constructed on a Lot shall be in compliance with the applicable ordinances of the City of Grantsville and this Declaration.

All fences constructed on a Lot shall be subject to the following restrictions:

- (a) Fences shall not project beyond the front yard setback or the principal Building (whichever distance is greater) on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of the ACC.
- (b) Side yard or rear yard fences on corner lots shall be set back from the right-of-way a minimum of 10 feet with a landscaping area within the 10 foot fence set back. It is strongly encouraged that privacy between Lots be established by hedges, trees, shrubbery or other landscaping provided that the same complies with the intent of this Declaration and is approved by the ACC. Heavy foliage and fences are not allowed to interfere with the vision triangle of traffic.
- (c) All fences shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing shall be repaired or replaced to original design, materials, and color within a reasonable time after said damage occurs.
- (d) No fence shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded subdivision plat of the Property.
- (e) All fences constructed or installed on the interior of a Lot, e.g. dog runs, swimming pools, etc., which are visible from an adjoining Lot or from a street within the Subdivision shall be subject to prior approval by the ACC.

- (f) Fences installed by the Declarant or the Association on or along Common Areas shall not be altered or modified by any Owner or Occupant in any manner other than for routine maintenance (including painting, repair and replacement). Owners and Occupants shall not install parallel fences to those installed by Declarant or the Association, behind or along the original fence installed by the Declarant or Association, unless specific approval is issued by the ACC.
- (g) Chain link fencing is not a permitted fence type. Exceptions may be granted by the ACC on a case-by-case basis where (1) such fence would be limited to a small area (such as a dog run), (2) where the chain link fence is not used as a perimeter fencing method and would not be open to public view. In all events, uses of chain link fencing must receive prior approval by the ACC in writing with respect to location and color.

SECTION 3.18. Landscaping. The following provisions shall govern the landscaping of Lots within the Subdivision:

- (a) The minimum landscaping requirements shall be as follows:
- (1) Sod or hydroseed in the front yard and, two (2) trees of at least two inch (2") caliper in the front yard.
  - (2) All front yards shall be irrigated with an automatic underground sprinkler system.
- (b) All required landscaping on a Lot shall be installed within one hundred-eighty (180) days after the earlier of the following: (I) substantial completion of the Building on the Lot, or (II) occupancy of the Building by an Occupant, with a reasonable extension for winter weather.

SECTION 3.19. Addition of ACC Rules/ACC Standards. The Declarant, or in the event of the Declarant's failure to do so, the ACC, shall have the power to promulgate ACC Rules/ACC Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary or desirable by the Declarant, or the ACC, as the case may be, to carry out the purposes of this Declaration.

SECTION 3.20. Exemption of Declarant. Nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to Common Areas to utility companies, public agencies or others; or to complete excavation, grading and Development to or on any Lot or other portion of the Property owned or controlled by the Declarant or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Declarant deems advisable in the course of Development of the Subdivision. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain ACC approval of any Improvements constructed or placed within the



Property by the Declarant in connection with the Development of the Subdivision, but this exemption shall not apply to a Building(s) constructed by the Declarant on a Lot owned by the Declarant. The Declarant shall be entitled to the non-exclusive use, without charge, of any Common Area within the Subdivision in connection with the marketing of the Lots therein.

#### **ARTICLE IV- ANDERSON RANCH OWNERS ASSOCIATION**

**SECTION 4.01. Organization of Association.** The Owners Association, Inc., shall be organized by the Declarant as a Utah non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its By-Laws and the Declaration. Neither said Articles nor said By-Laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

**SECTION 4.02. Members.** Each Owner (including the Declarant) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association and no Owner shall have more than one membership in the Association, but shall have such voting rights as hereinafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

**SECTION 4.03. Voting.** The Association shall have two (2) classes of voting membership:

**CLASS A.** Class A Members shall be all Owners of Lots within the Subdivision, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned.

**CLASS B.** Class B Members shall be the Declarant, and its successor(s) in title to a Lot(s), which Lot(s) is held by such successor in an unimproved condition (i.e., without a residential dwelling thereon) for resale to a builder or other person for the purpose of constructing thereon a residential dwelling, and to which successor the Declarant has specifically granted such Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be entitled to the voting rights of a Class A Member with respect to each Lot owned. Upon the first sale of a Lot to an Owner, the Declarant shall thereupon be entitled to five (5) votes for each Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership when (i) the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, or (ii) January 1, 2017, whichever shall first occur.

