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**When recorded return to:**

**778 East 5750 South  
South Ogden, Utah 84405**

Serial Numbers 01-White1-0001;0002;0003;0005;0006;0016,0017;0018,0019  
Parcel Numbers 00-0084-6977;6978;6979;6980;6981;6982;6983;  
6984;6985

## **RECORDING COVER SHEET**

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
WHITTIER ESTATES PHASE 1 SUBDIVISION  
(RECORDED)**

**AND**

**WHITTIER ESTATES PHASE 2 SUBDIVISION  
(UN-RECORDED)**

When recorded, please mail to:

WHITTIER ESTATES HOMEOWNERS  
ASSOCIATION  
778 E 5750 S  
South Ogden, UT 84405

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHITTIER  
ESTATES HOME OWNERS ASSOCIATION**

WHEREAS, as of the Effective Date, Declarant owns approximately 100% (until the sale of individual lots to buyers) of the Lots within the Subdivision and has the right to amend the Prior Declaration pursuant to Section 6 of the Prior Declaration;

WHEREAS, Declarant desires to amend and restate the Prior Declaration to amend, clarify and expand certain provisions;

WHEREAS, Declarant is the legal and beneficial owner of a certain tract of land (the "Property") situated in Morgan County ("Morgan County"), State of Utah, as more fully described Exhibit "A" attached hereto;

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 one or more Subdivisions or Subdivision Plats 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, landscaped, 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. The Subdivision is not a cooperative.

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

1.1 "Assessment and Voting Unit" or "Unit(s)" means the value and/or vote assigned to each 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.

1.2 "Association" means and refers to the WHITTIER ESTATES HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation, its successors and assigns.

1.3 "Board of Directors" or "Board" means those three (3) individuals elected by the Members to serve on the board of directors of the Association and to perform their duties and responsibilities as outlined in Bylaws and in this Declaration. The Board of Directors are elected by the Members each year at the annual meeting of the Association.

1.4 "Bylaws" means the Bylaws of the Association. The initial Bylaws of the Association are attached hereto as Exhibit "F", which are incorporated herein by this reference.

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 of the Subdivision Plats 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 FUTURE HOMES, LLC. a Utah limited liability company, and the successors-in-title and assigns of FUTURE HOMES, LLC. 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 "Front Yard Landscaping" means the landscaping installed on the portion of a Lot between the front corners of the dwelling constructed on the Lot and the street in front of such dwelling, which landscaping for such Lot shall conform to this Declaration and the Water Declaration.

1.9 "Landscape Plan" shall be submitted when submitting house plans to the architectural review committee.

1.10 "Lot(s)" means each of those plots of land so designated upon any Subdivision Plats, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of street improvements, a single family residential dwelling site as shown on such Subdivision Plats. 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.

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

number.

1.12 "Member(s)" means the person(s) or entity(ies) who has(have) Membership in the Association.

1.13 "Membership" means being a Member of the Association as defined in Section 13 herein. The sole qualification for Membership in the Association is ownership of one or more Lots. The Owners of Parcels shall not be deemed to be Members of the Association.

1.14 "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.

1.15 "Mortgagee" means the holder of a Mortgage.

1.16 "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.

1.17 "Parcels" means those certain parcels identified on Subdivision Plats with alphabetical characters, such as Parcels A, B, C, etc., which Parcels shall not constitute Lots for purposes of this Declaration and shall not be entitled to any voting, assessment, or dwelling units or other rights of the Association. Parcels may be used as Common Properties and for other non-residential uses as may be specifically designated on any Subdivision Plat.

1.18 "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.

1.19 "Property" means the tracts of land located in Morgan County, Utah, which are more fully described on Exhibit "A" attached hereto, as may be expanded from time to time by the Declarant pursuant to Section 15 herein below.

1.20 "Subdivision" or "Subdivisions" means one or more subdivisions of all or portion of the Property into Lots, Parcels, streets, and easements, etc. A "Subdivision Plat" means a plat map for a Subdivision recorded in the Official Records. The initial Subdivision Plat for the first Subdivision on the Property is the Whittier Estates Phase 1 recorded on FEBRUARY 2, 2017 as Entry No. 140657 in the Official Records. (BOOK 333 PAGE 865)

1.21 "Unit(s)" is defined in Section 1.1, above herein below.

1.22 "Water Declaration" shall have the meaning as defined in Section 7.10

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 Morgan County, Utah, described on Exhibit "A" to this Declaration, as may be expanded by the Declarant, in its sole discretion, pursuant to Section 15 herein below.

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 privacy 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 March 9, 2047, 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 the Property prior to the date of an automatic extension, it is agreed to release the Property in whole or in part from the provisions of this Declaration and such agreement is evidenced by an appropriate written agreement specifying the Property released, signed by the then Owners of said seventy-five percent (75%) of the eligible votes of Owners of Lots within the Property, and filed in Official Records prior to the date of an automatic extension, which agreement shall be effective upon the date such automatic extension would otherwise have occurred. 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, other than releasing the Property in whole or in part from the provisions of this Declaration, at any time by the affirmative action of the Owners of seventy-five percent (75%) of the eligible votes of Owners of Lots within the Property. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of eligible mortgagees is required for such amendment, that such approval has been obtained. To the extent permitted by applicable law, any amendment regarding paragraph 7.1 of this

Declaration shall require the unanimous vote of all of Owners of all of the Lots within the Property. Any such amendment 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 Official Records.

The provisions of this Section 6 shall not apply to the Declarant's rights to expand the Property covered by this Declaration and to thereby expand the number of Lots and Membership in the Association pursuant to Section 15 herein below.

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 Five adult (5) 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. Private detached garages, outbuildings, sheds and other structures are permitted but must be approved in writing by the Committee. The number of structures, height of any dwelling, building, structure, facility or appurtenance thereto, at any point shall follow county code regulations

The Natural Grade of a Lot shall not be materially modified except in connection with the construction of a dwelling or other improvements and/or the landscaping on a Lot pursuant to Plans and/or a Landscape Plan, if any, that have been approved in writing by the Committee pursuant to the terms of this Declaration; 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, in reviewing Plans for proposed improvements, dwellings, accessory 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 2200 square feet for a single level residence (patio/ranch style); 1900 square feet per main floor and 1900 square feet per basement for a rambler or three thousand (2800) square feet above grade finish for a multi-level or two story dwelling .

If an owner elects to have a detached garage a minimum of a gravel approach is required to access second garage.

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. Shipping containers/non business related storage

facilities may be permitted with Committee approval. All structures must comply with all county codes and regulations.

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 Morgan County, 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 fifteen (15) 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 fifteen (15) months from the date physical construction commenced.

