

When Recorded, Please Return to:

Morgan County
Attention: County Attorney
48 West Young Street
Morgan, Utah 84050

Ent 111103 Bk 260 Pg 183
Date: 21-FEB-2008 3:35PM
Fee: \$149.00 Check
Filed By: BDN
BRENDA NELSON, Recorder
MORGAN COUNTY
For: NILSON HOMES

DEVELOPMENT AGREEMENT
FOR ASPEN MEADOWS PUD,
MORGAN COUNTY, UTAH

THIS DEVELOPMENT AGREEMENT FOR ASPEN MEADOWS, MORGAN COUNTY, UTAH (this "**Agreement**") is entered into as of this 9th day of January, 2008, by and between NILSON AND COMPANY, INC. dba NILSON HOMES, a Utah corporation ("**Developer**"), and MORGAN COUNTY, a political subdivision of the State of Utah, by and through its County Council (the "**County**").

RECITALS:

A. Developer owns or has the contractual right to acquire approximately 2.49 acres of land located in Morgan County, Utah, described on Exhibit "A" attached hereto and made a part hereof (the "**Property**"), on which Developer has proposed the development of a PUD in accordance with the site plan shown on page 07.01 of the Preliminary Plan Report (defined below) (the "**Site Plan**") and more particularly known as Aspen Meadows PUD.

B. Pursuant to a duly noticed public hearing on May 18, 2006, the County's Planning Commission voted to recommend to the County Council that the Property be rezoned from A-20 and RR-1 to CD (Central Development District).

C. Pursuant to a duly noticed public hearing on June 6, 2006, the County Council considered and adopted the recommendation of the County's Planning Commission and the Property was rezoned from A-20 and RR-1 to CD (the "**Zone Change**").

D. Pursuant to the County's Ordinance, the Developer submitted to the County, and after an appropriate public hearing on June 6, 2006 the County approved the proposed PUD for "Aspen Meadows", on September 5, 2006 (the "**Aspen Meadows Concept Plan**").

E. The CD Ordinance requires that Developer and County negotiate and adopt a development agreement which advances the policies, goals and objectives of the Morgan County General Plan (the "**General Plan**"), the Morgan County Land Use Management Code (the "**Land Use Code**"), and the CD Ordinance, and contributes to capital improvements, business growth, and development which substantially benefit the County.

03-ASPMI-0001 DO-0077-5351 TO 03-ASPMI-0028 DO-0077-5378

03-ASPMI-CA-NA DO-77-5379 (COMMON AREA)

03-ASPMI-CA-NA1 DO-0077-5380 ITO 03-ASPMI-CA-NA5 DO-0077-5384
(LIMITED COMMON AREA)

ALSO

F. Developer is willing to design and develop the Property in order to harmonize the use of the Property in accordance with the objectives of the General Plan, the Land Use Code and the CD Ordinance and to promote the long-range County development objectives and policies.

G. Developer and the County desire to address specific planning issues as set forth below and in the exhibits hereto and to clarify certain standards that will be applied in connection with the development of the Property.

H. The execution of this Agreement has been affirmatively recommended by the County Planning Commission and approved by the County Council based on specific findings of fact that the development of the Property in accordance with this Agreement, and the Preliminary Plan Report, is consistent with the goals, policies and objectives of the General Plan, is in harmony with the community character and that the use of the Property as contemplated by this Agreement, the Preliminary Plan Report, the CD Ordinance, and the General Plan is essential to the enjoyment of a substantial property right possessed by other property in the same district.

I. The County, acting pursuant to its authority under Utah Code Ann. (the "Utah Code") § 17-27a-101, et seq., and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the Property, and, in the exercise of its legislative discretion, has elected to approve this Agreement and the Preliminary Plan Report, including, without limitation, the density, setback and use standards set forth herein and therein, on this the 9th day of January, 2008.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter to be fully kept and performed, the parties hereby agree as follows:

1. **Zoning, Construction Drawings, and Plat Approval.**

1.1. **Re-Zoning of the Property.**

1.1.1. The County has amended the General Plan and the County's zoning maps to reflect the Zone Change, it being agreed by the County that all public hearings necessary for the implementation of the Zone Change have been accomplished prior to the date hereto. The County Council, after holding all necessary public hearings, has adopted the Aspen Meadows Concept Plan.

1.1.2. Simultaneously with the adoption of this Agreement the County Council has adopted, after holding all necessary public hearings, the provisions of that certain Preliminary Plan Report dated April 20, 2007 (the "**Preliminary Plan Report**"), which Preliminary Plan Report sets forth certain standards and requirements for the development of the Property. The Preliminary Plan Report is attached hereto as Exhibit "B". The County Council, after holding all duly noticed public hearings, has adopted this Agreement. Pursuant to the CD Ordinance, the Preliminary Plan Report and this Agreement constitute subdivision regulations and a CD zone amendment for the Property and supplement and amend the Aspen Meadows Concept Plan. The adoption of this Agreement by the County Council

constitutes the final approval of the CD zone change. To the extent of any inconsistencies between the Aspen Meadows Concept Plan, this Agreement and the Preliminary Plan Report, this Agreement and the attachments shall govern.

1.2. Planning Commission Preliminary Plat Approval. The County Planning Commission reviewed the preliminary Plat and the Preliminary Plan Report. Following an appropriate public hearing on April 5, 2007, the County Planning Commission recommended approval of the Aspen Meadows PUD by the County Council.

1.3. County Council Preliminary Approval of Plat. Following the recommendation from the County Planning Commission that a Plat be approved by the County Council pursuant to Section 1.2 above, such Plat shall be submitted to the County Council for approval. Developer shall be entitled to approval of the Plat provided that the Plat is complete and complies with this Agreement, the Preliminary Plan Report and all applicable federal, state and local laws, rules, regulations and ordinances. The County Council shall review the Plat for completeness, and conformity with this Agreement, all applicable federal, state and local laws, rules, regulations and ordinances and the Preliminary Plan Report. To the extent that such Plat is complete and consistent with the Preliminary Plan Report, this Agreement, the Land Use Code, and all applicable federal, state and local laws and ordinances, the County Council shall approve the Plat. The County Council shall hold all duly noticed public hearings required for the approval of such Plat under the Utah Code and the CD Ordinance, the Land Use Code and other applicable County ordinances; provided, however, nothing herein shall prevent the County Council in its discretion from holding any public hearings not required by applicable law. In the event the County Council determines that the Plat is not consistent with the Preliminary Plan Report and this Agreement, the County Council will provide Developer with a reasonably detailed description of any such inconsistencies, in which case Developer shall revise such Plat to remediate any such inconsistencies and resubmit such Plat to the County Council for approval pursuant to the process set forth above.

1.4. Final Plat Approval. Following the preliminary approval of the Plat by the County Council pursuant to Section 1.3 above, the County Council shall authorize Developer to submit a final Plat to the County Staff for review. The County Staff shall review a paper Plat for completeness and conformance to the preliminary approval of the Plat (including any conditions for approval) pursuant to the provisions of Section 1.3 above. If such Plat is complete and conforms to the preliminary approval, the County Staff shall authorize Developer to submit a mylar copy of the final Plat for approval. Developer shall be responsible for obtaining all required signatures on the mylar with the exception of the County Planning Commission and County Council. The signed mylar shall be placed on the agenda of the County Planning Commission for review, approval and signature. Following receipt of the final Plat signature from the County Planning Commission, the County Staff shall place the mylar and on the agenda for the County Council for signature and adoption. The final Plat will then be released to the Developer for recordation.

1.5. Building Permits. Following the recordation of the Final Plat, Developer is hereby authorized to sell units in accordance with State and local law. The County Staff will issue building permits in accordance with this Agreement, the Land Use Code and applicable federal, state and local laws, rules, regulations and ordinances. Building permits shall only be issued when required infrastructure for the Plat has been installed and inspected and approved by the County Engineer, which approval shall be limited to confirming that such infrastructure is completed in accordance with this Agreement and all applicable federal, state and local laws, rules, regulations and ordinances.

2. Approved Use, Density, General Configuration, and Development Standards Affecting Aspen Meadows.

2.1. Property Affected by this Agreement. The legal description of the Property contained within or that may be contained within boundaries of the development to be known as Aspen Meadows is attached and specifically described in Exhibit "A". No additional property may be added to this description for purposes of this Agreement except by written amendment to this Agreement executed and approved by the parties hereto.

2.2. Approved Use, Density, and General Configuration. Aspen Meadows consists of 28 single family attached townhome units on 2.49 acres. The townhomes are configured in (3) 6-plex buildings and (2) 5-plex buildings

2.3. Declaration of Covenants, Conditions, and Restrictions. Upon the recording of the Plat, Developer will caused to be recorded against the Property, that certain Declaration of Covenants, Conditions, and Restrictions for Aspen Meadows (the "**CC&Rs**") substantially in the form included in the Preliminary Plan Report (as the same may be amended, restated, supplemented or otherwise modified from time to time). The development and construction of the Property shall proceed pursuant to and consistent with the CC&Rs. The CC&Rs shall provide for a home owner's association (the "**HOA**") which shall maintain the Common Areas (as such term is defined in the CC&Rs) in accordance with the CC&Rs. At such time as Developer submits the Final Plat, Developer shall prepare a budget for the HOA showing the costs and expenses expected to be incurred by the HOA during the next succeeding three (3) year period (the "**HOA Budget**"). During the period that Developer owns more than twenty five percent (25%) of the units or lots upon which a dwelling unit shall be constructed, Developer shall contribute such amounts to the HOA as are necessary for the HOA to meet its obligations under HOA Budget. From and after the date that Developer owns twenty five percent (25%) or less of the lots upon which a dwelling unit shall be constructed, Developer shall only be required to pay to the HOA such amounts as are assessed by the HOA in accordance with the CC&Rs against the units owned by Developer. In no event shall the County be responsible or liable for the enforcement of the HOA.

2.4. Open Space. In connection with development of the Property, Developer shall preserve a portion of improved open space. The location of the open space shall be as set forth in Section 24.01 of the Preliminary Plan Report (the "**Open Space Plan**").

The open spaces shall be shown on the Plat and shall be maintained and owned by the HOA in accordance with the CC&Rs and the Plat.

2.4.1. Parks. A portion of the open space will be developed as a tot lot or kids playground. Said tot lot shall be developed by Developer substantially in accordance with the Aspen Meadows Concept Plan included on page 01.01 of the Preliminary Plan Report. The tot lot shall be owned and maintained by the HOA, and shall be limited to the use of the members and guests of the HOA. Upon the filing of the Plat, Developer shall convey the property for the tot lot to the HOA.

2.4.2. Trail. Those portions of the open space which are to be developed as trails shall be developed by Developer substantially as set forth in the Concept Plan which is included in Section 01.01 of the Preliminary Plan Report. The trail shown on the Concept Plan shall be developed in connection with the development of the Property. The HOA shall own the trail. The trail shall be maintained by the HOA, and, except as noted below, shall be limited to the use and enjoyment of the members of the HOA and their guests. So long as the Developer and the HOA are afforded the same or greater limitations on liability as set forth in the Utah Code § 57-14-101, et seq., the trail shall be open to the general public.

2.5. Height Restrictions. Each residential unit shall not exceed a height of thirty-five feet (35') measured from the lowest finished grade elevation to the ridge line of such unit.