In addition to individual Lots owned by the Declarant, the Declarant shall be granted the equivalent Class B voting rights of two (2) Lots per acre for all Property yet undeveloped (and Declarant-owned) in the Project.

**SECTION 4.04. Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time.

**SECTION 4.05. Power of Association.** The Association shall have all powers of a non-profit corporation organized under the laws of the State of Utah subject only to such limitations as are expressly set forth in the Articles, the By-Laws or this Declaration. It shall have the power to perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Areas and the performance of other responsibilities including, but not limited to, the following:

- (a) **Assessments.** The power to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.
- (b) **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, By-Laws, Declaration or ACC Rules/ACC Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (c) **Delegation of Powers.** The authority to delegate its powers and duties to committees, officers, employees, or to any person, firm or corporation to act as manager.
- (d) **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act, error, or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, or the ACC, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.
- (e) **Association Rules.** The power to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Areas and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, By-Laws or this Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were part of this Master Declaration. In the event of any conflict between an Association rule or any provision of the Articles, By-Laws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency.

- (f) Emergency Power. The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- (g) Licenses, Easements and Right-of-Way. The power to grant and convey to any third party such licenses, easements, right-of-way or fee title in, on through, under or of the Common Areas as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
- (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.
  - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling and irrigation water systems, water, heating and gas lines or pipes.
  - (iii) Any similar public or quasi-public improvements or facilities including but not limited to parks, pathways, street, nature trails, recreational facilities, pools, ponds, entrances, waterways, open spaces, clubhouses, game rooms, craft and handicraft facilities, greenhouses, hobby facilities, equestrian facilities and all other common amenities pertaining to the Development, providing that the particular feature or facility has been decided by the Declarant to the Association.
- (h) Fiscal Year. The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

SECTION 4.06. Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall conduct all business affairs of common interest to all Owners a may perform each of the following duties:

- (a) Operation and Maintenance of Common Areas. Perform, or provide for the performance of, the operation, maintenance and management of the Common Areas including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss and all other property owned by the Association.
- (b) Taxes and Assessments. Pay all real and personal property taxes and assessments separately levied against the Common Areas owned by the Association or against the Association and/or any property owned by the Association. Such taxes and

assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.

- (c) Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical telephone, gas and other necessary services for the Common Areas owned by the Association.
- (d) Insurance. Obtain, from reputable insurance companies authorized to do business in the State of Utah and maintain in effect the following policies of insurance:
- (i) Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all improvements, equipment, fixtures and other property located within the Common Areas owned by the Association, including such equipment, fixtures and other property not located in the Common Areas, if the same are used or necessary for the use of the Common Areas or easement areas under the control of the Association.
  - (ii) Comprehensive public liability insurance insuring the Association, the Board, officers, the Grantor and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Areas owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board of Directors.
  - (iii) Full coverage directors and officers liability insurance in an amount determined by the Board.
  - (iv) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property.
  - (v) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith.

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- (vi) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessment levied by the Association.
- (vii) Notwithstanding any other provision herein to the contrary, the Association shall continuously maintain in effect such casualty, liability and other insurance and a fidelity bond meeting the insurance and fidelity bond requirements for PUD projects established by Federal National Mortgage Association (FNMA), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation (FHLMC), so long as any of which is a Mortgagee or Owner of a Lot within the Subdivision, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA or FHLMC, as applicable.
- (e) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Subdivision, whether the same be located within or without the boundaries of the Subdivision.
- (f) Rule Making. Make, establish, promulgate, amend and repeal Association rules.
- (g) Architectural Control Committee. Appoint and remove members of the Architectural Control Committee, all subject to the provisions of this Declaration.
- (h) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules.

SECTION 4.07, Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies distributed at the Association's annual meeting as follows:

- (a) A pro forma operating statement (budget) for each fiscal year.
- (b) Within ninety (90) days after the close of each fiscal year, the Association, or its agent, shall cause to be prepared a balance sheet as of the last day of the Association's fiscal year and an annual operating statement reflecting the income and expenditures of the Association for that fiscal year.