In instances where the Owner of a Lot that is holding such Lot and the single family dwelling subsequently erected thereon for re-sale to a homeowner (a "Homeowner"), installation of the Front Yard Landscaping in conformance with the Water Declaration shall be the responsibility of such individual Homeowner, and the Park Strip Landscaping including all grass, trees, hardscape and sprinkling system (See landscaping requirements) shall be completed by the Homeowner no later than twelve(12) months after such Homeowner's closing of its purchase of the completed single family dwelling located on such Lot. In instances where the Owner of a Lot is building or causing to be built a single family dwelling on a Lot for such Owner's own account and use, installation of the Park Strip Landscaping shall be completed by such Owner no later than twelve (12) months after the purchase of the subject lot or with-in 6 months of a Certificate of Occupancy ("C.O.") pertaining to such single family dwelling is issued by Morgan County.

7.6 COMPLIANCE WITH MORGAN COUNTY CODES AND ORDINANCES. 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 applicable Morgan County codes and 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 Morgan County codes and ordinances, then simultaneously with applying for said variance, the Lot Owner shall submit to the Committee the following: (a) a copy of the completed Morgan County variance application bearing signatures of the applicant as well as any adjacent Lot Owners whose consent is being sought and (b) the Whittier Estates CC&R Variance Request Form as described in Section 8.5 to this Declaration. In addition to receiving approval from Morgan County for any variance to Morgan County codes and ordinances, such variances must be approved in writing by the Committee.

7.7 SET BACKS. The building setbacks for any Lot in any Subdivision created upon the Property shall be as shown on the Subdivision Plat creating such Lot; provided, however, in the event that such Subdivision Plat does not specify building setbacks, then the setbacks provided in the Morgan County codes and ordinances for the applicable zoning district shall apply.

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 Morgan County 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 PUBLIC UTILITY EASEMENTS; ON-SITE DRAINAGE RETENTION; PROTECTION OF DRAINAGE SWALES. Drainage and public utility easements ("PUDE's") over portions of the Property as shown on any recorded Subdivision Plat have been dedicated as drainage and/or utility easements for the use of Morgan County, 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 swales, conduits, ditches, ponds, or pipes and for pipes, conduits, poles, wires, cables, and other means of conveying to and from the Lots and Parcels, gas, electricity, power, water, telephone, communication services, cable television, telegraph services, sanitary sewer, storm drainage, and other services for convenience of Owners of Lots and Parcels.

The Owners of all Lots and Parcels shall: (a) be required to retain all storm drainage (runoff) within such Lot or Parcel which cannot be discharged into the drainage swale along the front of each Lot (if available) and (b) not discharge any storm drainage (runoff) upon any adjacent property, Lots or Parcels. Since it will likely be impossible for downhill Lots or Parcels to discharge storm drainage into the drainage swales along the front of each Lot or Parcel, the Owners of such downhill Lots or Parcels shall be required to retain all storm drainage (runoff) within such Lot or Parcel. All lot owners building a home where the foundation is excavated below the lots current grade must install a sump pump that connects and discharges into the storm drain as long as a storm drain pipe runs/touches their lot. **A drainage retention plan for each Lot or Parcel shall be required to be submitted to and approved by the Committee as a part of the Plan approval for each Lot or Parcel.**

Each Owner hereby agrees to not fill-in or block any drainage swales that are constructed within the as shown on any Subdivision Plat and, unless otherwise approved by the Committee in writing, all drainage swales which are crossed by driveways or other hard surfaces must be bridged or piped at the Owner's expense with at least an 18" diameter culvert so as to not impede the flow of water within such drainage swales. The size, material, plans and placement of all such pipes and/or conduit must be approved by the Committee prior to installation. Except for periodic "check" dams or structures in the drainage swales to be installed by the Association or by Declarant as part of the initial Improvements, 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.



Dedicated public roads ("Public Roads") have been or shall be granted to the Morgan County on the Subdivision Plats for the use of the public and Association, its Members, and their guests. 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 a Public Road within the area marked PUDE's on a Subdivision Plat. As noted above, these areas may contain drainage swales, drainage ways and drainage facilities.

7.9 MINIMUM MAIN LEVEL FINISHED FLOOR ELEVATION. Unless otherwise specifically agreed to in writing by the Committee, the minimum main level finished floor elevation for any dwelling erected on any Lot shall be completed per Morgan County Building Regulations.

7.10 LANDSCAPING. On all vacant, unimproved Lots and until construction of an approved dwelling thereon commences, all vegetation shall be maintained in its natural state, except as provided below. Specifically, on vacant, unimproved Lots, the natural grasses and weeds located within any Lot shall be periodically maintained, mowed or trimmed in order to reasonably minimize the fire hazard and to reasonably minimize an unsightly condition on such Lot. 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.

For each Subdivision Plat recorded on a portion of the Property, the Declarant shall cause a Declaration of Covenants, Conditions and Restrictions for Water Conservation (a "Water Declaration") to be recorded against such Subdivision Plat, which shall identify the quantity of water being allocated to each Lot and which shall provide recommendations and requirements relating to water conservation and the landscaping of each Lot.

All landscaping planting placed on a Lot by an Owner shall be properly nurtured and reasonably maintained or replaced at the Owner's expense.

Owners are permitted to use all portions of their Lots, but excluding front yards that are visible from the Public Roads, for personal garden. No restrictions shall be placed on the types of species an Owner is entitled to plant; provided, however, if an Owner chooses to have a food production garden, such gardens shall be properly cared for and reasonably maintained.

If the Association elects to landscape Common Properties, the Association shall do so using water-conserving plants and efficient irrigation methods in order to conserve water, and such landscape plans shall be submitted to the Committee for approval in the same fashion as those for Lots.

If owners elect to place water features on any given lot plans shall be submitted to the committee for approval.

LANDSCAPE REQUIREMENTS: Owners are required to install a minimum of four (4) trees (chosen from the approved tree options) no smaller than a minimum of 2" diameter per tree, evenly spaced on each park strip in front and or sides of each lot. Corner lots will be required to have a minimum of eight (4) trees (chosen from the approved tree options) evenly spaced on the primary address facing street, and a

minimum of four (4) trees (chosen from the approved tree options) on the non primary address facing street. All trees must be planted no smaller than a minimum of 2" diameter per tree. A proper water system to be installed and grass/hardscape to be installed with-in the one year/12 months from the purchase of the subject lot, OR with-in 6 months of a Certificate of Occupancy, which ever happens first in the park strip.

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 reasonably 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 Roads, or into the storm drainage system, except as allowed by the Plans.

7.12 RURAL AREA; FARM ANIMALS. The Property is located in the Peterson area of Morgan County which enjoys a semi-rural lifestyle, including the boarding, caring for, raising, grazing, feeding, riding, and training of horses and other livestock, farm animals, and pets often found in rural areas (collectively, "Livestock"), and their attendant noises, odors, and sights. Each Owner takes title to the Lots or Parcels with an acknowledgment that the Peterson area surrounding the Property is a rural area which allows and welcomes Livestock and that such Owners hereby agree not to challenge, oppose, complain about, or otherwise try to prohibit, outlaw, or restrict the residents' legal rights to have Livestock in the Peterson area.