2.6. Air Quality. All fireplaces installed in Aspen Meadows will be natural gas burning.

2.7. Night Sky. The development the Property shall at all times comply with the applicable provisions of the Land Use Code. Refer to Section 12.02 and 12.03 of the Preliminary Plan Report for information about the street lights.

2.8. Architectural Guidelines. Developer shall comply with all architectural guidelines set forth in the CC&Rs. Refer to Section 10.01 of the Preliminary Plan Report for an exterior rendering of the buildings.

2.9. Public and Private Partnership for Affordable Housing. Developer recognizes that the assurance of public benefits is a requisite component of a development agreement and Developer also acknowledges the County's need for moderate or affordable housing access as a public benefit. Developer will donate an amount equal to five percent (5%) of the value each lot to a County approved non-profit Housing Authority, Housing Trust, or other appropriate agency for the sole purpose of supporting the establishment of affordable housing at other locations within Morgan County. Said donation shall be made by the Developer at the time the Developer sells a finished unit. For the purpose of this agreement, the value of each lot shall be \$50,000. Therefore, Developer shall donate \$2,500 per unit sold in Aspen Meadows.

3. **Vested Rights and Reserved Legislative Powers.**

3.1. **Vested Rights.** Subject to Sections 3.2, 6.2 and 6.3, Developer shall have the vested right to develop and construct the Property in accordance with the zoning, subdivision, development, growth management, transportation, environmental, open space, and other land use plans, policies, processes, ordinances, and regulations (together, the "**Land Use Laws**") in existence and effective on the date of final approval of this Agreement, including the conditional approval existing under the CD Ordinance (the "**Vesting Date**"), and applying the terms and conditions of this Agreement and the Preliminary Plan Report.

3.2. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the County's future exercise of its police power in enacting generally applicable Land Use Laws after the Vesting Date. Notwithstanding the retained power of the County to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer under this Agreement based upon policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change affecting the vested rights of Aspen Meadows shall be of general application to all development activity in the County; and, unless the County declares an emergency, Developer shall be entitled to notice and an opportunity to be heard with respect to the proposed change and its applicability to Aspen Meadows under the compelling, countervailing public policy exception to the vested rights doctrine. Developer acknowledges that the County cannot control changes in federal or state laws, rules and regulations that might affect a developer's right to develop property, including, without limitation, state and federal environmental laws.

4. **Further Approvals.**

4.1. **Subdivision, Plat Approval and Compliance with Design Conditions.** Subject to Section 3.1, Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve it from the obligation to comply with all applicable requirements necessary for approval and recordation of the Plat as set forth in Sections 1.2 and 1.3 above. Developer has a vested right to have the Plat approved, subject to the Developer's satisfaction of the requirements of Sections 1.2 and 1.3 hereof.

4.2. **Timeliness.** Where further approvals from the County are necessary, the County agrees to cooperate in processing requests for such approvals.

5. **Public Improvements.**

5.1. **Phase Improvements.** All public improvements located within Aspen Meadows shall be constructed and installed at the Developer's sole expense in accordance with the Plat (including the approved construction drawings and specifications), the Preliminary Plan Report and this Agreement.

5.2. Roadways. Streets within the Property shall be developed in accordance with the Aspen Meadows Plat and the Preliminary Plan Report and shall be constructed prior to or concurrent with development of adjacent lots or parcels and in accordance with the Land Use Code. All streets in Aspen Meadows shall be owned and maintained by the HOA. Developer shall not be required to expand, operate and/or maintain any roadways outside of the Property. The County shall not be required to maintain or remove snow from any private roadways or trails.

5.3. Sewer, Water, and Storm Drainage. Developer shall install sanitary sewer, culinary water supply systems, and surface water drain systems for the entire Property. In addition, Developer shall cause to be brought to the Property such other utilities as are customary and necessary for the use of a dwelling unit. All such installation shall be done according to the reasonable and customary design and construction standards of the utility providers and the County Engineer and shall be installed underground to the extent reasonably possible. Developer has obtained all necessary will-serve letters from the local water, sewer and utility providers. Copies of the will-serve letters are included in the Preliminary Plan Report.

6. Miscellaneous Provisions.

6.1. Term of this Agreement. The rights of the Developer under this Agreement shall continue for a period of five (5) years following the date of its adoption by the County Council, unless the Agreement is earlier terminated or its term modified by written amendment to this Agreement. Notwithstanding the foregoing, any indemnification given by Developer under this Agreement shall survive the term of this Agreement.

6.2. Construction Standards. Construction standards for the development of the infrastructure for the Property shall be governed by the most current edition of the Land Use Code, the Utah State Building, Plumbing, Mechanical, Electrical Codes, and the International Building Code as enforced by the County as the primary governing agency, at the time of application for building permit. No part of this Agreement shall be deemed to supersede these standards. Developer shall be required to comply with all conditions necessary for the insurance of a building permit, including, without limitation, any bonding or guaranty requirements generally applied by the County.

6.3. Minor Development Changes. In the event Developer desires to make minor changes to the approved Plat, plans and specifications and construction drawings which have been approved in accordance with the provisions of Sections 1.2 and 1.3 hereof, following the commencement of the development of the Property in accordance with the provisions of this Agreement and the Preliminary Plan Report, Developer shall submit such changes to the County Engineer for approval. So long as such changes are consistent with this Agreement, and applicable federal, state and local laws, rules, regulations and ordinances, including, without limitation, the provisions of Section 6.2 hereof, and the Preliminary Plan Report, the County Engineer shall approve of such changes. In the event the County Engineer determines that such changes are inconsistent with the provisions of this Agreement or the Preliminary Plan Report, Developer must

seek the approval of such changes from the County Planning Commission and the County Council.

6.4. Sidewalks. The County agrees to issue building permits to Developer prior to the installation of the sidewalks. Developer shall install the sidewalk adjacent to a building before occupancy of any unit in said building.

7. **Successors and Assigns.**

7.1. Binding Effect. This Agreement shall be binding on the successors and assigns of the Developer in the ownership or development of any portion of Aspen Meadows, and the successors and assigns of the County.

7.2. Assignment.

7.2.1. Developer may from time to time and without the consent of the County, convey any or all of the Property in its entirety to a Successor Developer, together with the rights granted by this Agreement to develop the Property so transferred or conveyed in accordance with this Agreement; provided, however, such assignment shall in no way relieve Developer of its obligations under this Agreement and Developer shall remain jointly and severally liable with Developer's assignee to perform all obligations under the terms of this Agreement which are specified to be performed by Developer. Developer must request the written consent of the County of an assignment of Developer's interest in the Agreement. In such cases, the proposed assignee shall have the qualifications and financial responsibility necessary and adequate, as required by the County, to fulfill the obligations undertaken in this Agreement by Developer. The County shall be entitled to review and consider the ability of the proposed assignee to perform, including financial ability, past performance and experience. After review, if the County gives its written consent to the assignment, Developer shall be released from its obligations under this Agreement for that portion of the Property for which such assignment is approved.

7.2.2. Nothing in this Section 7 shall prohibit Developer, without the consent of the County, from selling residential lots or dwelling units in the ordinary course of the business of Developer, or prohibit the Developer from selling a portion of Aspen Meadows to one or more occupants for the purpose of erecting, constructing, maintaining, and operating (or causing to be erected, constructed, maintained, and operated) improvements thereon consistent with the requirements of the Preliminary Plan Report and this Agreement. The provisions of this Section shall not prohibit the granting of any security interests for financing the acquisition and development of dwelling units, or residential lots, within Aspen Meadows, subject to Developer complying with the Preliminary Development Report, this Agreement and applicable federal, state and local laws, rules, regulations and ordinances.

7.2.3. Liability of Assignee. In the event of a transfer of all or any portions of Aspen Meadows and upon assumption by the transferee of the Developer's obligations under this Agreement, the transferee shall be fully substituted as the Developer under this Agreement, and shall agree to be subject to all of the conditions and restrictions to which the Developer and the Property are subject to.

8. **General Terms and Conditions.**

8.1. Agreement to Run With the Land. Except as specifically provided below, this Agreement shall be recorded in the Office of the Morgan County Recorder against the Property and shall be deemed to run with the land, shall encumber the same, and shall be binding on all successors in the ownership of any portion of the Property. Notwithstanding the foregoing, this Agreement shall not be deemed a covenant running with the land with respect to the enforcement of the zoning and land use regulations imposed hereby for any portion of the Property that would otherwise be exempt from compliance with zoning and land use regulations generally under applicable federal or state laws, rules and regulations by reason of the ownership thereof. No party hereto shall, by reason of the covenants, conditions and restrictions established hereunder, have authority to take action forbidden by Utah Code §17-27a-305.

8.2. Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of implementing long-range planning objectives, obtaining public benefits, and protecting any compelling, countervailing public interest while providing reasonable assurances of continuing vested development rights.

8.3. State and Federal Law. The parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal laws, rules and regulations. The parties further agree that if any provision of this Agreement becomes, in its performance, inconsistent with state or federal laws, rules and regulations or is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with State or Federal law, as the case may be, and the balance of this Agreement shall remain in full force and effect.

8.4. Relationship of Parties and No Third Party Rights. This Agreement does not create any joint venture, partnership, undertaking, or business arrangement between the parties hereto nor any rights or benefits to third parties. It is specifically understood by the parties that: (a) Aspen Meadows is a private development; (b) County has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property unless the County accepts the improvements in connection with a dedication plat or deed approval; and (c) Developer shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

8.5. Laws of General Applicability. Where this Agreement refers to laws of general applicability to Aspen Meadows, this Agreement shall be deemed to refer to other developed and subdivided properties in the County.

8.6. Integration. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and integrates all prior conversations, discussions, or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed and approved by the parties hereto.

8.7. No Third Party Beneficiary. The provisions of this Agreement are and will be for the benefit of Developer and the County only and are not for the benefit of any third person or entity.

8.8. Confidentiality. This Agreement and all exhibits and attachments are subject to the provisions of the Government Records Access Management Act, Utah Code Ann. § 63-2-101 et seq. as amended.

8.9. Events of Default.

8.9.1. Upon the happening of one or more of the following events or conditions Developer or County, as applicable, shall be in default ("Default") under this Agreement:

8.9.1.1. A warranty, representation or statement made or furnished by Developer under this Agreement is intentionally false or misleading in any material respect when it was made.

8.9.1.2. A determination by County made upon the basis of substantial evidence that Developer has not complied in good faith with one or more of the material terms or conditions of this Agreement.

8.9.1.3. Any other act or omission, either by County or Developer, which (i) violates the terms of this Agreement, or (ii) materially interferes with the intent and objectives of this Agreement.

8.9.2. Procedure Upon Default.

8.9.2.1. Upon the occurrence of Default, the non-defaulting party shall give the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said Default must be satisfactorily cured. In the event that the Default cannot reasonably be cured within thirty (30) days, the defaulting party shall have such additional time as may be necessary to cure such default so long as the defaulting party takes action to begin curing such default within such thirty (30) day period and thereafter proceeds diligently to cure the default. After proper notice and expiration of said thirty (30) day or other appropriate cure period without cure, the non-defaulting party may declare the other party to be in breach of this Agreement and may take the action specified in Section 8.10.

8.9.2.2. Any Default or inability to cure a Default caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, regulations, or controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other similar causes beyond the reasonable control of the party obligated to perform an obligation under this Agreement, shall excuse the performance of such obligation by such party for a period equal to the period during which any such event prevented, delayed or stopped any required performance or effort to cure a Default.