#### ARTICLE V - ASSOCIATION PROPERTIES

SECTION 5.01, Use. Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Association properties and the properties of any Sub-Association of which the Owner is a Member subject to the following:

- (a) Articles, Etc. The provisions of the Articles and By-Laws of the Association, this Declaration and any applicable Supplemental Declaration and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association shall comply with the same.
- (b) Suspension of Rights. The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any infraction or published rules and regulations of the Association.
- (c) Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Subdivision.
- (d) Mortgage or Conveyance of Common Area. Except as provided in subsection C, above, no portion of the Common Area shall be mortgaged or conveyed by the Association without the prior approval of at least one half (1/2) of the Class A Members or two-thirds (2/3) of the Class B Members, which approval may be obtained in writing or by a vote of the respective Class Members at a meeting called for such purpose.
- (e) Notwithstanding other provisions of the section, the Association may limit the use and fee rental or sale of any Association facilities per rules created by the Association.

SECTION 5.02. Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of his family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in the Declaration.

SECTION 5.03. Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

SECTION 5.04. Condemnation. If at any time any part of a Common Area or other property owned by the Association be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association; (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

## ARTICLE VI – ASSESSMENTS

**SECTION 6.01. Covenant to Pay Assessment.** Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association.

All such Assessments, together with interest, costs and reasonable attorney's fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment becomes due and payable, provided, however, that all such assessments shall be junior and subordinate to the lien of a First Mortgage or First Deed of Trust encumbering the Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Areas or by abandonment of his Lot.

**SECTION 6.02. Regular Assessments.** Regular Assessments shall be assessed on a calendar year basis unless otherwise determined by the Board. The Regular Assessments shall be based upon advance estimates of annual cash requirements as determined by the Board for the maintenance and operation of the Common Areas and all easement areas, if any, controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, administration and ACC activities, taxes and special assessments of local government units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s), and other expenses or obligations incurred or expected as they may be required by the Association in compliance with this Declaration.

The initial annual Regular Assessment for the calendar year during which the Declarant conveys fee title to a Lot to an owner shall be the amount of:

\$5.00 per Lot per month pro-rata for platted but unimproved Lots, conveyed from the Declarant to an individual or Builder.

\$10.00 per Lot per month pro-rata for developed lots (with infrastructure), without homes completed. A Lot will be considered "developed" when the Lot is eligible for building permit and the lot has been conveyed from the Declarant to an individual or Builder.

\$20.00 per Lot per month, pro rata with a completed home on lots less than one acre.

\$30.00 per Lot per month, pro rata on lots of one acre or larger.

**SECTION 6.03, Special Assessments.** In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area, unexpected repair or replacement of a Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

**SECTION 6.04, Limited Assessments.** In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Improvements on a Lot, if such maintenance and repair is necessary in the opinion of the Board, to protect the Common Area or any other portion of the Property, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.
- (b) **Correction of Violations.** In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Rules/ACC Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in this Declaration.
- (c) **Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.



**SECTION 6.05. Commencement of Regular Assessments.** Regular Assessments of the Association against each Lot shall commence on the date the Declarant conveys title to the Lot, or Subdivided Lots, to an Owner. Nothing herein contained shall obligate the Declarant to pay any Assessment with respect to a Lot within a separately platted phase or subdivision within the Subdivision in which the Declarant owns all of the Lots.

**SECTION 6.06. Assessment Due Date.** The due dates for Regular, Special and Limited Assessments shall be the first day of the first month of the second calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

**SECTION 6.07. Interest and Penalties.** Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

#### **ARTICLE VII - ENFORCEMENT OF ASSESSMENTS**

**SECTION 7.01. Right to Enforce.** The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorney's fees in connection therewith.

**SECTION 7.02. Creation of Assessment Liens.** There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subdivision pursuant to this Declaration, together with interest thereon and all cost of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Tooele County, Utah, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are prior and superior by reason of applicable law.

All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessment levied by the Association, whether or not such consent be specifically set forth in the instrument creating such other liens.

**SECTION 7.03, Notice of Assessments.** If any Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such notice shall be recorded in the office of the Tooele County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

**SECTION 7.04, Enforcement.** Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Utah for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such cost and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

**SECTION 7.05, Notice Required.** Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of unpaid Assessment(s) and the legal description of the Lot.