Within and upon the Property and subject to applicable Morgan County codes and ordinances, Owners are permitted to raise and produce Livestock and farm animals including horses, cattle, sheep, poultry (collectively, "Farm Animals"); provided, however, that the following conditions must be satisfied:

- A. No Farm Animals shall be kept or maintained closer than forty feet (40') to any dwelling on any adjacent Lot and no barn, stable, coop, pen, or corral shall be kept closer than forty feet (40') to any Public Road and shall be screened from sight from a Public Road.
- B. All Farm Animals shall be kept behind the dwelling, in the rear portion of any lot.
- C. Horses, cattle, and other similarly sized large animals ("Large Animals") are only allowed on Lots that are permitted by Morgan County and then no more than two (2) such Large Animals may be kept on any Lot at any given time, if the large animal is to be a cow/bull only one may be kept on any lot at any given time. No more than two (2) dogs may be kept on any lot at any given time. (A) Dogs must be kept on a leash at all times that they are not behind back fences.
- D. Roosters and swine are not to be permitted on any lot at any given time.
- E. The keeping and rearing of Farm Animals on the Property shall be done in a clean and healthy way, using the best practices of animal husbandry, in order to minimize odors and noises.

7.13 ENERGY EFFICIENCY AND RENEWABLE ENERGY. Owners are encouraged to use best practices and measures for energy conservation in building and operating dwellings upon the Lots, including such things as highly efficient furnaces, appliances and lighting; quality windows; effective insulation; passive solar techniques in site orientation and building design; and active solar, wind, and geothermal strategies.

Subject to applicable laws and regulations and Committee review and approval as part of the Plans, (A) rooftop renewable energy collectors or generators may be used on the Lots so long as they are not visible from the front of the home with exceptions being made to solar panels on the roof surfaces that best serve the benefit of the property (B) portions of the Lot may be used to generate renewable energy. (C) If propane is to be used, propane tanks must be buried in the back yard behind a fence.

8. ARCHITECTURAL AND STRUCTURAL CONTROL COMMITTEE.

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

The initial notice address of the Committee shall be:  
Whittier Estates Architectural and Structural Control Committee  
778 E 5750 S  
South Ogden, UT 84405  
Tel: (801) 528-4804  
Email: FutureHomesUtah@gmail.com

This mailing and email 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 Official Records. Any notice authorized, required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given (a) when delivered in person; (b) when sent by email to the email address of the Committee set forth above; (c) the next business day after deposit with Federal Express, UPS or another nationally-recognized overnight courier service; or (d) four (4) business days after depositing such notice in the United States Mail, postage prepaid, certified mail or registered mail, return receipt requested, and in each case properly addressed utilizing the foregoing address.

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, any Landscape Plans, if an Owner elects to submit a Landscape Plan, or specifications for all structures to be erected or remodeled on Lots within the Property, so that all structures 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) on 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), accessory building, barn, fence, wall, tennis court, greenhouse, swimming pool, or other facility, shall be erected, remodeled or placed on any Lot until the written approval of the location, height, design, materials, colors of materials and harmony with existing structures has first been obtained from the Committee. No construction of any kind or nature on any of the Lots shall be commenced until road 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 the following design plans (collectively, the "Plans");

- A. A site plan, drawn to scale and including the following: (1) a topographic map of the Lot at 2' contour intervals showing the Natural Grade (as defined above) and the proposed grade, (2) the dimensions of the Lot, (3) the location and elevation relative to the Natural Grade of all roads and public way improvements (existing and proposed), (4) all easements and rights-of-way affecting the Lot, (5) the footprints and elevations relative to Natural Grade of all proposed structures or improvements, including fences, walls, garages, roof overhangs, retaining walls, driveways, accessory buildings, barns, patios, sidewalks, fences, mechanical equipment, swimming pools, sport courts or similar recreational structures, and (6) the elevations relative to Natural Grade of the basement finished floor, main and upper finished floors, and roof ridges (collectively, the "Site Plan");
- B. Floor plans and elevations of the front, rear, and all sides of all structures;
- C. A fully completed "Whittier Estates Plan Submittal Worksheet," the form for which is attached hereto as Exhibit "C";
- D. A check for Five Hundred Dollars (\$500) to the Whittier Estates Home Owners Association for Plan Review (the "Plan Review Fee").
- E. 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
- F. If a variance or exception is being requested pursuant to Section 8.5 hereof, the "Whittier Estates CC&R Variance Request Form", a copy of which is attached as Exhibit "D" hereto.

Within thirty (30) days after receipt of the Plans by the Committee, the Committee shall reasonably approve or disapprove the Plans and shall evidence such approval or disapproval 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 reasonable basis for the denial). Such approval shall only be valid if construction is commenced within twelve (12) months of the date of such approval or deemed approval, as applicable.

The submission of Plans shall be deemed received only when delivered to the Committee as follows:

G. By delivering the Plan Review Fee and one (1) complete set of 11" x 17" or larger, scaled prints of the Plans to the Committee at its notice address provided in Section 8.1 above; and

H. By emailing to the Committee at its email address provided in Section 8.1 above a complete digital copy (.pdf file format) of the Plans.

I. A landscape plan needs to be included with the 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 and responded to in writing.

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 buildings shall be either brick, stone, stone variations, wood, hardy plank, smart side, vinyl siding, stucco or other material approved by the Committee, or a combination thereof. Exterior design needs to be a mix of the above items. The roofing materials shall be metal, tile, treated wood shingles, architectural grade asphalt 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 Morgan County 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 setback. No fence or wall shall be higher than six feet (6'). The Committee shall deem acceptable and approved for the construction of fences and walls within the Subdivision any materials other than chain link.

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 found upon the Property.

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 therefrom, the Committee may, after receiving written application stating the basis therefor (on the attached Whittier Estates CC&R Variance Request Form), and upon written approval from the Committee stating the basis therefor, 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, 7.9, 7.10, 7.12, 7.13, 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 materially 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 Bylaws and Articles of Incorporation of the Association. Furthermore, the Board of Directors may purchase liability insurance for the Committee as allowed under the Bylaws.

9. OTHER RESTRICTIONS AND PROHIBITIONS.

9.1 NUISANCES. Except as may be expressly permitted elsewhere in this Declaration, 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 NO BUSINESS OR COMMERCIAL ACTIVITIES. Except for home-based businesses as may be allowed under Morgan County codes and ordinances in the zoning district of which the Property is a part, no Owner may engage in business or commercial activities upon a Lot.

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 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 or approved accessory buildings and only to the rear of and behind enclosed fencing of the dwelling and limited visibility from a Public Road.

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 portion of the Property.

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 reasonably shielded from view from streets and other Lots.

9.8 DUTY TO MAINTAIN. It is the obligation of the Owner of each Lot to maintain properly his or her Lot and the improvements to the Lot in a good state of repair and in an attractive, safe, and healthy condition at all times in order to preserve and enhance the enjoyment of the Subdivision.

9.9 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 Public Road 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 the same is not voluntarily cleaned up and removed by the Owner within 48 hours of written notice from the Declarant 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 Official Records.