8.10. Breach of Agreement. Following the occurrence of a Default by Developer, after the expiration of all application notice and cure periods set forth in Section 8.9 above, County may declare Developer to be in breach of this Agreement and County (i) may elect to withhold approval of any or all building permits or certificates of occupancy applied for in the Project, but not yet issued; and (ii) shall be under no obligation to approve or to issue any additional building permits or certificates of occupancy for any building within the Project until Developer has cured such Default. In addition to such remedies, either County or Developer may pursue whatever additional remedies it may have at law or in equity, including injunctive and other equitable relief.

8.11. Enforcement. The parties to this Agreement recognize that County has the right to enforce its rules, policies, regulations, ordinances, and the terms of this Agreement by seeking an injunction to compel compliance, or by withholding building permits or any other lawful means. In the event Developer violates the rules, policies, regulations or ordinances of County applicable to the Property or otherwise violates the terms of this Agreement, County may, without declaring a Default hereunder or electing to seek an injunction, upon given thirty (30) days written notice to Developer specifying the nature of the alleged violation and, when appropriate, the manner in which said violation must be satisfactorily cured (or such longer period as may be reasonably required by Develop so long as Developer has commenced the cure of such violation within such thirty (30) day period and has thereafter diligently proceeded to cure such default), take such actions as shall be deemed appropriate under law until such violations have been rectified by Developer, including the withholding of building permits. County shall be free from any liability arising out of the proper exercise of its rights under this paragraph.

8.12. No Waiver. Failure of a party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the County Council taken with the same formality as the vote approving this agreement, no officer, official or agent of County has the power to amend, modify or later this Agreement or waive any of its conditions as to bind County by making any promise or representation not contained herein.

8.13. Attorneys Fees. Should any party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, and whether or not an action has actually commenced, the prevailing party shall be entitled to receive from the other party thereto reimbursement for all attorney's fees and all costs and expenses. Should any judgment or final order be issued in any proceeding, said reimbursement shall be specified therein.

8.14. Notices.

All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

If to the County: Morgan County Council
P.O. Box 886
48 West Young Street
Morgan, Utah 84050
Attn: County Attorney
Fax No.: (801) 945 6006

With a copy to: Morgan County Council
48 West Young Street
Morgan, Utah 84050
Attn: County Council Chairman
Fax No.: (801) 945 6006

If to Developer: Nilson Homes
5617 South 1475 East
Ogden, Utah 84403
Attn: Bruce L. Nilson
Fax No.: (801) 399 0802

With copy to: Nilson Homes
5617 South 1475 East
Ogden, Utah 84403
Attn: Jed Iverson
Fax No.: (801) 399 0802

8.9 Effectiveness of Notice. Any notices sent by certified mail shall be effective on the date on which such notice is sent. Any party may change its address or notice by giving written notice to the other party in accordance with the provisions with this section.

8.10 Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

[Signatures Appear on Following Page]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

DEVELOPER:

NILSON & COMPANY, INC. dba NILSON HOMES,
a Utah Corporation

By:



Name: Bruce L. Nilson

Title: President

COUNTY:

COUNTY OF MORGAN

By:



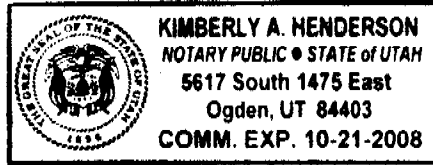
Name: Bruce Sanders

Title: Council Chairperson

Attest:


County Recorder Clerk

STATE OF UTAH)
)
:SS.
)
COUNTY OF WEBER)

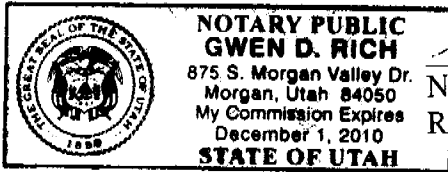


The above instrument was acknowledged before me by Bruce L. Nilson, the President of Nilson and Company, Inc. dba Nilson Homes, a Utah Corporation, this 7th day of January 2008.

Kimberly A. Henderson
Notary Public
Residing in Ogden Utah

STATE OF UTAH)
)
:SS.
)
COUNTY OF MORGAN)

The above instrument was acknowledged before me by Bruce Sanders, the County Council Chair of the County of Morgan, this 9 day of Jan, 2008.



Gwen D. Rich
Notary Public
Residing in 12-1-10

DEVELOPMENT AGREEMENT

EXHIBIT "A"

(Property Legal Description)

BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS LOCATED SOUTH 89°58'59" WEST 308.44 FEET AND NORTH 290.44 FEET FROM THE CENTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN (BASIS OF BEARING IS SOUTH 00°05'39" WEST 2646.97 FEET FROM THE NORTHEAST CORNER TO THE EAST QUARTER CORNER OF SAID SECTION.) AND RUNNING; THENCE NORTH 04°17'33" WEST 7.47 FEET TO A POINT OF CURVATURE TO A 60.50 FOOT RADIUS CURVE TO THE LEFT; THENCE 88.15 FEET ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 83°28'53", (CHORD BEARS NORTH 46°01'59" WEST 80.56 FEET.) TO A POINT OF TANGENCY; THENCE NORTH 87°46'26" WEST 1.92 FEET; THENCE NORTH 0°18'14" WEST 95.32 FEET; THENCE NORTH 87°20'32" EAST 39.07 FEET; THENCE NORTH 67°00'42" EAST 69.23 FEET; THENCE NORTH 35°31'49" EAST 25.85 FEET; THENCE NORTH 2°39'28" WEST 80.07 FEET; THENCE SOUTH 87°20'32" WEST 2.38 FEET; THENCE NORTH 2°39'28" WEST 77.56 FEET TO THE SOUTH LINE OF OLD HIGHWAY ROAD; THENCE ALONG SAID SOUTH LINE NORTH 87°07'55" EAST 286.50 FEET TO THE CENTERLINE OF DRY CREEK; THENCE ALONG SAID CENTERLINE SOUTH 8°27'15" WEST 369.26 FEET; THENCE SOUTH 86°54'7" WEST 279.49 FEET TO THE POINT OF BEGINNING.

CONTAINS 188,378 SQ. FT. - 2.49 ACRES.

DEVELOPMENT AGREEMENT

EXHIBIT "B"

(Preliminary Plan Report)

[See Attached.]

On file at the Morgan County
Community Development Office

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS**

of

**ASPEN MEADOWS AT MOUNTAIN GREEN
a Planned Unit Development**

Dated this 21st day of February, 2008

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ASPEN MEADOWS AT MOUNTAIN GREEN,
A Planned Unit Development

THIS DECLARATION is made this 21st day of February, 2008, by Nilson & Co., Inc., a Utah corporation, hereinafter referred to as "Declarant".

RECITALS:

- A. Declarant is the record Owner of certain real property in the County of Morgan, State of Utah which is more particularly described as follows:

See Exhibit "A" attached hereto.

- B. It is anticipated that various improvements will be made to the parcel so as to enable its use and operation as a planned unit development.
- C. Declarant desires, by filing this Declaration, to impose upon the real property constituting the Project and all the improvements now or hereafter constructed thereon mutually beneficial restrictions under a general plan of improvement and operation for the benefit of the Project and the Owners thereof.
- D. Declarant intends to sell and convey to various persons the fee title to the individual Lots, and improvements constructed thereon, subject to the covenants, conditions, restrictions, and limitations herein set forth.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I
Definitions

Unless the context clearly indicates otherwise, certain terms used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article I.

- 1.01 "*Assessments*" shall have the meaning assigned to it in Article IX herein.

1.02 "Association" shall mean and refer to ASPEN MEADOWS AT MOUNTAIN GREEN OWNERS ASSOCIATION, INC., a Utah non-profit corporation, its successors and assigns.

1.03 "Board of Directors" or "Board" shall mean the governing board of the Association which is appointed or elected in accordance with this Declaration and the Articles of Incorporation and the Bylaws of the Association.

1.04 "Bylaws" shall mean the Bylaws of the Association.

1.05 "Common Area" shall mean all real property (including the improvements thereon) owned by the Association for the common use and enjoyment of the Owners, including the Roadways. The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall constitute all portions of the Project, except the Lots.

1.06 "Common Expense" shall have the meaning assigned to it in Article 9.04 herein.

1.07 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities, and other personal property within the Project for the use and benefit of all Owners and all furniture, furnishings, equipment, facilities, and other real or personal property acquired in accordance with this Declaration by the Association for the use and benefit of all Owners. Common Facilities shall be deemed to be part of the Common Area except as otherwise expressly provided for in this Declaration.

1.08 "Declarant" shall mean Nilson & Co., Inc., a Utah corporation.

1.09 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for Aspen Meadows at Mountain Green, a Planned Unit Development, Dated February 21, 2008.

1.10 "Lien" shall have the meaning assigned to it in Section 10.03(b) herein.

1.11 "Lot" shall mean and refer to any one of the numbered plots of land within the boundary of the Parcel as such are shown upon and designated on the Plat for private ownership and individually numbered and are intended to be used and occupied by a single family, together with additional numbered plots of land contiguous to the Parcel as shown upon and designated upon subsequently-recorded plats.

1.12 "Lot Number" shall mean and refer to the number which designates a Lot on the Plat.

1.13 "Mortgage" shall mean any first mortgage, first deed of trust, or other security instrument which constitutes a first lien by which a Lot or any part thereof is encumbered.

1.14 "Mortgagee" shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the Lot of any Owner is encumbered or (ii) any successor to the interest of such person under such Mortgage.

1.15 "Owner" shall mean any person or entity or combination thereof, including the Declarant, who, according to the official records of the County Recorder, Morgan County, State of Utah, which are maintained for such purpose, is the Owner of fee simple title to any Lot. The term "Owner" shall not refer to any Mortgagee unless such Mortgagee has acquired title for other than security purposes.

1.16 "Parcel" shall mean the real property, as more particularly described in Paragraph A of the Recitals above, which is the subject of this Declaration and the Plat.

1.17 "Plat" shall mean that certain subdivision plat entitled Aspen Meadows at Mountain Green, a Planned Unit Development, which plat has been recorded in the official records of the County Recorder, Morgan County, State of Utah, which are maintained for such purpose, which Plat shall identify and describe all easements which exist on the Property.

1.18 "Project" shall mean all areas within the Parcel, including the Lots and Common Area, and any and all improvements constructed thereon which are the subject of this Declaration and the Plat.

1.19 "Regular Assessment" shall have the meaning assigned to it in Section 9.04 herein.

1.20 "Residential Unit" shall mean each individual single family residence, including garages, carports, patios, or other such similar facilities, which are constructed, or shall be constructed, upon each respective Lot within the Project.

1.21 "Roadways" shall mean that portion of the Common Area consisting of the streets within the Parcel for the use and benefit of the Owners as such are identified and depicted on the Plat.

1.22 "Rules and Regulations" shall have the meaning assigned to it in Section 8.04 herein.

1.23 "Special Assessment" shall have the meaning assigned to it in Section 9.05 herein.