**SECTION 7.06, Reporting.** The Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 9.05, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
- (c) The name and address of the Owner;

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- (d) The date the lien of the Mortgage was filed of record in Tooele County, Utah, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;
- (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$25.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 9.02, above. The charge for such notification shall be subject to change by the Board.

**SECTION 7.07. Term of Assessment.** Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration or any applicable Supplemental Declaration shall expire and be of no further force or effect after a period of five (5) years from the latter of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

**SECTION 7.08. Non-Exclusive Remedy.** The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

#### ARTICLE VIII - ARCHITECTURAL CONTROL COMMITTEE

**SECTION 8.01. Members of the Committee.** The Architectural Control Committee shall be comprised of a least three (3) persons, all of whom shall be appointed as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said Member's successor has been appointed. Member of the ACC may be removed at any time, with or without cause.

**SECTION 8.02. Appointment.** So long as the Declarant owns any Lot or parcel within the Property, the Grantor shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board.

The ACC shall have the right by a resolution in writing unanimously approved, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

**SECTION 8.03. Compensation.** The members of the ACC may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and may be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

**SECTION 8.04. Non-Liability.** Neither the ACC, or any member thereof, or the Declarant or any partner officer, employee, agent, successor or assign thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application. Every person who submits an application to the ACC for approval of plans and specifications agrees, by submission of such an application, and every officer, partner, employee, agent, successor or assign thereof to recover such damages.

**SECTION 8.05. Approval Required.** No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ACC.

**SECTION 8.06. Variances.** The ACC may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the ACC Rules/ACC Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

If a variance is granted as provided herein, no violation of this Declaration, ACC Rules/ACC Standard or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC Rules/ACC Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The ACC shall have the right to consider and grant a variance provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable ordinances of the City of Grantsville.

**SECTION 8.07. Application.** To request ACC approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

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All applications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- (a) Site Plan: A site plan showing the location of the Building(s) and all other structures and improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements, at a scale no smaller than 1" = 200'.
- (b) Building Plan: A building plot plan at a scale no less than 1" = 20'. Building elevation drawings of the North, South, East and West sides, and detailed specifications which shall indicate, by sample if required by the ACC, all exterior colors, materials and finishes, including roof to be used.
- (c) Landscape Plan: A landscape plan or affidavit that the minimum landscape standards are being met.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion, deems necessary or convenient for the purpose of assisting the ACC in reviewing and processing the application.

SECTION 8.08, Decision: In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its best efforts and judgement to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a quality residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted and complete application. The decision of the ACC can be in the form of an approval, a conditional approval or denial.

The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

**SECTION 8.09. Inspection and Complaints.** The ACC is empowered to inspect a) work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating there from or is violating this Declaration or the ACC Rules/ACC Standards or the approved plans and specifications.

Each owner or builder shall instruct their respective workers and employees to follow construction only per ACC approved plans. Any modifications or deviations from approved plans must be reapproved by the ACC prior to installation.

**SECTION 8.10. Hearing.** An Owner submitting an application under Section 11.07, above, or served with a written notice of deviation or violation, shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members. A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the ACC and legal fees, such costs shall be paid by the Complaint unless an Owner is found to be in violation in which event such Owner shall pay all costs. The payment of such costs shall be enforceable as provided in this Declaration.

**SECTION 8.11. Appeal.** An Owner shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner reached following a hearing held pursuant to Section 11.10, above, provided, however, that an Owner shall be entitled to such an appeal with respect to deviations or violations unless said Owner or their authorized representatives, have participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Secretary of the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and a copy of the written decision or determination of the ACC. The failure of an Owner to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner to appeal said decision and it shall be binding and enforceable.

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The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.

The Board may require the Owner to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal. At the hearing the Owner, and the ACC, together with their representatives and other witnesses, shall present their position to the Board. The order of presentation and the evidence to be admitted shall be solely within the Discretion of the Board provided, however, that the Owner, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, and the ACC members shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

**SECTION 8.12, Enforcement.** The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of the Declaration, the ACC Rules/ACC Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall have the sole discretion to commence such proceedings.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, the Board may elect to require that all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said assessments or any installment thereof when due, shall be enforceable in the manner provided in this Declaration.