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 Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot 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 within the Property, including but not limited to landscaping and maintenance of Common Properties, PUDE's, storm drain and utility systems, curb, gutter, sidewalk, trails, 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 Bylaws. 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 quarterly installments on January 1, April 1, July 1, and October 1 of each year.



14.3 ALLOCATION OF ASSESSMENT AMOUNT. Each Lot shall bear an assessment equal to the ratio of one divided by the total number of Lots that have been created at any given time by the recordation with the Official Records upon the Property.

14.4 ANNUAL BUDGET; COMPUTATION OF LOT ASSESSMENT. The Board of Directors shall 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 within the Subdivision, which the Association is responsible to repair and/or replace pursuant to the terms of the Declaration, 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 within forty-five (45) days after the budget is presented to the Owners by the Board of Directors in accordance with Section 57-8a-215 of the Utah Code, as amended from time to time. 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 may be deposited in the Reserve Fund (as defined below) at the discretion of the Board of Directors.

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 One Thousand Dollars (\$1,000.00) 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 Official Records 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 Official Records 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 deemed delinquent. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in the amount of five percent (5%) of the amount due. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within thirty (30) days following the due date. If the assessment is not paid within sixty (60) 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 ninety (90) 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. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Declarant hereby designates To be determined by HOA Board, ("Trustee") and conveys and warrants pursuant to Sections 57-1-20, 57-8a-302 and 57-8a-402 of the Utah Code to Trustee, with power of sale, the Lots or Parcels and all of the improvements to the Lots or Parcels within the Subdivision for the purpose of securing payment of all of the assessments under the terms of this Declaration. Each Owner, by accepting a deed to a Lot or Parcel, also hereby conveys and warrants to Trustee, with power of sale, each Lot and/or Parcel acquired by such Owner and all of the improvements thereon for the purpose of securing payment of all of the assessments under the terms of this Declaration and such Owner's performance of such Owner's obligations set forth herein. The Board may, at any time, designate one or more successor trustees, in the place of Trustee, in accordance with the provisions of Utah law for the substitution of trustees under deeds of trust. Such Trustee, and any successors, shall not have any other right, title or interest in the Property beyond those rights and interests necessary and appropriate to foreclose any liens against Lots or Parcels arising pursuant hereto. 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 Bylaws, 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 first quarter of 2017 shall be due from Owners of then-existing Lots on January 1, 2017 in an amount determined by the Association not to exceed one-quarter of the total amount of the 2017 budget. Notice of the assessment shall be sent by mail or given personally on or before December 20, 2016 to Owner(s) of then-existing Lots in the then existing Subdivision(s) within the Property. Commencement of the assessment to began once the Board is convened and agreed to by a majority vote of the current lot owners.

The first full annual assessments for all then-existing Lots subject to assessment under this Declaration shall be due and payable quarterly or in a manner and on a schedule as the Board of Directors 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 Directors, the Association, after approval by two-thirds (2/3) of the Board of Directors, 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 Official Records 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 any 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.

14.13 ASSESSMENTS FOR THE RESERVE FUND. 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 within the Subdivision, which the Association is responsible to repair and/or replace pursuant to the terms of this Declaration (hereafter the "Reserve Fund"). The Board of Directors shall manage the Reserve Fund in accordance Section 57-8a-211 of the Utah Code, as may be amended from time to time, including, without limitation, causing a Reserve Fund analysis to be conducted on a periodic basis.

15. DEVELOPMENT AGREEMENT; EXPANSION OF THE PROPERTY BY DECLARANT.

Each purchaser or Owner of Lots or Parcels in this Subdivision takes title to the Lots or Parcels with an acknowledgment that the Developer or, upon assignment from the Developer, the Declarant, and their successors and assigns have the right to develop the Lands pursuant to the rights granted to them in the Development Agreement, and such purchasers or Owners hereby agree not to challenge, oppose, file a complaint, complain about, or otherwise try to prohibit the Developer's or Declarant's exercise of its rights to develop the Lands pursuant to the Development Agreement

16. SUBDIVISION IMPROVEMENTS.

16.1 WARRANTY BY DECLARANT. In developing any Subdivision, Declarant shall install (a) water, power, gas and storm drain lines or facilities to service or provide service to the Lots, and (b) streets within the areas identified as "Dedicated Public Road". 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 Morgan County 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. Individual septic systems are required for each individual lot. Weber Davis Health Department has identified the specific system that is required for each individual lot. (See attached "Required Septic System for Lot").

3900 North Retaining wall will be dedicated to the HOA as common area including the fencing material installed on the lower wall. HOA will be responsible for the maintenance and insurance on the identified upper and lower wall structures and any surrounding common area that is directly appurtenant to the wall. Including but not limited to sump systems for appropriate water conversion.

16.2 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 INSURANCE. The Board of Directors shall at all times purchase, maintain in force, and pay the premiums for insurance on all Common Area Property within the Subdivision satisfying the insurance requirements set forth in Sections 57-8a-401 through 57-8a-407 of the Utah Code, as such Sections may be amended, supplemented or replaced from time to time.

17.2 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.

17.3 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.

17.4 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.

17.5 PARAGRAPH AND SECTION CAPTIONS. The paragraph and section captions and phrases as to the contents of particular paragraphs or sections 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 or section to which they refer.

17.6 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.

17.7 RELATIONSHIP TO COUNTY AND STATE ORDINANCES. The provisions contained in this Declaration are in addition to the effective laws and ordinances of Morgan 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 Morgan County or the State of Utah, the most restrictive provision shall apply.

17.8 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.

17.9 PRE-LITIGATION REQUIREMENTS.

(i). Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else

to perform, any inspection on any Lot that Owner is purchasing or any aspect of the Subdivision; all prior to purchasing a Lot. Moreover, if any warranty has been provided, it identifies the only items that are warranted by the Declarant, as applicable, including the warranty by Declarant in Section 16.1 above. Having had the ability to inspect a Lot prior to purchasing a Lot, having received a written warranty (if any warranty is provided), and having paid market price for a Lot in the condition the Lot, the Subdivision and Common Property are in at the time of purchase, Owner acknowledges and agrees that it would be inequitable to later seek to have the Declarant, and/or their respective contractors and subcontractors performing work in the Subdivision to change, upgrade, or perform any additional work to the Subdivision outside of any express warranty obligation. Moreover, the Owners and the Association acknowledge and agree that litigation is an undesirable method of resolving Disputes (as defined below) because litigation can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lots during any period when litigation is pending. For this reason, the Owners (by purchasing a Lot) and the Association acknowledge and agree that before any Dispute is pursued through litigation, the "Pre-Litigation Requirements" set forth below shall be satisfied. In addition, the Association and the Owners (by purchasing a Lot) acknowledge and agree that each takes ownership and possession of the Lots, Common Property, and limited common areas AS IS, with no warranties of any kind (except as set forth in a written warranty, this Declaration or as otherwise required as a matter of law). To the fullest extent permitted by applicable law, Declarant specifically disclaim any warranties of merchantability, fitness for a particular use, or of habitability.