ARTICLE II

Submission and Division of Project

2.01 *Submission to Act.* The Declarant hereby submits the Parcel, the Lots, the Common Area, the Residential Units, and all other improvements now existing or hereafter made in or upon the Parcel to the provisions of this Declaration and the Plat. Each and every portion of the Project is and shall hereafter be held, conveyed, devised, mortgaged, encumbered, leased, rented, occupied, improved, and otherwise used as a Planned Unit Development to be known as Aspen Meadows at Mountain Green. All of the Project is, and shall hereafter be, subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement for the Parcel. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a

burden and a benefit to the Declarant, Declarant's successors and assigns, and to any person or entity acquiring or owning an interest in the real property and improvements comprising the Project, and the heirs, devisees, personal representatives, successors, and assigns of any such person or entity. This submission is made subject to all patent reservations and exclusions, all easements and rights-of-way of sight or record, an easement for each and every pipe, line, cable, wire, utility line, or similar facility which presently does, or in the future may, traverse or partially occupy the Parcel and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

2.02 *Division Into Lots and Common Area.* The Project is hereby divided into twenty-eight (28) Lots, each consisting of a fee simple interest in a portion of the real property comprising the Parcel as said portion is defined as set forth in the Plat. All portions of the Project not designated as Lots shall constitute the Common Area which shall be owned by the Association for the benefit of all Owners in accordance with the provisions of this Declaration.

2.03 *Expansion of Project.*

(a) *Additional Property.* At any time within ten (10) years of the filing of an Amended Declaration, Declarant may, in its absolute discretion and without the consent or participation of any Owner, expand the Project from time to time by filing an amendment hereto adding all or any portion of certain contiguous and abutting real property situate in the County of Morgan, State of Utah, (the "Expanded Property" or "Expanded Parcel").

(b) *Supplemental Declarations and Supplemental Maps.* Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Morgan County, Utah, no later than ten (10) years from the date this Declaration is recorded in said office, a supplement or supplements to this Declaration containing a legal description of the site or sites for new Lots, together with a supplemental Plat or Plats containing the same information with respect to the new Lots as was required on the original Plat with respect to the initial Lots. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion;

(c) *Expansion of Provisions.* In the event of such expansion, the provisions used in this Declaration shall be expanded to encompass and refer to the Project as so expanded and reference to the Amended Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, as expanded, by use of the forms of description set forth herein, with additional references to the supplemental Declarations and the supplemental Plats;

(d) *Declaration Operative on New Lots.* The new Lots shall be subject to all the terms and conditions of the Amended Declaration and any supplemental Declaration, and the Lots therein shall be subject to ownership with all the incidents

pertaining thereto as specified herein, upon filing the supplemental Plat and supplemental Declaration in the office of the Morgan County Recorder;

(e) *Improvements, Liens, and Consent.*

(i) All improvements on the Expanded Property to be added shall be substantially complete before such Expanded Property is added to the Project;

(ii) Liens arising in connection with the Declarant's ownership of, and construction of, improvements upon the Expanded Property to be added must not adversely affect the rights of existing Lot Owners or the priority of first mortgages on the Lots in the existing Project. All taxes and other Assessments relating to such Expanded Property covering any period prior to the addition of the Expanded Property must be paid or otherwise satisfactorily provided for by the Declarant;

(f) *Restrictions and/or Limitations.* There shall be no restrictions or limitations as to what portion or portions of Expanded Property may be added to the Project. Portions of Expanded Property may be added without regard to time (except as provided at Section 2.03(a) above) or boundaries. No Assessments are made with regard to the locations of any improvements that may be made on any portion of the Expanded Property; other improvements that will or will not be made on any portion of the Expanded Property will be substantially identical to the improvements on the land originally within the Project and types, sizes, and facilities within any portion of the Project;

(g) *Liability Insurance.* In the event of expansion, Declarant shall purchase, at its expense, a liability insurance policy in an amount to cover any liability to which Owners of previously-sold Lots might be exposed. This policy shall be endorsed "as Owners' interests might appear."

ARTICLE III

Nature and Incidents of Ownership

3.01 *Separate Ownership.* Each Lot, together with the Residential Unit and any other improvements constructed thereon, is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, occupied, improved, and otherwise used in accordance with the provisions of this Declaration.

3.02 *Use and Occupancy.* Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Area and the exclusive right to use and enjoy said Owner's Lot.

3.03 *Exterior of Residential Units.* The Association shall keep the exterior of the Residential Units, including without limitation, exterior walls, roofs, gutters, drain spouts, all exterior building surfaces, and any and all other exterior improvements to the Lot in a sanitary condition and in a state of good repair. All such maintenance and repair shall be for the purpose of maintaining said Residential Units in a manner consistent with existing design, materials, colors, and other such items then in use on other Residential Units within the Project unless different materials shall have been previously approved in writing in accordance with the provisions of Section 3.06 hereof. In the event that any Residential Unit should develop an unsanitary condition or fall into a state of disrepair due to the willful or negligent conduct, or lack of conduct, of the Owner of such Residential Unit, the Association shall have the right at the expense of the Owner, and without liability to the Owner for trespass or otherwise, to enter upon said Owner's Lot and correct or eliminate said condition at the Owner's expense.

3.04 *Interior of Residential Units.* Each Owner of a Residential Unit shall, at the Owner's expense, keep the interior of such Residential Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all interior redecorating and painting which may at any time be necessary to maintain the good appearance of such Residential Units. Except to the extent that the Association is protected by insurance against damage, the Owner shall repair all damages to the Residential Unit or Lot caused by the act, negligence or carelessness of the Owner or that of any tenant, subtenant, member of the Owner's family or of the family of any tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work as determined and approved in writing by the Association. In addition to decorating and keeping the interior of the Residential Unit in good repair, the Owner shall be responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges and other fixtures that may be in or connected with the Residential Unit.

3.05 *Maintenance of Lots.* The Association shall be responsible to keep all Lots, including, without limitation, all trees, shrubs, grounds, and lawns, in a sanitary condition and in a state of good repair, free from all accumulations of refuse, rubbish, or abandoned articles of any kind.

3.06 *Maintenance of Culinary and Sewer Water Laterals.* The association shall maintain, repair and, as necessary, replace those culinary and sewer water laterals located on Owner's Lot.

3.07 *Common Area Maintenance.* The Association shall be responsible to keep the Common Area in a state of good repair and maintenance, including all detention basins, storm drains, fencing, play areas and Common Area appurtenances, free from all damage and accumulations of snow, refuse, rubbish, and other inappropriate materials of any kind. Notwithstanding the foregoing, the Association may, from time to time, delegate this responsibility to each respective Owner by written notice, so long as such delegation shall be made to all Owners at the same time.

3.08 *Architectural Control.*

(a) No building or other structure on any Lot shall be commenced, erected, or maintained, nor shall any exterior addition to or change (including painting) or alteration therein be made until the Plans and Specifications showing the nature, kind, shape, height, colors, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and topography by the Board or by an architectural control committee composed of three (3) or more representatives appointed by the Board. In the event said Board or its designated committee fails to approve or disapprove such design and location within sixty (60) days after said Plans and Specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. Any and all construction, improvements or alterations shall meet all requirements of Morgan County.

(b) No fence or fences of any nature whatsoever shall be constructed, placed upon, or maintained on any Lot or any portion thereof without the express prior written approval of the Board or the architectural control committee in accordance with the provisions of this Section 3.08.

(c) Additional minimum architectural standards are as follows:

(i) the exterior finish of the front elevations shall be a combination of brick, rock, stucco siding, cement siding, or other durable material approved by the architectural control committee. All roofing shingles shall be asphalt shingles;

(ii) all eaves, soffits and fascia shall be constructed of aluminum or cement fiberboard;

(iii) landscaping shall be as outlined in the landscaping plan approved by Morgan County at the time of filing of the final plat.

3.09 *No Subdivision.* No Owner shall cause a Lot or Residential Unit to be divided in any manner so as to permit the permanent occupancy and ownership thereof by more than one family, and any documents purporting to convey any portion of a Lot or Residential Unit shall be void and of no effect unless a transfer shall be approved in writing in accordance with the provisions of Section 3.09.

3.10 *Party Walls.* Each wall which is built as part of the original construction of a Residential Unit within the Project and placed on the dividing line between two Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section 3.09, the general rules of law regarding Party Walls and liability for property damaged due to negligence or willful acts or omissions shall apply thereto. The term Party Wall as used in this section shall refer to and

include all structural components thereof, including the foundation thereof; plumbing and electrical components located within the Party Wall; trusses, shingles and other roof components; and any and all other such items normally required for the construction and use of a Party Wall. Specific provisions with respect to such Party Walls within the Project shall be as follows:

(a) the cost of reasonable repair and maintenance of a Party Wall shall be shared by each Owner who makes use of the Party Wall in proportion to such Owner's use. No change to the exterior or structural elements of a Party Wall may be made without the written consent of all other Owner's having an interest in such Party Wall;

(b) if a Party Wall is destroyed or damaged by fire, or other casualty, any Owner who has used the Party Wall may restore it, and if any other Owner thereafter makes use of the Party Wall, each such Owner shall contribute to the cost of the restoration in proportion to such Owner's use without prejudice, however, to the right of any such Owner to call for a larger contribution from other Owner's under any rule of law regarding liability for negligent or willful acts or omissions;

(c) notwithstanding any other provisions of this Section 3.09, an Owner whose negligent or willful act causes the Party Wall to be exposed to the elements, shall bear the whole cost of repairing any such exposure and of furnishing the necessary protection against such Owners;

(d) right of any Owner to contribution from any other Owner under this Section 3.09 shall be appurtenant to the land and shall pass to such Owner's successors-in-title;

(e) in the event of any dispute arising concerning the Party Wall, or under the other provisions of this Section 3.09, each Party to such dispute shall chose one (1) arbitrator and such arbitrators shall chose an additional arbitrator and the decision of such arbitrators shall be by a majority of all arbitrators so selected and such decision shall be binding upon the Parties to the dispute.

ARTICLE IV

Title to Lots and Common Area

4.01 *Title to Lots.* Title to a Lot within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

4.02 *Title to Common Area.* Title to the Common Area within the Project shall be held in the name of the Association and is subject to the rights of any Owner to the non-exclusive use of the Common Area in any manner that does not hinder or encroach upon the rights of others and is not

contrary to the provisions of this Declaration and to any Rules and Regulations promulgated by the Association for the use thereof. All Owners within the Project acknowledge that the ownership of the Common Area by the Association is in the best interest of the Owners and that Morgan County will not be responsible for the Common Area, now, or at any future date.

4.03 *Inseparability.* Every devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

4.04 *No Partition.* The Common Area shall be owned by the Association, and no Owner may bring any action for partition thereof.

4.05 *Separate Mortgages by Owners.* Each Owner shall have the right separately to mortgage or otherwise encumber his or her Lot. No Owner shall attempt to, or shall have the right to, mortgage or otherwise encumber the Common Areas or any part thereof. Any mortgage or any encumbrance of any Lot within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure through private power of sale, judicial foreclosure, or otherwise.

4.06 *Separate Taxation.* Each Lot in the Project shall be assessed separately for all taxes, Assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. For purposes of assessment, the valuation of the Common Area shall be assessed separately from the Lots. No forfeiture or sale of any Lot or any Residential Unit constructed thereon for delinquent taxes, Assessments, or other governmental charges shall divest or in any way affect title to any other Lot.

4.07 *Mechanic's Liens.* No labor performed or material furnished for use in connection with any Lot or Residential Unit constructed thereon with the consent, or at the request of, an Owner or his or her agent or subcontractor shall create any right to file a statement of mechanic's lien against a Lot of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Area unless such work shall have been performed upon the express written consent of the Association and the labor performed or material furnished shall have been provided directly for the improvement, repair, or construction of the Common Area.