SECTION 8.13. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation of the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion.

SECTION 8.14. Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 11.12 and 11.13, above, shall be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 8.15. Private Rights. The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.



## ARTICLE IX - PROTECTION OF MORTGAGES

SECTION 9.01, Purpose. Notwithstanding any and all provisions of this Declaration to the contrary, to induce the Federal Home Loan Mortgage Home Loan Mortgage Corporation ("FHLMC") The Government National Mortgage Association ("GNMA") the Federal National Mortgage Association ("FNMA"), the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") to participate in the financing of the purchase of Lots within the Subdivision, the provisions of this Article are added thereto to the extent the following Sections of this Article conflict with any other provisions of this Declaration or the provisions of any Supplemental Declaration, this Article shall control.

SECTION 9.02, Restrictions on Amendments. No amendment of this Declaration shall operate to defeat or render invalid the rights of a Mortgagee or beneficiary under any first Mortgage or first Deed of Trust upon a Lot made in good faith and for value and recorded prior to the recording of such amendment, provided that after foreclosure of any such Mortgage or Deed of Trust such Lot shall remain subject to this Declaration, as amended.

SECTION 9.03, Mortgagee Defined. For the purposes of this Article only a "Mortgagee" shall refer to FHLMC, GNMA, FHA and VA.

SECTION 9.04, Right to Notice. Each Mortgagee, upon filing a written request for notification, shall be given written notice by the Association of any default by the Owner of the Lot encumbered by the Mortgage held by said Mortgagee in the performance of such Owner's obligations under this Declaration and under any Supplement Declaration applicable to the Lot. The Articles or the By-Laws of the Association (hereafter collectively referred to as "Project Documents"), which default is not cured within thirty (30) days after the Association has notice of such default.

SECTION 9.05, Right to Inspect Books, Etc. Mortgagees, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours; (ii) require from the Association the submission of audited annual financing reports and other financial data; (iii) receive written notice of all meetings of owners; and (iv) designate in writing a representative to attend all such meetings.

SECTION 9.06, Right to Pay Charges. Mortgagees may pay taxes or other charges which are in default and which may or have become a charge against any Common Area and may pay any overdue premiums on hazard insurance policies covering said Common Area and said Mortgagees making such payments shall be entitled to immediate reimbursement therefrom from the Association.

SECTION 9.07, Liability for Taxes. All taxes levied and assessed on the Common Areas must be assessable against those Common Areas only and the Association and/or any Sub-Association shall be solely responsible for the payment thereof.

**SECTION 9.08, Waiver of Liability and Subrogation.** Any provision in this Declaration which requires Owners to indemnify the Association, the Board or other Owners against acts of the indemnitor is subject to the exception that if the liability, damage or injury is covered by any type of insurance and proceeds are actually paid to the insured by reason thereof, the indemnitor is relieved of liability to the extent of insurance proceeds so paid.

**SECTION 9.09, Additional Contracts.** In addition to the foregoing provisions of the Article, the Board may enter into such contracts and agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC, FNMA, GNMA, FHA, VA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entity of mortgages encumbering Lots within Improvements thereon. Each Owner hereby agrees that it will benefit the Association and each Owner, as a class of potential mortgage borrowers and potential sellers of their Lots if such agencies approve the Subdivision as a qualifying subdivision under applicable policies, rules and regulations as adopted from time-to-time.

**SECTION 9.10, Consent to Release of Information by Mortgagee.** Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Lot and each Owner of a Lot encumbered by such a Mortgage hereby consent thereto.

**SECTION 9.11, Restricted Application.** It is expressly provided that the terms, conditions and provisions of this Article shall not be operative or in force and effect unless and until FHLMC, FNMA, GNMA, FHA or VA purchases, grantees or insures a Mortgage on a Lot within the Subdivision and then only to the extent the same are required by said purchaser, guarantor or insurer. In the event the standards and guidelines of FHLMA, FNMA, GNMA, FHA or VA do not require as a condition of approval of the Subdivision as a qualifying subdivision, the inclusion of one or more of the provisions of this Article, said non-required provisions shall be of no further force of effect.