(ii). Pre-Litigation Requirements (Applicable Only to the Association). Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, engineers or architects, or any other person or entity involved in the design or construction of the dwelling structures unless and until the Notice of Claim requirements set forth above have been satisfied, and all of the following "Pre-Litigation Requirements" have been satisfied:

(iii). The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection (i) above.

If any claims or actions of the Association are filed without satisfying all of the requirements of subsections (i), (ii) and (iii) above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

The purposes of these requirements include, but are not limited to, the following: (i) to minimize the risks to the Association of pursuing litigation involving claims that lack merit; (ii) to minimize the risks of becoming involved in litigation that is unlikely to be successful or, even if successful, will not result in meaningful recovery sufficient to justify the costs and expenses of litigation; and (iii) to avoid becoming involved in litigation without sufficient support from the Members of the Association financially and otherwise.

18. Motorized vehicles. (1) Vehicles are required to be stored in garages or behind privacy fences to not be seen from the front of the home. (2) No gas operated vehicles are to be used on common grounds unless authorized by HOA for maintenance and or improvement purposes.

19. Buyer shall in no way hold the developer liable or responsible for any water drainage, water flow, water subbing, etc on any portion of the subject development. Buyers at buyers own choice, risk and/or assessment will determine if buyer chooses to build below the curb level and or existing grade level of the buyers subject lot.

IN WITNESS WHEREOF, the undersigned, as the Owner of approximately 100% of the Lots within the Subdivision, has executed this Declaration as of the Effective Date.

FUTURE HOMES, LLC. a Utah limited liability company

[Signature]  
Blair Gardner, Manager

FUTURE HOMES, LLC. a Utah limited liability company

[Signature]  
Wyndell Pasch, Manager

STATE OF UTAH )  
COUNTY OF Wasatch ) : ss.

On the day of March 9, 2017, Blair Gardner and Wyndell Pasch personally appeared before me who being by me duly sworn did say is the manager of FUTURE HOMES, LLC. a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company.



[Signature]  
NOTARY PUBLIC

My Commission Expires 3-28-18

Residing at: Laegden, Utah

AGREED to and ACCEPTED this 9 day of March, 2017 by: Whittier Estates Homeowners' Association, a Utah nonprofit corporation

[Signature]

EXHIBIT "A"  
LEGAL DESCRIPTIONS

Lots 1, 2, 3, 5, 6, 16, 17, 18 and 19 WHITTIER ESTATES PHASE 1 SUBDIVISION, MORGAN COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

*SERIAL NUMBERS 01-WHITE 1-0001; 0002; 0003; 0005; 0006; 0016; 0017; 0018; 0019*  
*Parcel Number 00-0084-6977; 6978; 6979, 6980, 6981, 6982, 6983, 6984, 6985*

WHITTIER ESTATES PHASE 2—BOUNDARY DESCRIPTION

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 6 OF THE WHITTIER ESTATES PHASE 1 SUBDIVISION AS RECORDED IN THE MORGAN COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 89°58'30" EAST 192.39 FEET AND NORTH 1521.84 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 6, TOWNSHIP 4 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 44°40'11" EAST ALONG THE SOUTHERLY LOT LINE OF SAID LOT 6, 132.39 FEET; THENCE SOUTH 44°00'20" WEST 45.00 FEET; THENCE SOUTH 45°59'40" EAST 180.00 FEET TO A POINT ON THE SAID PHASE 1 SUBDIVISION BOUNDARY LINE; THENCE ALONG SAID PHASE 1 SUBDIVISION BOUNDARY LINE THE FOLLOWING FIVE (5) COURSES: 1) SOUTH 44°00'20" WEST 1.00 FEET; 2) NORTH 49°07'47" WEST 104.27 FEET; 3) NORTHWESTERLY 180.30 FEET ALONG THE ARC OF A 230.00 FOOT RADIUS TANGENT CURVE TO THE LEFT (CHORD BEARS NORTH 71°35'16" WEST 175.72 FEET); 4) NORTHWESTERLY 143.40 FEET ALONG THE ARC OF A 970.00 FOOT RADIUS TANGENT CURVE TO THE RIGHT (CHORD BEARS NORTH 89°48'38" WEST 143.27 FEET); 5) NORTH 85°34'32" WEST 38.98 FEET; THENCE NORTH 05°10'28" EAST 190.87 FEET; THENCE NORTH 85°34'32" WEST 263.06 FEET; THENCE NORTH 28°19'32" WEST 224.46 FEET; THENCE NORTH 61°40'28" EAST 27.48 FEET; THENCE NORTH 00°50'12" EAST 261.87 FEET; THENCE NORTH 50°48'50" WEST 63.76 FEET; THENCE NORTH 59°26'36" EAST 266.37 FEET; THENCE NORTH 61°01'28" EAST 374.25 FEET; THENCE SOUTH 36°07'17" EAST 816.55 FEET TO A POINT ON THE WHITTIER ESTATES PHASE 1 SUBDIVISION BOUNDARY; THENCE ALONG SAID SUBDIVISION BOUNDARY THE FOLLOWING THREE (3) COURSES: 1) SOUTH 53°52'43" WEST 193.69 FEET; 2) NORTH 36°23'34" WEST 47.62 FEET; 3) SOUTH 53°36'26" WEST 302.30 FEET TO THE POINT OF BEGINNING.

*SERIAL NUMBER*  
*PART OF 01-004-097-03-1*

*PARCEL 00-0084-2599*



**EXHIBIT "B"**  
**INTENTIONALLY DELETED**

EXHIBIT "C"

WHITTIER ESTATES PLAN SUBMITTAL WORKSHEET (Refer to Sections 8.2 and 8.3 of CC&Rs)

Lot No. \_\_\_\_\_

**Section 1: Owner Information**

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

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

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

Email: \_\_\_\_\_

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

Address \_\_\_\_\_

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

Email: \_\_\_\_\_

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

Address \_\_\_\_\_

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

Email: \_\_\_\_\_

**Section 2: Dates**

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

Construction Commencement Date: \_\_\_\_\_ (within 12 mos. of approval)

Construction Completion Date \_\_\_\_\_ (within 15 mos. of beginning)

**Section 3: Site Plan Information**

Front Setback (feet) \_\_\_\_\_

[if corner lot] (feet) \_\_\_\_\_

Left Side Yard (facing lot) (feet) \_\_\_\_\_

Right Side Yard (feet) \_\_\_\_\_

Rear Yard Setback (feet) \_\_\_\_\_

Accessory Building Setback (feet) \_\_\_\_\_

No. Of Stories \_\_\_\_\_

**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 \_\_\_\_\_

Square Footage of Main floor \_\_\_\_\_

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

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

TOTAL SQUARE FOOTAGE Garage \_\_\_\_\_

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

No. of Car Garage \_\_\_\_\_  
 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 \_\_\_\_\_