4.08 *Description of Lot.* Each respective Lot shall be legally described for all purposes by using the applicable Lot number as established and described on the Plat. Every contract for the sale of a Lot and every other instrument affecting title to the Lot within the Project may describe the Lot by its identifying number or symbol as indicated on the Plat. Such description will be construed to describe the Lot and incorporate all the rights incident to ownership of a Lot within the Project and all of the limitations on such ownership as such ownership is described in this Declaration and/or the Articles of Incorporation and Bylaws of the Association, whether or not such rights are expressly set forth within such instruments.

ARTICLE V
Easements

5.01 *Right to Ingress, Egress, and Enjoyment.* Each Owner shall have the right to ingress and egress over, upon, and across the Common Area and shall have the right of easement and enjoyment in and to the Common Area which shall be appurtenant to and pass with the title to every Lot subject to the terms and conditions of said easements as herein set forth.

5.02 *Delegation of Use.* Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Area and any recreational facilities located thereon to the members of his or her family and his or her tenants and shall be deemed to have delegated said rights to contract purchasers who reside on said Owner's Lot.

5.03 *Easement for Completion of Project.* Declarant shall have a transferable easement over and on the Common Area for the purpose of completing construction of the Project and improvements therein as shown on the Plat and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing such easement, Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

5.04 *Easement for Temporary Use by Declarant.* Declarant, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors, and other authorized personnel, reserves for a period of five (5) years following the date of recordation of this Declaration an exclusive easement in gross in, over, and through the Common Area for the purposes of (i) marketing and selling the Lots; (ii) displaying signs; and (iii) showing the Lots. The use of such easement shall not interfere with or diminish the rights of Owners to use and occupy each respective Owner's Lot or interfere with the use and occupancy of the Common Area.

5.05 *Easements Deemed Created.* All conveyances of a Lot within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided for herein even though no specific reference to such easements appears in any such conveyance.

5.06 *Easement for Maintenance of Lots.* The Association, its agents, employees, or subcontractors, shall have the right of easement over and across each Lot, but not to any portion of the interior of any Residential Unit, for the purpose of maintaining the Lot in accordance with the provisions of Section 3.05 hereof, together for the purpose of maintaining, repairing or replacing, as necessary, any and all land-drain laterals that may traverse said Lots.

ARTICLE VI
Restrictions on Use

6.01 *Residential Uses.* All Lots are intended to be used for single family residential housing and are restricted to such use. No Residential Unit shall be used for business or commercial

activities; provided, however, that nothing herein shall be deemed to prevent (i) Declarant, the Association, or its duly-authorized agents from using any Units owned by the Declarant or the Association as sales models; or (ii) any Owner or his or her duly-authorized agent from renting or leasing his or her Residential Unit from time to time.

6.02 *No Noxious or Offensive Activity.* No noxious, offensive, or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. No automobile or other vehicle shall be parked on a street within the Project or at any other location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts.

6.03 *Restrictions on Animals.* No animals other than household pets in a reasonable number shall be kept or allowed in any part of the Project. Whenever a pet is allowed to leave the Lot of its Owner, it shall be on a leash or some other appropriate restraint. Each Owner shall be responsible to keep any and all such household pets confined to said Owner's Lot.

6.04 *Prohibition of Damage and Certain Activities.* Except with the prior written consent of the Association, nothing shall be done or kept in any Residential Unit or upon any Lot which would result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in any Residential Unit which would increase the rate of insurance on the Project or any part thereof over that which, but for such activity, would be paid. Nothing shall be done or kept in any Residential Unit, upon any Lot, or upon the Common Area, or upon any part of the Project which would be in violation of any statute, ordinance, regulation, rule, permit, or other validly-imposed requirement of any governmental authority. No damage to, or waste of, the Common Area or Common Facilities or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each such Owner shall indemnify and hold harmless the Association and the other Owners against all loss resulting from any such damage or waste caused by such Owner, his or her family guests, tenants, licensees, or invitees.

6.05 *Rules and Regulations.* Each Owner and any person or persons occupying a Lot or using any facility within the Project shall comply with each and every provision of the Rules and Regulations governing use of the Project as such Rules and Regulations may from time to time be adopted, amended, or revised by the Association pursuant to Section 8.04 herein.

6.06 *Construction Exemption.* During the construction of any permitted structures or improvements, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that, during the course of such construction, nothing shall be done which will result in a violation of said provisions, covenants, conditions, or restrictions upon completion of the construction.

6.07. *Garbage, Refuse and Debris.* All trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate thereon. All containers for the storage or disposal of such materials shall be kept in a clean and sanitary condition, and shall be stored in the garages of each Owner. Such containers may be placed for collection not more than twelve (12) hours prior to the scheduled collection date and shall be removed from the view of the general public and stored in a reasonably prompt manner after collection.

6.08. *Signs.* No sign of any kind shall be displayed to the public view from any Lot or from the Common Area without the approval of the Board of Directors except (1) one sign of customary and reasonable dimensions advertising a Lot for sale, lease or rent displayed from a window of a Residential Unit, and (2) such signs as may be used by Declarant or its assignees for the purpose of selling Lots.

6.09. *Right to Lease.* The Board of Directors may require a minimum lease term and may limit the number of times a Residential Unit may be leased per year. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, Bylaws and the Restrictions and Rules and any lease or rental agreement shall be in writing and be expressly subject to the Declaration and any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement.

ARTICLE VII The Association

7.01 *The Association.* The administration of this Project shall be through the ASPEN MEADOWS AT MOUNTAIN GREEN OWNERS ASSOCIATION, INC., a Utah non-profit corporation, which has been organized and will be operated to perform the functions and provide the services contemplated in this Declaration. Said Association shall operate in accordance with the laws of the State of Utah, and with the Articles of Incorporation of the Association and the Bylaws of the Association which have been adopted in accordance therewith. A true copy of the duly-adopted Bylaws of the Association shall be available for inspection and copying by any Owner during regular business hours at the offices of the Association.

7.02 *Membership.* Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by said Owner. Each Membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association, and any devise, conveyance, or disposition of a Lot shall be construed to be a devise, conveyance, or other disposition, respectively, of that Owner's membership in the Association and all rights appurtenant thereto. No person or entity other than an Owner may

be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

7.03 *Board of Directors.* The Association shall be governed by a Board of Directors as the same shall be established and defined in the Bylaws of the Association. The Board of Directors shall initially consist of persons appointed by the Declarant. At the time of the first annual meeting of the Members, the Members (including Declarant) shall elect, in accordance with the Bylaws, a Board of Directors replacing the initial Board of Directors as defined in the preceding sentence. From and after the first election of the Board of Directors by the Members, not less than one of the Directors shall be elected solely by the votes of the Members other than Declarant pursuant to the election procedures set forth in the Bylaws.

7.04 *Votes.* Each Owner shall be entitled to one (1) vote for each Lot owned. If a membership is jointly held, all or any holders of the joint membership may attend any and all meetings of the Members of the Association, but such holders of the joint membership must act unanimously to cast the one (1) vote relating to their joint membership.

7.05 *Classes of Membership.* The Association shall have two (2) classes of voting membership, as follows:

(a) *Class A.* Class A Members shall consist of all Owners, except Declarant, and each Class A Member shall be entitled to one vote for each Lot owned;

(b) *Class B.* Class B Members shall consist of the Declarant, and each Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the first to occur of the following events:

(i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(ii) seven (7) years after date of recording this Declaration.

7.06 *Amplification.* The provisions of this Article VII may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however:

(a) no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration;

(b) in the event of a lack of a Quorum comprised of fifty-one percent (51%) of the outstanding votes at a regular or special meeting of the Owners called to

increase (or decrease) the Regular Assessment or a Special Assessment, another special meeting shall be called by sending notice of said meeting by certified mail stating the intent thereof and providing a minimum of fourteen (14) days written notice. At the subsequent special meeting, the Quorum shall consist of those Owners present and a majority vote of the Owners attending shall be sufficient to constitute an increase (or decrease) to the Regular Assessment or any Special Assessment.

7.07 *Power of Attorney and Amendments.* Each Owner makes, constitutes, and appoints the Association the true and lawful attorney in said Owner's name, place, and stead to make, execute, sign, acknowledge, and file with respect to the Project such amendments to this Declaration and the Plat as may be required by law or by vote taken pursuant to the provisions of this Declaration.

7.08 *Membership Upon Expansion.* Upon the expansion of the Project to include more Lots, each Lot and the Owner thereof shall enjoy membership and a vote in the Association as though originally included in this Declaration.

ARTICLE VIII Certain Rights and Obligations of the Association

8.01 *The Common Area.* The Association, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management, control, operation, and maintenance of the Common Area, including all improvements thereon (including the Common Facilities), and shall keep the same in a good, clean, attractive, safe, and sanitary order and repair. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund. All Owners within the Project acknowledge that the ownership of the Common Area by the Association is in the best interest of the Owners and that Morgan County will not be responsible for the Common Area, now, or at any future date.

8.02 *Miscellaneous Goods and Services.* The Association may obtain and pay for out of the Common Expense Fund the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may also obtain or pay for out of the Common Expense fund legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Association may acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Area and insurance, bonds, and other goods and services common to the Lots and necessary to implement the intent of this Declaration.

8.03 *Property Acquisition.* The Association may acquire (by purchase, lease, or otherwise), hold and dispose of real, personal, and mixed property of all types for the use and benefit of all Owners. The costs of acquiring all such property, including Common Facilities, shall be paid

for out of the Common Expense Fund and all proceeds from the disposition of such property shall be part of the Common Expense Fund.

8.04 *Rules and Regulations.* The Association may make reasonable Rules and Regulations governing the use of the Common Area, Common Facilities, and Roadways; provided, however, that such Rules and Regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall send by first class U.S. mail, postage prepaid, to each Owner, at the address set forth in the Register of Owners established in the Bylaws, a copy of all such Rules and Regulations, all amendments thereto and any rescissions thereof. Such Rules and Regulations shall take effect fifteen (15) days after adoption by the Association. The Association or any aggrieved Owner may initiate and prosecute appropriate legal proceedings against an offending Owner to enforce compliance with such Rules and Regulations or to recover damages caused by non-compliance therewith as may be permitted by law. In the event the Association shall initiate any such legal proceedings, the Association shall be entitled to recover from the offending Owner costs and expenses incurred by the Association in connection with such proceedings, including court costs and reasonable attorney's fees both before and after judgment.

8.05 *Creation of Easements.* The Association may, without vote or consent of the Owners or of any person, grant or create, on such terms as it deems advisable, reasonable utility and similar easements over, under, across, or through the Common Area which may be determined by the Association to be reasonably necessary.

8.06 *Implied Rights.* The Association may exercise any right or privilege given to it expressly by this Declaration or by law and every other right or privilege reasonably implied from the existence of any right, privilege, or duty given to it herein or reasonably necessary to effectuate any such right, privilege, or duty.