#### **ARTICLE X – MISCELLANEOUS**

**SECTION 10.01, Term.** This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2030, unless amended as hereafter provided. After December 31, 2030, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourth (3/4) of the Lots covered by this Declaration and such written instruments is recorded with the Tazewell County Recorder.

**SECTION 10.02, Amendment.** This Declaration may be amended as follows:

- (a) **By Declarant.** Until title to a Lot within the Subdivision is conveyed by the Declarant to an Owner, this Declaration may be amended or terminated by the Declarant by recordation of a written instrument signed by the Declarant and acknowledged setting forth such amendment or termination.

- (b) By Owner(s). Except where a greater percentage is required by an express provision in this Declaration, the provisions of this Declaration, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a vote or written consent of 66% (2/3rds) of the cumulative Class A and Class B votes, and such amendment shall be effective upon its recordation with the Utah County Recorder.

SECTION 10.03. Non-Waiver. The failure of the Declarant, the Board, the ACC or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 10.04. Indemnification of Board Members. Each member of the Board and each member of the ACC shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Board or ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Association or prior thereto during the period the Declarant is exercising the powers of the Association.

Users of the Common Area for pedestrian or equestrian use understand and hereby accept that some risks are inherent by virtue of activities in the Common Areas and indemnify Association Board Members, ACC Members, the Declarant and its representatives and the Association against expenses, liabilities and attorneys' fees incurred or imposed as a result of use of the Common Area.

SECTION 10.05. Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 10.06. Severability. Each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

EXHIBIT 'A'

For purposes of this Declaration, the property consists of three adjoining parcels:

1.69.3  
PARCEL 1: Beginning 356.4 feet South of the Northwest corner of Section 4, Township 3 South, Range 5 West, Salt Lake Base and Meridian on South line of Durfee Street of Grantsville City Survey said corner established by Decree, East 152.5 feet along said South line of Durfee Street to Southerly line of State Highway 11112, South 943.80 feet to Quarter Quarter Section line; thence East 297 feet; South 1798.45 feet; thence North 88° 33' 31" West 297.07 feet; South 62.85 feet; to South line of said street; thence West 1485 feet along South line to Section lined South of the point of beginning; then North 2704 feet to beginning.

3.41.7  
PARCEL 2: The West 5.5 chains of the East 15.5 chains of the Southeast Quarter, Northwest Quarter and the north 493.41 feet to the east 15.5 chains of the Northeast Quarter; Southwest Quarter Section 4, Township 3 South, Range 6 West, Salt Lake Base and Meridian.

1.70.45  
PARCEL 3: Commencing 5.90 chains South of the Northeast corner of Section 5, Township 3 South, Range 5 West, Salt Lake Base and Meridian, on the South line of Durfee Street of Grantsville City, said corner established by decree; running thence West 8.5 chains; South 19 chains; East 8.5 chains; North 19 chains to the point of beginning.

And shall specifically exempt the portion of the property that is the existing home and lot being platted as Lot 134 of the Phase 1 Plat of Anderson Ranch.

12-65-124

Anderson Ranch Sub Plat-1

12-65-1 Use 37

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IN WITNESS WHEREOF the Declarant has executed this Declarant as of the date first herein above set forth

Declarant:

ANDERSON RANCH, LLC

BY 

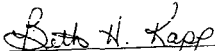
NAME: LYNNE E. WARDLEY

TITLE: MANAGER

ACKNOWLEDGEMENTS

STATE OF Utah )  
COUNTY OF Salt Lake ) ss:

On this 6th day of May, in the year of 1998, before me Beth H. Kapp personally appeared Lynn E. Wardley known or identified to me (or proved to me on the oath of \_\_\_\_\_), to be the member(s) or manager(s) in the limited liability company of Anderson Ranch, LLC and the member(s) or manager(s) who subscribed said limited liability company name to the foregoing instrument, and acknowledged to me that he ( or she or they) executed before me on the date set forth above by the member(s) or manager(s) named above of the limited liability company named above.



Notary Public

My commission expires: \_\_\_\_\_

Residing at: \_\_\_\_\_



NOTARY PUBLIC  
BETH H. KAPP  
5296 South 300 West  
Midway, Utah 84019  
My Commission Expires  
November 18, 1999  
STATE OF UTAH

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