<p><b>Submittal Checklist:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Site Plan required by Section 8.2 A.</li> <li><input type="checkbox"/> Floor plans and elevations as required by Section 8.2 B.</li> <li><input type="checkbox"/> Completed Whittier Estates P.U.D. Plan Submittal Worksheets as required by Section 8.2 C.</li> <li><input type="checkbox"/> if applicable, Landscape Plan as contemplated by Section 7.10 and the Water Declaration and a check for the Landscape Plan Review Fee payable to "Whittier Estates Homeowners Association".</li> <li><input type="checkbox"/> A check for the Plan Review Fee payable to "Whittier Estates Homeowners Association" as required by Section 8.2 D.</li> <li><input type="checkbox"/> Fence or wall plans as required by Sections 8.2 F, 8.3 B, and 8.3 C.</li> <li><input type="checkbox"/> (If needed) 2 copies of the CC&amp;R Variance Request Form pursuant to Sections 7.6, 8.2 F and 8.5. A variance from Morgan County Ordinances also requires this form (See Section 7.6).</li> </ul>	<p><b>Plan Review Fee Schedule:</b></p> <p>\$500.00.          Landscape Plan Review to be submitted with House Plan review.</p>
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Submitted By \_\_\_\_\_  
 (Owner's Signature(s))

EXHIBIT "D"

WHITTIER ESTATES CC&R VARIANCE  
REQUEST FORM

Lot No. \_\_\_\_\_  
Plat No. \_\_\_\_\_

**Section 1: Owner Information**

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

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

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

Are you requesting a variance from the Morgan County codes and ordinances? \_\_\_\_\_.  
If you are, please describe in detail the specific nature of the variance sought (including the applicable Morgan County code section), and attach a copy of the completed Morgan County application for variance signed by you and any adjacent Lot Owners whose consent Morgan County 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 Morgan County codes or ordinances 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 Morgan County provision would result in exceptional practical difficulties to, or undue hardship upon, the Owner:

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

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

**Whittier Estates Architectural and Structural Control Committee:**  
(two signatures required)

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

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

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

Dated \_\_\_\_\_

cc: Board of Directors

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

**EXHIBIT "E"**

**WHITTIER ESTATES ARCHITECTURAL AND STRUCTURAL CONTROL  
COMMITTEE**

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

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

Re: Plans submitted for construction of a building and/or landscaping on Lot \_\_\_\_\_,  
Whittier Estates Plat \_\_\_\_\_; Plans received on \_\_\_\_\_, 20 \_\_\_\_

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 Morgan County requirements. 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 Morgan County and the State of Utah in the construction and landscaping of this home.

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.

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

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

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

Very truly yours,

**Whittier Estates Architectural and Structural Control Committee:**  
(two signatures required)

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Committee Member

---

Committee Member

---

Committee Member

cc: Board of Directors

**EXHIBIT "F" ASSOCIATION**

**BYLAWS [See Attached]**



BY-LAWS  
OF THE  
WHITTIER ESTATES HOMEOWNERS ASSOCIATION

**ARTICLE I - OFFICES**

The principal office of the WHITTIER ESTATES HOMEOWNERS ASSOCIATION (hereafter the "Association") is located at 778 E 5750 S South Ogden, UT 84405.

The Association may have other offices as the Board of Directors designates or as the business of the Association requires.

**ARTICLE II - DEFINITIONS**

As used herein, the terms "Parcels", "Assessment and Voting Unit(s)" or "Unit(s)", "Association", "Common Property(ies)", "Lot(s)", "Majority", "Member(s)", "Membership", "Owner(s)", "Person(s)", and "Property" are defined in that certain DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF WHITTIER ESTATES

**ARTICLE III - MEMBERS**

A. Membership. Every Owner shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot is the sole qualification for Membership in the Association. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, without limitation, Membership in the Association. As stated in the Declaration, owners of Alpha Parcels shall not be entitled to Membership in the Association or any other similar rights as a result of such ownership.

B. Suspension of Membership. If a Member is in default in the payment of any annual or special assessment levied by the Association, the voting rights of the defaulting Member may be suspended by action of the Board of Directors until the assessment has been paid in full. Voting rights of a Member may also be suspended for a period not to exceed 180 days for violation of any rules and regulations established by the Association or the Board of Directors of

the Association.

C. Voting Rights. Each Lot shall be entitled to one (1) Assessment and Voting Unit. When more than one Person is an Owner of a Lot, all of the Owners shall be Members but they shall collectively have only the vote of the Assessment and Voting Unit assigned to the Lot of which they are Owners. When more than one Person holds an interest in a Lot, all Persons shall be Members but in no event shall more than one (1) Assessment and Voting Unit assigned to a Lot be cast with respect to any Lot.

D. Annual Meetings. The annual meeting of the Members will be held on the second Tuesday in November of each year, for the purpose of electing directors and for the transaction of any other business that properly comes before the meeting. Nominations for director shall be made by the Board of Directors and may also be made from the floor at the time of the annual meeting. If the day fixed for the annual meeting is a legal holiday in the State of Utah, the meeting will be held on the next succeeding business day. If the election of directors does not occur at the annual meeting of the Members, or at its adjournment, the Board of Directors will cause the election to be held at a special meeting of the Members held as soon thereafter as practicable.

E. Special Meetings. Special meetings of the Members may be called by the Chairman of the Board of Directors, the President or by the Board of Directors, and must be called if there is a written request to hold a special meeting by Members holding not less than one-third (33.33%) of all Units entitled to vote.

F. Notice and Place of Meetings. Written notice to each member stating the place, date and time of any annual or special meeting and the purposes for which the meeting is called, will be delivered not less than ten (10) or more than fifty (50) days before the date of the meeting. The Board of Directors shall set the place, time, and except for annual meetings, the date of the meeting, by resolution.

G. Quorum. A Majority of the outstanding Assessment and Voting Units of the Association entitled to vote, represented in person or by proxy, will constitute a quorum at a meeting of Members. If less than a Majority of the outstanding Assessment and Voting Units are represented at the meeting, Members holding a Majority of the Assessment and Voting Units then present or represented at the meeting, without further notice, may adjourn the meeting to a future date, not less than 24 hours later, at which time a Majority of the Assessment and Voting Units present or represented by proxy shall constitute a quorum. The Members present at a duly organized meeting, including either a scheduled meeting at which a Majority is present or a meeting reconvened after adjournment of a scheduled meeting because of lack of

a quorum as provided herein, may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum present or represented.

H. Proxies. At all meetings of Members, a Member may vote by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. The proxy must be filed with the secretary or a director of the Association before or at the time of the meeting. No proxy will be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

I. Consents. Any action that can be taken at a meeting of Members may be taken without a meeting if consent in writing, setting forth the action taken, is signed by all Members entitled to vote on the matter.