8.07 *Manager.* The Association may, by written contract, delegate in whole or in part to professional managers such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any manager retained by the Association shall be paid for with funds from the Common Expense Fund. The written contract by which the manager shall be engaged shall:

- (a) authorize and obligate the manager to perform such duties and obligations as the Association intends for the manager to perform;
- (b) provide for the compensation to be paid to the manager;
- (c) provide for a term of not more than three (3) years, except that such provision shall not be construed to prohibit the execution of a new agreement with the same manager upon the completion of such term;
- (d) be subject to termination by the Association as follows:

(i) at any time, for cause, upon the vote of two-thirds (2/3) of all members of the Board of Directors;

(ii) at any time, with or without cause, if requested by affirmative vote of at least fifty-one percent (51%) of the total votes of the Association;

(e) provide that the manager may resign only after giving the Association written notice of its intended resignation at least ninety (90) days prior to the effective date thereof; and

(f) provide that, in the event that a dispute shall arise concerning the provisions of the contract, such dispute shall be committed to arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

8.08 *Powers of the Association.* Notwithstanding the powers of the Association as set forth in this Article VIII, neither the Association nor the Manager as delegee of the Association's powers and duties shall enter into a contract with a third person or entity whereby such person or entity shall furnish goods or services for the Project for a term longer than one (1) year unless authorized by at least fifty-one percent (51%) of the Owners, except for:

(a) the management agreement;

(b) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Service Commission; provided, however, that the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(c) prepaid casualty and/or liability insurance policies not to exceed three (3) years duration, provided that the policy permits short rate cancellation by the insured; or

(d) a lease of Common Facilities or other equipment determined to be reasonably necessary for effective operation of the Project.

8.09 *Financial Statements.* The Association shall cause financial statements for the Association to be prepared at least annually, or at more frequent intervals if required by a vote of the Owners, and cause copies thereof to be made available to all Owners. Such statements shall be prepared in accordance with normally-accepted accounting procedures and presented in such a manner as to fairly and accurately reflect the financial condition of the Association. The financial books of the Association shall be available for inspection by any Owner or his or her duly-authorized representative at any time during the normal business hours of the Association at such place as the books shall be normally maintained.

ARTICLE IX
Assessments

9.01 *Assessments.* The Association shall have the right to charge to, and collect from, each Owner of a Lot within the Project said Owner's *pro rata* share of all sums which are expended on behalf of all Owners and all sums which are required by the Association to perform or exercise the functions, duties, rights, and powers of the Association under this Declaration, the Articles of Incorporation of the Association, or the Bylaws adopted in accordance with the provisions thereof. All such sums which are charged and collected for such purposes shall be collectively referred to herein as "Assessments." The term "Assessments" shall also include each and every annual Regular Assessment and each and every Special Assessment levied in accordance with the provisions hereof.

9.02 *Agreement to Pay Assessments.* Declarant, for each Lot owned by it and each Owner, for each Lot owned, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all Assessments made for the purposes provided for in this Declaration. Such Assessments shall be fixed, established, and collected from time to time as provided in this Article.

9.03 *Commencement of Assessments.* Regular Assessments shall commence against all Lots on the first day of the first calendar month following recordation of a conveyance instrument transferring the first Lot within the Project to an Owner.

9.04 *Regular Assessments.* A Regular Assessment shall consist of each Owner's *pro rata* share of the estimated annual total of: (1) the amount which is reasonably anticipated to be expended on behalf of all Owners, and (2) the sum of all amounts which are required to perform or exercise the rights, powers, and duties of the Association during each fiscal year. A Regular Assessment shall be computed and levied annually against each Lot in accordance with the provisions hereof as follows:

(a) *Common Expense.* Each Regular Assessment shall be based upon an advance estimate of the Association's cash requirements to provide for payment of all estimated expenses arising out of, or connected with, maintenance and operation of the Common Area as set forth in Section 8.01 hereof, the maintenance of the Lots as set forth in Section 3.05 hereof, and for the provision of utility services (to the extent not separately metered or billed), and all other common items to the Project for the fiscal year for which the Regular Assessment is being made. Such estimated expenses may include, among other things, and without limitation, the following: expenses of management; governmental taxes, Special Assessments, and real property taxes attributable to the Common Area; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Area and the Lots; cost of capital improvements to Common Areas; wages for Association employees, including fees for a manager, if any; utility charges for utility services provided to the Common Area; legal and accounting fees; any

deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners or by reason of this Declaration. Such shall constitute the estimated Common Expense, and all funds received from Assessments under this Section 9.04 shall be part of the Common Expense Fund;

(b) *Apportionment.* Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among, and assessed to, each Lot on a *pro rata* basis. Notwithstanding the foregoing, the Declarant shall not be responsible to pay an Assessment otherwise attributable to each Lot which is unimproved, or improved but unoccupied, to which Declarant retains ownership.

(c) *Notice and Payment of Regular Assessment.* Each Regular Assessment shall be made on a January 1 through December 31 fiscal-year basis. On or before December 1 each year, the Association shall give written notice to each Owner as to the amount of the Regular Assessment with respect to his or her Lot for the fiscal year commencing on January 1 immediately following such date. Failure of the Association to give timely notice of any Regular Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor shall such failure affect the liability of the Owner of any Lot for payment of such Regular Assessment. Each Regular Assessment shall be payable in one of two options as follows:

(i) the full Regular Assessment may be paid in full prior to the 25th day of January of each respective fiscal year; or

(ii) the Regular Assessment shall be paid in monthly installments due on the first day of each month commencing January 1, and shall be subject to a late charge of Ten Dollars (\$10) for payments received after the fifth (5th) day of each month. After the fifth (5th) day of each month, all unpaid portions of any Regular Assessments then due shall bear interest at the rate of eighteen percent (18%) per annum until paid;

(iii) any monthly Assessment, or a prorata portion thereof, shall become immediately due and payable upon the acquiring of title to a Lot by Owner. The prorata portion to be paid by the Owner shall be payable pursuant to either of the options set forth in this Paragraph 9.04 (c).

(d) *Inadequate Funds.* In the event that the Common Expense Fund proves inadequate during any fiscal year for whatever reason, including non-payment of Owner's Assessments, the Association may either borrow funds and/or levy additional Assessments in accordance with the procedure set forth in Section 9.05,

except that the vote therein specified shall not be necessary. If the Association elects to levy such an additional assessment, then no such assessment or Assessments levied in any fiscal year may, in the aggregate, exceed five percent (5%) of the Common Expense Fund for that fiscal year without the vote or written consent of a majority of voters other than the Declarant;

(e) *Increases in Regular Assessments.* The amount of Regular Assessment shall not exceed twenty percent (20%) of the Regular Assessment amount for the immediately-preceding fiscal year unless a majority of Owners other than Declarant shall consent to a greater increase by vote or written consent pursuant to the procedures set forth in Section 7.06(b).

9.05 *Special Assessments.* Subject to Section 7.06 (b), in addition to the Regular Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, other than Declarant, Special Assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in the same manner as other Assessments. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners, provided that no payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of such Special Assessments shall bear interest at the rate of one and one-half percent (1.5%) per month from the date such portion become due in accordance with the above-mentioned notice until paid. All funds received from Assessments under this Section 9.05 shall be part of the Common Expense Fund.

9.06 *Maintenance and Reserves.* The Association shall be responsible to maintain an adequate reserve for the maintenance, repairs, and replacement of those elements of the Common Area, including Common Furnishings, that must be repaired or replaced on a periodic basis, including the inspection, maintenance, repair, and replacement of all storm drains, catch basins, piping, culverts, curbs and gutters, Roadways, and any and all such improvements. Said reserve funds shall be separately maintained in an interest-bearing account for the benefit of the Association.

9.07 *Lien for Assessments.* All sums assessed to the Owner of any Lot within the Project pursuant to the provisions of this Article IX, together with interest and penalties thereon as provided herein, shall be secured by a Lien on such Lot in favor of the Association as more particularly set forth in Section 10.03(b).

9.08 *Personal Obligation of Owner.* The amount of each and every Regular Assessment and Special Assessment against any Lot within the Project shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing

the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of his or her Lot, or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney's fees both before and after judgment.

9.09 *Statement of Account.* Upon payment of a reasonable fee not to exceed Twenty-Five Dollars (\$25.00), and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth the following: (i) the amount of the unpaid Assessments, if any, with respect to such Lot; (ii) the amount of the current Regular Assessment and Special Assessment, if any, and the date each such Assessment shall become or became due; and (iii) any credit for advance payments or prepaid items, including, without limitation, the Owner's share of prepaid insurance premiums. Such written statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.10 *Personal Liability of a Purchaser.* Subject to the provisions of Section 9.08, a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid Assessments against such Lot; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments which were due and payable up to the date of the grant or conveyance.

ARTICLE X **Enforcement of Restrictions**

10.01 *General.* Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended, modified or adopted from time to time. The Association shall have full power to enforce compliance with this Declaration, the Bylaws, and Rules and Regulations in any manner provided for by law or in equity, including, without limitation, the right to bring an action for damages, an action to recover sums due, an action to enjoin a violation or specifically enforce the provisions thereof. Said action or actions may be maintainable by the Association, or in a proper case, by an aggrieved Owner. In the event of any action by the Association to recover Assessments or other amounts due hereunder, or to enforce the provisions hereof, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection with such action, including court costs and reasonable attorney's fees. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, as the same may be lawfully amended or supplemented, with respect to the Association and/or the Lots within the Project, shall be enforceable by the Declarant, by the Association, or by an Owner through a proceeding for prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to any and all other rights now or hereafter provided by law for enforcement of the provisions of this Declaration, the Articles of Incorporation,

the Bylaws, the Rules and Regulations, and decisions and resolutions of the Association adopted pursuant thereto.

10.02 *Interest.* Unless otherwise specifically set forth in this Declaration, all sums payable hereunder by an Owner shall bear interest at the rate of eighteen percent (18%) per annum from the due date, or if the amount due has been advanced or incurred by the Association or any other Owner pursuant to authorization contained in this Declaration, interest shall begin to accrue on such amounts ten (10) days after repayment is requested in writing by said Association or Owner.

10.03 *Certain Specific Enforcement Powers.* In amplification of, and not in limitation of, the general powers specified in Section 10.01 above, the Association shall have the following rights and powers:

(a) *Suspension of Privileges.* If any Owner shall be in breach of this Declaration, the Bylaws, or Rules or Regulations, including, but not limited to, the failure of such Owner to pay any Assessment on or before the due date thereof, subject to the limitations hereinafter set forth in this paragraph, the Association may suspend the Owner's right to occupy the Common Area and to use Common Facilities and the right of such Owner to participate in any vote or other determination provided for herein. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Board present at a special meeting of the Board duly called and held for such purpose. No suspension under this paragraph shall be effective until written notice has been given to the Owner of the suspension, the reasons therefor, and the actions that must be taken by said Owner to have all suspended privileges reinstated. If such suspension of privileges is based on the failure of an Owner to pay Assessments when due, the suspended privileges of an Owner shall be reinstated automatically at such time as the Owner shall have paid to the Association, in cash or by cashier's or certified check, all amounts past due as of the date of such reinstatement. If such suspension of privileges is based on any act or omission other than the failure to pay Assessments or any other amounts due hereunder when due, no such suspension shall be made except after a meeting of the Board of Directors of the Association at which a quorum of the Board is present, duly called and held for such purpose. Written notice of such meeting shall be given to the Owner whose privileges are being sought to be suspended for any act or omission other than the failure to pay Assessments at least ten (10) days prior to the holding of such meeting. Such Owner shall be entitled to appear at such meeting and present his or her case or provide a written response to the Board no later than the time scheduled for such meeting as to why privileges should not be suspended;

(b) *Enforcement by Lien.* If any Owner shall fail or shall refuse to make any payment of any Assessments when due, the amount thereof shall constitute an encumbrance on the entire interest of the said Owner's Lot against which the Assessment has been levied. All of the rights and powers associated with such encumbrance on an Owner's Lot shall be collectively referred to herein as a "Lien."