#### **ARTICLE IV - BOARD OF DIRECTORS**

A. General Powers. The business and affairs of the Association will be managed by its Board of Directors. The Board of Directors shall have the power:

- (1) To adopt and publish, from time to time, rules and regulations governing the use of the Common Property;
- (2) To appoint and remove the members of the Architectural and Structural Control Committee as outlined in the Declaration;
- (3) To exercise for the Association all powers, duties and authority vested in or delegated to the Association not reserved to the members;
- (4) To employ managers, independent contractors and other employees and agents as they deem necessary, and to prescribe their duties;
- (5) To establish, levy and collect assessments from each Member to pay for all appropriate expenses of the Association, to issue certificates evidencing payment of assessments when requested by a Member (at the Member's expense), and to collect delinquent assessments and penalties and to create, record and foreclose the lien securing any assessments;
- (6) To pay all appropriate expenses of the Association;
- (7) To take other actions as the Board of Directors from time to time deems necessary to preserve and protect the interests of the Owners and/or the integrity and value of the Lots, the Common Property, and any Subdivision within the Property.

B. Number, Tenure and Qualifications. The number of directors of the Association is three.

At least two directors shall be Owners, or an owner, officer, employee, director, trustee, member, or general partner of an Owner which is a corporation, trust, limited liability company, or partnership. Each director will hold office until the next annual meeting of members and until his successor is elected and has qualified, or until removed, if removed pursuant to Section IV.D.

C. Quorum. Two directors constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if fewer than two directors are present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice and may reconvene such meeting and transact business at such time as a quorum is present.

D. Removal and Replacement. A director who ceases to be an Owner shall automatically cease to be a director at the same time such person ceases to be an Owner, if there are not two other Owners who are then directors. Any director may be removed from the Board, with or without cause, by a majority of the Members. Any vacancy occurring in the Board of Directors, whether by disqualification, removal, death, resignation or otherwise, may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy will be elected for the unexpired term of his predecessor in office.

E. Action Without a Meeting. Any action that can be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all Directors.

F. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any matter is taken will be presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as the Secretary of the meeting within thirty (30) days of the meeting.

G. Authority of Future Homes LLC Not with standing anything contained above to the contrary, Future Homes, LLC, a Utah limited liability company, the developer of Whittier Estates subdivision(s) and known as the Declarant in the Declaration; the "Declarant"), shall have the right, but not the obligation, to both appoint and remove all of the directors of the Association until the sale or transfer by Declarant of seventy five-percent (75%) of the Lots created in on or more Subdivisions upon the Property.

## ARTICLE V - OFFICERS

A. Number. The Association may, but shall not be required to, have officers, elected by the Board of Directors. Officers of the Association may include a President, one or more Vice Presidents, a Secretary and a Treasurer, and any other officers or assistant officers, including a Chairman of the Board of Directors.

B. Election and Term of Office. The officers, if any, will be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of the Members. If the election of officers is not held at said meeting, the election may be held as soon thereafter as practicable. Each officer elected will hold office until his or her successor is elected and has qualified, or until his or her death, or until he or she resigns or is removed.

C. Removal. Any officer or agent may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby. The removal will be without prejudice to the contract rights, if any, of the person removed. Election or appointment of an officer or agent will not of itself create contract rights.

D. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

E. Duties of Officers if and When Elected:

(1) President. The President is the principal executive officer of the Association and, subject to the control of the Board of Directors, supervises and controls all of the business and affairs of the Association. When present, the President presides at all meetings of the members and of the Board of Directors, unless there is a Chairman of the Board, in which case the Chairman presides. The President may sign any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing is expressly delegated by the Board of Directors, by these bylaws or by operation of law, to some other officer(s) or agent(s) of the Association; and in general performs all duties incident to the office of president and other duties prescribed by the Board of Directors.

(2) Vice President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice President performs the duties of the President, and when so acting, has all the powers of and is subject to all the restrictions upon the President. The Vice President performs other duties assigned him by the President or by the Board of Directors. If there is more than one Vice President, each Vice President will succeed to the duties of the President in order of rank as determined by the Board of Directors. If no rank has been determined, then each Vice President will succeed to the duties of the President in order of date of election, the

earliest date having the first rank.

(3) Secretary. The Secretary: (a) keeps the minutes of the proceedings of the meetings of the Members and of the Board of Directors in one or more books provided for that purpose; (b) sees that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) is custodian of the corporate records of the Association; (d) keeps the register of the post office address of each Member which shall be furnished to the Secretary by each Member; and (e) in general performs all duties incident to the office of the Secretary and other duties assigned him or her by the President or by the Board of Directors.

(4) Treasurer. The Treasurer: (a) has charge and custody of and is responsible for all funds and securities of the Association; (b) receives and gives receipts for moneys due and payable to the Association from any source whatsoever, and deposits all moneys in the name of the Association in banks, trust companies or other depositaries selected in accordance with the provisions of Article VI of these bylaws; and (c) in general performs all of the duties incident to the office of Treasurer and other duties assigned him or her by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer will give a bond for the faithful discharge of duties in a sum and with sureties determined by the Board of Directors.

#### **ARTICLE VI - CONTRACTS, LOANS, CHECKS & DEPOSITS**

A. Contracts. The Board of Directors may authorize any officers to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association. If there are no officers, the Board may so act on behalf of the Association by approval of at least two of the members of the Board and signature of at least two of the members of the Board on any contract or other instrument. The authority may be general or confined to specific instances.

B. Loans. No loans will be contracted on behalf of the Association and no evidences of indebtedness will be issued in its name unless authorized by a resolution of the Board of Directors. The authority may be general or confined to specific instances.

C. Checks, drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, will be signed by officers or agents of the Association and in the manner designated by resolution of the Board of Directors.

D. Deposits. All funds of the Association not otherwise employed will be deposited from time to time to the credit of the Association in interest-bearing accounts in banks, trust companies or other depositaries selected by the Board of Directors.

**ARTICLE VII - FISCAL YEAR** The fiscal year of the Association will be the calendar year.

**ARTICLE VIII - WAIVER OF NOTICE**

Unless otherwise provided by law, whenever any notice is required to be given to any Member or director of the Association under the provisions of these bylaws or under the provisions of the Articles incorporation or under the provisions of the Utah Revised Nonprofit Corporation Act, a waiver in writing, signed by the person or persons entitled to notice, whether before or after the time stated in the notice will be deemed equivalent to the giving of notice.

**ARTICLE IX - INDEMNIFICATION OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS,  
EMPLOYEES, FIDUCIARIES, AND AGENTS**

1. Indemnification of Directors. The Association shall indemnify any member or former member of the Board of Directors, Architectural and Structural Control Committee, or any other committee or subcommittee, or any officer or former officer of the Association against damages and expenses actually and necessarily incurred by such person in connection with the defense of any action, suit or proceeding in which the person is made a party by reason of being or having been a director, committee member, officer, employee or agent of the Association. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law. Provided, however, the Association shall only indemnify an individual if a determination has been made in accordance with the procedures set forth in Section 16-6a-906(2) of the Utah Revised Nonprofit Corporation Act that indemnification is in accordance with the following requirements:

- (A) Standard of Conduct. The Association shall determine that:
- (B) The individual's conduct was in good faith;
- (C) the individual reasonably believed that his or her conduct was in, or not opposed to, the Association's best interests; and
- (D) in the case of any criminal proceeding, the individual had no reasonable cause to believe that his or her conduct was unlawful.