To evidence a Lien for sums assessed pursuant to Article IX, the Association shall prepare a written Notice of Lien setting forth the amount of the Assessment or Assessments, the due date thereof, the amount or amounts remaining unpaid, the name of the Owner, a legal description of the Owner's Lot, and a statement that the amount of the Lien shall also include all costs and expenses, including attorney's fees, incurred in preparation, perfection, and enforcement of the Lien. Such Notice of Lien shall be signed and acknowledged by a duly-authorized agent of the Association and shall be recorded in the office of the County Recorder of Morgan County, State of Utah. No Notice of Lien shall be recorded until there is a delinquency in the payment of an Assessment. Such Lien may be enforced by sale or foreclosure of the Owner's interest in said Owner's Lot by the Association or its duly-authorized agent. Such sale or foreclosure shall be conducted in accordance with the provisions of Utah law applicable to the exercise of the powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by the laws of the State of Utah. The Lien may be satisfied and released upon payment to the Association, in cash or certified funds, the amount set forth in the Lien, all of the Association's expenses and attorney's fees incurred in the preparation, perfection, and enforcement of the Lien, and any Assessments against the Lot which may have become due since the date of said Lien. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Lot.

10.04 *Priority of Lien.* Upon recordation of the Notice of Lien, the Lien provided for herein shall be a charge or encumbrance upon the Owner's interest in the Lot prior to all other liens and encumbrances, recorded or unrecorded, except only tax and Special Assessment liens on the Lot in favor of any municipal assessing or taxing district and any encumbrances on the interest of the Owner recorded prior to the date when such Notice of Lien is recorded which, by law, would be a lien prior to subsequently-recorded encumbrances.

ARTICLE XI Roadways

11.01 *Limited Use.* Subject to the limitations herein set forth, the Roadways shall be and remain for the use and benefit of all Owners as Roadways for access, ingress and egress to and from the Lots and other improvements on the Project, unless and until the Owners unanimously agree to change such use. No change of use of the Roadways shall be effective unless and until there shall be recorded in the Office of the County Recorder of Morgan County, State of Utah, a written instrument duly executed and acknowledged by all Owners agreeing to such change in use.

11.02 *Easements and Rights.* Every Owner shall have a non-exclusive right and easement to use and enjoy the Roadways for access, ingress and egress to and from the Lots and Common Area, except that this grant of easement shall not be construed to grant to any Owner any right of easement for any purpose across the Lot of any other Owner. The right and easement granted hereby shall be appurtenant to and shall pass with title to each and every Lot subject to:

(a) the right of the Association to levy and collect Regular Assessments and Special Assessments as provided herein;

(b) the right of the Association to make reasonable Rules and Regulations governing the use of the Roadways pursuant to the authority granted herein;

(c) the right of the Association to dedicate or transfer all or any part of the Roadways to any public agency, authority or utility subject to such conditions as may be agreed to by the Owners and subject to the Mortgagee's right provided for herein.

11.03 *Delegation of Use.* Any Owner may delegate to the members of his family and to his guests, invitees or licensees, in accordance with the reasonable Rules and Regulations promulgated by the Association, such Owner's right to use and enjoy the Roadways in a manner consistent with the provisions hereof. Any Owner may also assign or delegate to his tenants and shall be deemed to have assigned to any contract purchaser who resides upon the Lot, also in accordance with the reasonable Rules and Regulations promulgated by the Association, such Owner's right and easement to use and enjoy the Roadways.

11.04 *Management of Roadways.* The Association, subject to the rights and duties of Owners as set forth in this Declaration, shall be singularly responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Private Roadways, unless and until such responsibility is transferred to, and accepted by, a public agency, authority or utility in accordance with the provisions hereof. The maintenance, repairs, replacement and upkeep of the Roadways shall include, but is not limited to, plowing of snow, requiring adequate seal coat, patching and overlay.

11.05 *Dedication of Roadways.* Subject to Section 11.04, the Association shall have the right to dedicate or transfer all or any part of the Roadways to any public agency, authority or utility for continued use as access, ingress and egress to and from the Lots and Common Area and subject to such conditions as may be agreed to by the Association and subject to the approval of the Owners and to the rights of Mortgagees as provided for herein, together with the approval of the public agency, authority or utility. Any such dedication shall be approved by the Owners the rights of Mortgagees as provided for herein. Any such dedication shall be approved by a vote of not less than two-thirds (2/3) of all Lot Owners at a meeting called for such purpose and no such dedication or conveyance shall in any way limit any Owner's right to access to the Lots or Common Area or be effective unless and until there shall be recorded in the office of the County Recorder for Morgan County, State of Utah, a written instrument duly executed and acknowledged by the Owners of not less than two-thirds (2/3) of all such Lots agreeing to such dedication or conveyance.

11.06 *Hold Harmless Agreement.* Morgan County shall be irrevocably held harmless in the event that emergency or other public vehicles cannot gain access to Lots, Common Area, Owner's, invitees or other Parties within the Project or otherwise meet the necessary needs of the foregoing because of inadequate maintenance of Roadways within the Project.

11.07 *Fire Lanes; Parking Restrictions.* All Roadways within the Project shall be designated a fire lane. Parking on the Roadways and the aprons leading to covered parking is not allowed. All Common Area Parking shall be for licensed, operable vehicles only. No parking area shall be used of recreational vehicles or of trailers, mobile homes, boats, snow mobiles or campers which have been detached from trucks. No repairs to automobiles or trucks or changing oil on any vehicle, trailer or boat may be performed in any parking or common area.

ARTICLE XII Insurance

12.01 *Types of Insurance.* The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) *Fire and Casualty Insurance.* The Association shall obtain a policy or policies of insurance on the Common Area and Common Facilities in such amounts as shall provide for coverage equal to at least eighty percent (80%) of the aggregate full insurable value for replacement of the Common Area and Common Facilities and all improvements located thereon in the event of damage or destruction from casualty against which such insurance is obtained. Said insurance shall also cover the Units from "stud out". Such insurance shall be written on the "All Risk" special form. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such deductible provisions as, in the Association's opinion, are consistent with good business practice;

(b) *Public Liability and Property Damage Insurance.* The Association shall obtain a broad form of comprehensive general liability insurance coverage to provide adequate protection against liability for personal injury and property damage in amounts not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence with regard to injury or property damage. Coverage shall include, without limitation, liability in connection with the ownership, operation, maintenance, and other use of the Project and the facilities located therein;

(c) *Workmen's Compensation Insurance.* The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance if there are employees of the Association in the amounts and in the forms now or hereafter required by law during any and all time periods that the Association shall have employees, as defined by law or regulation;

(d) *Fidelity Bond.* The Association may purchase, in such amounts and in such forms as it deems appropriate, a fidelity bond to cover against dishonesty of employees, destruction, theft or disappearance of money or forgery.

12.02 *Form of Insurance.* Insurance coverage relating to the Project, insofar as possible, shall be in the following form:

(a) *Casualty Insurance.* Casualty insurance shall be carried in a form or forms naming the Association as the insured. Each policy shall provide a standard, noncontributory mortgagee clause, as needed, in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. Each policy shall also provide that it cannot be cancelled by the insurance company until after ten (10) days' prior written notice is first given to the Association and to each Mortgagee which has requested such notice in writing. The Association shall furnish or cause to be furnished a certificate of insurance coverage to each Owner and to each Mortgagee requesting the same;

(b) *Directors and Officers Insurance.* Directors and Officers insurance shall protect the Association and its Officers and Directors against liability for acts or omissions of the Association in connection with the ownership, operation, maintenance, or other use of the Project or any part thereof. Each such policy shall provide that it cannot be cancelled by the insurance company until after ten (10) days' prior written notice to the Association, its Officers and Directors, to the Declarant, and to each Mortgagee who has requested such notice in writing;

(c) *Policies.* The Association shall make every effort to secure insurance policies that will provide that any "no other insurance" clause in the policy or policies on the Project shall exclude individual Owner's policies from consideration.

12.03 *Insurance Proceeds.* The Association shall receive the proceeds of any casualty insurance payments made under policies obtained and maintained by the Association pursuant to this Article. To the extent that reconstruction or repair is required herein, all proceeds of such insurance shall be made available as a fund for such reconstruction or repair and shall be disbursed by the Association as provided in Article XIII. To the extent that reconstruction or repair is not required herein and there is a determination that the Project shall be not rebuilt, the proceeds shall be disbursed by the Association to the Owners as provided in Article XIII.

12.04 *Additional Coverage.* The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may deem appropriate from time to time.

12.05 *Adjustment and Contribution.* Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

12.06 *Owner's Own Insurance.* Notwithstanding any other provisions of this Article, each Owner shall be responsible to obtain insurance at his or her own expense providing coverage upon

his or her Lot, Residential Unit, and any and all other improvements located thereon, his or her personal property, for his or her personal liability, and covering such other risks as he or she may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article, and the part of the Unit not insured by the Association's blanket policy.

12.07 *Review of Insurance.* The Association shall review annually the coverage and policy limits of all insurance on the Common Area and Common Facilities and adjust the same at its discretion within the limitations set forth within this Article. Such review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

ARTICLE XIII **Damage or Destruction**

13.01 *Damage or Destruction of Lot or Residential Unit.* In the event that a Lot or any improvement located thereon, including a Residential Unit, is damaged or destroyed by fire or other casualty, the Owner thereof shall cause such Lot or Residential Unit to be promptly repaired, restored, or reconstructed to the extent required to restore the Lot or Residential Unit to substantially the same condition in which it existed prior to the occurrence of the damage or destruction. In addition, if any Common Area is damaged or destroyed in connection with the repair, restoration, or reconstruction of a damaged Lot, then the cost of repair, restoration, or reconstruction of the Common Area so damaged shall be paid by the Owner of the said Lot.

13.02 *Damage or Destruction of Common Area.* In the event that the Common Area or any portion thereof, any improvements constructed on the Common Area, or any Common Facilities are damaged or destroyed by fire or other casualty, the Association shall be responsible to promptly repair, restore, replace, or reconstruct same to the extent required to return them to substantially the same condition in which they existed prior to the occurrence of the damage or destruction. The Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract or other instrument and may take all action which may be necessary or appropriate to exercise the powers herein granted and no consent or other action by any Owner shall be necessary in connection therewith.

13.03 *Repair or Reconstruction.* Repair, restoration, replacement, or reconstruction of damaged portions of the Project as used in this Article means restoring, by whatever means, method, or process that shall be necessary, the damage portions of the Project to substantially the same condition in which it existed prior to the damage, with each Lot and the Common Areas having substantially the same boundaries as before. The term "repair" as used herein shall be deemed to include, without limitation, each and every process or procedure necessary to comply with the intent of the Article.

13.04 *Estimate of Costs.* As soon as practicable after an event causing damage to or destruction of any part of the Common Area and Common Facilities, the Association shall obtain complete and reliable estimates of the costs of repair of that part of the Common Area or Common Facilities damaged or destroyed. As soon as practicable after receiving said estimates, the Association shall diligently pursue to completion the repair of that part of the Common Area and Common Facilities damaged or destroyed.