2. No Indemnification in Certain Circumstances. The Association shall not indemnify an individual under this Article X:

(A) In connection with a proceeding by or in the right of the Association in which the individual was adjudged liable to the Association; or

(B) in connection with any other proceeding charging that the individual derived an improper personal benefit, whether or not involving action in the individual's official capacity, in which proceeding he or she was adjudged liable on the basis that he or she derived an improper personal benefit.

3. Indemnification in Derivative Actions Limited. Indemnification permitted under this Article X in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

4. Advance Payment of Expenses. Unless otherwise provided in the Articles of Incorporation, the Association may pay for or reimburse in advance of final disposition of any proceeding the reasonable expenses incurred by an individual who is a party to a proceeding because he or she is or was a director of the Association if (i) in accordance with the procedures and standards set forth in Section 16-6a-906(4) of the Utah Revised Nonprofit Corporation Act, an authorization of payment is made, and (ii) in accordance with the procedures of Section 16-6a-904 of the Utah Revised Nonprofit Corporation Act, a determination is made that the following has occurred:

(A) Written Affirmation. The individual has furnished to the Association a written affirmation of the individual's good faith belief that the individual has met the standard of conduct described in Article X of these Bylaws.

(B) Written Undertaking. The individual has furnished to the Association a written undertaking, executed personally or on the individual's behalf, to repay the advance if it is ultimately determined that the individual did not meet the standard of conduct (which undertaking must be an unlimited general obligation of the individual but need not be secured and may be accepted without reference to financial ability to make repayment).

(C) Factual Determination. A determination has been made that the facts then known to those making the determination would not preclude indemnification under Article X of these Bylaws.

5. Indemnification of Employees, Fiduciaries, and Agents. Unless otherwise provided in the Articles of Incorporation, the Association shall indemnify and advance expenses to any individual made a party to a proceeding because the individual is or was an employee, fiduciary, or agent of the Association to the same extent as to an individual made a party to a proceeding because the individual is or was a director of the Association, or to a greater extent, if not inconsistent with public policy, if provided for by general or specific action of the Board of



Directors.

6. Insurance. The Association may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, committee member, employee, fiduciary, or agent of the Association, or who, while serving as a director, officer, committee member, employee, fiduciary, or agent of the Association, is or was serving at the request of the Association as a director, officer, partner, trustee, committee member, employee, fiduciary, or agent of another foreign or domestic Association or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, fiduciary, or agent. Insurance may be procured from any insurance company designated by the Board of Directors, whether the insurance company is formed under the laws of the State of Utah or any other jurisdiction of the United States or elsewhere, including any insurance company in which the Association has an equity or any other interest through stock ownership or otherwise.

#### **ARTICLE – X AMENDMENTS**

These bylaws may be altered, amended or repealed and/or new bylaws may be adopted when approved: (a) by two thirds (2/3) of the members of the Board of Directors at any regular or special meeting or the Board of Directors, and (b) by the affirmative vote of seventy-five percent (75%) of the votes of the Members of the Association cast at a duly called meeting of the Members.

The above bylaws are certified to have been adopted by the Board of Directors of the

Association on March 9, 2017



When recorded, please mail to:

WHITTIER ESTATES HOMEOWNERS ASSOCIATION  
778 E 5750 S  
South Ogden, UT 84405

WHEREAS, as of the Effective Date, Declarant is the legal and beneficial owner of approximately 100% of the Lots (defined below) within that certain tract of land (the "Land") situated in Morgan County ("Morgan County"), State of Utah, as more fully described Exhibit "A" attached hereto and has the right to amend the Prior Declaration pursuant to Section 10 of the Prior Declaration;

WHEREAS, the Declarant has recorded the Whittier Estates (the "Plat") upon the Land in order to subdivide it into 4 phases of 45 +/- single-family residential Lots (a "Lot" or if more than one, "Lots"), according to the official plat thereof on file in the Official Records;

WHEREAS, the Declarant has subjected the Plat to that certain Amended and Restated

WHEREAS, pursuant to Section 7.10 of the Master Declaration, the Owner of each Lot has the right to submit and have approved by the Committee a Landscape Plan;

WHEREAS, water service to the Lots within the Plat shall be secured by the individual lot owner.

**Exhibit "G"**

**Copy of Recorded Subdivision Plat  
For**

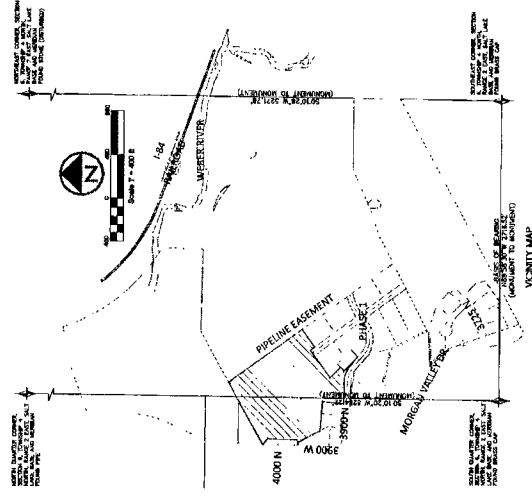
**Whittier Estates**

**[See Attached]**





**WHITTIER ESTATES PHASE 2**  
 LOCATED IN THE SOUTH HALF OF SECTION 6,  
 TOWNSHIP 4 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN  
 MORGAN COUNTY, UTAH  
 SHEET 1 OF 2



1. THE PLAT HAS BEEN PREPARED BY THE SURVEYOR AT THE REQUEST OF THE PROPERTY OWNERS AND IS NOT TO BE CONSIDERED AS A GUARANTEE OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.
2. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE PROPERTY AND HAS FOUND THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.
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**SURVEYOR'S CERTIFICATE**  
 I, the undersigned, being duly qualified and sworn, do hereby certify that the foregoing is a true and correct copy of the original plat on file in my office, and that the same has been duly recorded in the public records of the county of Morgan, State of Utah, in accordance with the provisions of the laws of this State relating to the recording of plats.

**BOUNDARY DESCRIPTION**  
 The boundary description of the land shown on this plat is as follows: ...

**NARRATIVE**  
 The survey was made by the undersigned on the 15th day of ...

**BASIS OF BEARINGS**  
 The bearings were taken by the undersigned on the 15th day of ...

**CONTRIBUTORS' ASSOCIATION**  
 The undersigned has been duly qualified and sworn as a surveyor ...

**LLC ACKNOWLEDGMENT**  
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**MORGAN COUNTY COUNCIL**  
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**MORGAN COUNTY ATTORNEY**  
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**MORGAN COUNTY ENGINEER**  
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**MORGAN COUNTY PLANNING COMMISSION**  
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**RECORDERS' OFFICE**  
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