13.05 *Funds for Reconstruction.* The proceeds of any casualty insurance collected by the Association due to damage to the Common Area or Common Facilities shall be available to the Association for the purpose of repair of the Common Area or Common Facilities. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair, the Association may levy in advance a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair. Such Special Assessment shall be allocated and collected as provided in Section 9.05, except that the vote therein specified shall not be necessary. Further levies may be made in like manner if the proceeds of insurance and the Special Assessment collected prove insufficient to pay the costs of repair.

13.06 *Disbursement of Funds for Repair.* The insurance proceeds received by the Association and any amounts received from Special Assessments made pursuant to Section 13.05 shall constitute a fund for the payment of costs of repair after casualty. It shall be deemed that the first money disbursed in payment for cost of repair shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair, such balance shall be distributed *pro rata* to the Owners.

ARTICLE XIV Condemnation

14.01 *Condemnation of Lot.* If, at any time or times during the continuance of ownership pursuant to this Declaration, all or part of one or more Lots shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of a Lot, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

14.02 *Proceeds.* All compensation, damages, and other proceeds from any taking of a Lot by power of eminent domain (hereinafter "the Condemnation Award") shall be made payable to the Owner of each respective Lot so condemned.

14.03 *Termination of Membership.* If all of a Lot is taken by condemnation, or if such a portion of a Lot is taken by condemnation such that the remaining portion of the Lot may not practically or lawfully be used for any purpose permitted in this Declaration, then the membership, vote, easement rights, liability for payment of the Assessments, and all other rights and duties granted by this Declaration which are appurtenant to such Lot shall be and are automatically terminated upon such taken.

14.04 *Remaining Portion of Lot.* If any portion of a Lot shall remain after a complete taking as set forth in Section 14.03, then the remaining portion thereof shall be subject to purchase by the Association, at the sole election of the Association, at the fair market value thereof after such condemnation is complete and less any portion of the Condemnation Award paid to the Owner of such Lot which is properly allocated to such remaining portion of the Lot. Any portions of a Lot so purchased by the Association shall be Common Area.

ARTICLE XV
Condemnation of Common Area

15.01 *Condemnation of Common Area.* If, at any time or times during the continuance of ownership pursuant to this Declaration, all of any part of the Common Area or Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Area or Common Facilities in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

15.02 *Proceeds.* All compensation, damages, and other proceeds from any such taking of Common Area or Common Facilities by power of eminent domain (hereinafter "the Condemnation Award") shall be made payable to the Association and shall be distributed by the Association as provided herein.

15.03 *Complete Taking.* In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate, and the Condemnation Award shall be allocated among, and distributed to, the Owners in proportion to their respective undivided interests in the Common Area and Common Facilities. For the purposes of this Article, the undivided interest owned in common which shall appertain to each Owner shall be that percentage obtained by dividing one hundred (100) by the number of Lots existing in the Project immediately prior to the condemnation as such number is set forth in the Plat.

15.04 *Partial Taking.* In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) *Allocation of Award.* If apportionment of allocation is established by applicable negotiations, judicial decree, or statute, the Association shall employ such apportionment and allocation to the extent appropriate. Otherwise, as soon as practicable, the Association shall, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) the total amount apportioned to taking of or injury to the Common Area shall be allocated and distributed to all Owners

(including Owners whose entire Lots have been taken) in proportion to their respective undivided interests in the Common Area;

(ii) the total amount apportioned to severance damages shall be allocated among, and distributed to, the Owners of those Lots that have not been taken in the proportion that said Owners' undivided interests in the Common Area bears to the total of all such Owners' undivided interests in the Common Area;

(iii) the respective amounts apportioned to the taking of or injury to the particular Lot shall be allocated and distributed to the Owner or Owners of such Lot;

(iv) the total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) distribution of allocated proceeds shall be made by check payable jointly to the each Owner and his or her respective Mortgagees, as appropriate.

(b) *Continuation and Reorganization.* If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate, but shall continue.

(c) *Reconstruction or Repair.* Any reconstruction or repair necessitated by condemnation shall be governed by the procedures specified in Article XIII hereof for cases of damage or destruction.

ARTICLE XVI Mortgage Protection

16.01 *Mortgage Protection.* No breach of any of the covenants, conditions, restrictions, or limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions, and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure, Trustee's sale, or by deed or assignment in lieu of foreclosure.

16.02 *Priority of Liens.* No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, Assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot in good faith and for value and recorded prior to the date on which any such assessment became due.

16.03 *Prior Liens Relate Only to Individual Lots.* All taxes, Assessments, and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

16.04 *Mortgage Holder Rights in Event of Foreclosure.* Whenever the Mortgagee of a Mortgage of record obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, then such Mortgagee or any purchaser at a foreclosure sale shall take the Lot free of any claims for unpaid Assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer except for claims for *pro rata* share of such Assessments or charges resulting from a *pro rata* reallocation of such Assessments or charges to all Lots in the Project, including the mortgaged Lot. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible prospectively *pro rata* from all of the Lots in the Project, including the Lot which has been acquired in accordance with the provisions of this Section.

16.05 *Notice to First Mortgage Holders.* The Association shall give the applicable first Mortgagee, if any, prompt notice of any default in the Lot Mortgagor's obligation under the Declaration not cured within thirty (30) days of default.

16.06 *Matters Requiring Mortgagee Approval.* Notwithstanding any other provision contained within this Declaration, at least two-thirds (2/3) (based upon one vote for each first Mortgage owned per Lot) of the first Mortgagees of any Lot as then appear on the official Records of Morgan County, Utah, shall have given their prior written approval before the Association shall be entitled to:

- (a) by act or omission, seek to abandon or terminate the Project;
- (b) change the *pro rata* interest or obligations of any individual Lot for the purpose of levying Assessments or charges or allocating distributions of hazard insurance proceeds or Condemnation Awards;
- (c) by act or omission, seek to abandon, encumber, sell, or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area and Common Facilities by the Project shall not be deemed a transfer within the meaning of this clause); or
- (d) use hazard insurance proceeds for losses to the Project (whether to Common Area or Common Facilities) for other than the repair, replacement, or reconstruction of such property.

16.07 *Amendment.* No provision of this Article XVI shall be amended without the prior written consent of at least two-thirds (2/3) (based on one vote for each Mortgage) of all first Mortgagees as appear on the official records of Morgan County, State of Utah, as of the date of the vote regarding such amendment.

ARTICLE XVII
General Provisions

17.01 *Intent and Purpose.* The provisions of this Declaration and any supplemental or subsequent Declaration or amendments thereto shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of this Cluster Subdivision. Failure to enforce any provision, restriction, covenant, or condition of this Declaration, or in any supplemental or subsequent Declaration or amendments hereto shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

17.02 *Interpretation.* Whenever used herein, unless the context shall otherwise provide, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise limit or affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

17.03 *Registration of Mailing Address.* Each Owner shall register from time to time with the Association his or her current mailing address. All notices or demands intended to be served upon any Owner may be sent by First Class U.S. Mail, postage prepaid, addressed to the Owner at his or her last registered mailing address, or, if no address has been registered, to the mailing address of the Lot of such Owner. All notices or demands intended to be served upon the Association may be sent by First Class U.S. Mail, postage prepaid, addressed to the Association at the address of its offices as may be furnished to the Owners in writing from time to time. Any notice or demand referred to in this Declaration shall be deemed given when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section.

17.04 *Audit.* Any Owner may, at any reasonable time, upon appointment and at his or her own expense, cause an audit or inspection to be made of the books and records maintained by the Association.

17.05 *Amendment.* Except as otherwise provided herein, this Declaration may be amended if Owners holding at least seventy-five percent (75%) of the total votes of the Association consent and agree to such amendment by instruments duly recorded in the office of the County Recorder for Morgan County, State of Utah.

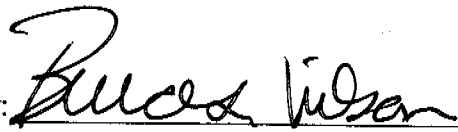
17.06 *Owner's Obligations.* All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that said Owner may be leasing, rent, or selling his or her Lot. The Owner of a Lot within the Project shall have no obligation for expenses or other obligations (except interest on prior obligations) accruing after the conveyance of such Lot to a subsequent Owner.

17.07 *Effective Date.* This Declaration and every provision hereof shall take effect upon recording.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

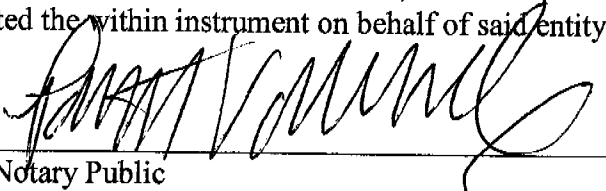
DECLARANT:

NILSON & COMPANY, INC. dba NILSON HOMES,
a Utah corporation

By: 
Bruce L. Nilson, President

STATE OF UTAH)
 : ss.
COUNTY OF WEBER)

On this 21ST day of February, 2008, personally appeared before me Bruce L. Nilson, known to me to be the President of Nilson & Company, Inc. dba Nilson Homes, a Utah corporation, and known to me to be the person who executed the within instrument on behalf of said entity.


Notary Public

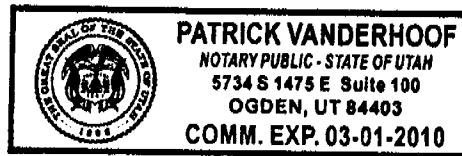


EXHIBIT "A"
(Property Legal Description)

BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS LOCATED SOUTH 89°58'59" WEST 308.44 FEET AND NORTH 290.44 FEET FROM THE CENTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 1 EAST, SALT LAKE BASE & MERIDIAN (BASIS OF BEARING IS SOUTH 00°05'39" WEST 2646.97 FEET FROM THE NORTHEAST CORNER TO THE EAST QUARTER CORNER OF SAID SECTION,) AND RUNNING; THENCE NORTH 04°17'33" WEST 7.47 FEET TO A POINT OF CURVATURE TO A 60.50 FOOT RADIUS CURVE TO THE LEFT; THENCE 88.15 FEET ALONG SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 83°28'53", (CHORD BEARS NORTH 46°01'59" WEST 80.56 FEET,) TO A POINT OF TANGENCY; THENCE NORTH 87°46'26" WEST 1.92 FEET; THENCE NORTH 0°18'14" WEST 95.32 FEET; THENCE NORTH 87°20'32" EAST 39.07 FEET; THENCE NORTH 67°00'42" EAST 69.23 FEET; THENCE NORTH 35°31'49" EAST 25.85 FEET; THENCE NORTH 2°39'28" WEST 80.07 FEET; THENCE SOUTH 87°20'32" WEST 2.38 FEET; THENCE NORTH 2°39'28" WEST 77.56 FEET TO THE SOUTH LINE OF OLD HIGHWAY ROAD; THENCE ALONG SAID SOUTH LINE NORTH 87°07'55" EAST 286.50 FEET TO THE CENTERLINE OF DRY CREEK; THENCE ALONG SAID CENTERLINE SOUTH 82°7'15" WEST 388.26 FEET; THENCE SOUTH 86°54'7" WEST 278.49 FEET TO THE POINT OF BEGINNING.

CONTAINS 108,378 SQ. FT. - 2.49 ACRES