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DOUG CROFTS, WEBER COUNTY RECORDER  
05-OCT-05 2:07 PM FEE \$117.00 DEP SGC  
REC FOR: NORTH EDEN ACRES II LLC

# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SHEEP CREEK CLUSTER SUBDIVISION PHASE THREE

This Declaration is made this 5 day of OCT, 2005, by North Eden Acres, LLC ("**Declarant**"), with respect to the following recitals:

## RECITALS

1. Declarant is the owner of that certain real property ("**Properties**") located in the County of Weber, State of Utah.
2. Declarant intends to convey the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in this Declaration, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of each Owner thereof.
3. It is the further intention of the Declarant to sell and convey residential Lots to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitude between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a planned development. Finally, it is the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invites, all subject to the terms and conditions of the Governing Documents.

## ARTICLE I

### DEFINITIONS

**I.1 "Architectural Committee"** means the committee created in accordance with Article V of this Declaration.

**I.2 "Articles"** means the Articles of Incorporation of Sheep Creek Estates Homeowner's Association, which are filed in the Office of the Utah Secretary of State, as such Articles may be amended from time to time.

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**I.3 "Assessment"** means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

**I.4 "Association"** means Sheep Creek Estates Homeowner's Association, a Utah nonprofit corporation.

**I.5 "Association Rules"** means the rules, regulations and policies adopted by the Governing Board of the Association, pursuant to Section 3.8 of this Declaration, as the same may be in effect from time to time.

**I.6 "Governing Board" or "Board"** means the Governing Board of the Association.

**I.7 "Building Site"** means the area designated by the Declarant as the location on each Lot where a residence may be constructed. The Building Sites shall be marked on a permanent map which shall be kept in the records of the Association.

**I.8 "Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**I.9 "Common Area"** means all real property owned by the Association for the common use and enjoyment of the Owners. The Common Areas owned by the Association at the time of the recordation of this Declaration. Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

**I.10 "Common Expense"** means any use of Common Funds authorized by the Governing Documents and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area, Common Facilities, (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Governing Board, (c) any amounts reasonably necessary for reserves for maintenance, repair, and replacement of the Common Areas and Common Facilities that the Association is obligated to maintain or replace, and for nonpayment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the governing Documents.

**I.11 "Common Facilities"** means the trees, hedges, plants, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, structures, fire cisterns, the Irrigation Distribution System, drainage systems, retention basins and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

**I.12 "County"** means the County of Weber, State of Utah, and its various departments, divisions, employees and representatives. If any portion of the Properties become a portion of an incorporated city, then the term "County" shall be deemed to include the city in which that portion of the Properties is located.

**I.13 "Declarant"** means the original developer of the Properties, namely Paul A. Southwick, an individual.

**I.14 "Declaration"** means this instrument, as it may be amended from time to time.

**I.15 "Governing Documents"** is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

**I.16 "Improvement"** includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of any Residence.

**I.17 "Irrigation Company"** means the Sheep Creek Estates Irrigation Company, a Utah nonprofit corporation.

**I.18 "Irrigation Distribution System"** means the pipes and other structures used to distribute irrigation water to the Lots.

**I.19 "Lot"** means any parcel of real property designated by a number on the Subdivision Map for any portion of the Properties. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

**I.20 "Member"** means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended.

**I.21 "Mortgage"** means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in conventional sense.

**I.22 "Owner"** means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term "Owner" shall include the Declarant for so long as the Declarant possesses any Lot within the Properties, and, except where the context otherwise requires, the family, guests, tenants, and invitees of an Owner.

**I.23 "Owner of Record" and "Member of the Association"** include an Owner and mean any person, firm, corporation, or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

**I.24 "Permitted Fencing"** means fencing which complies with the restrictions of this Declaration and which has been approved by the Architectural Committee.

**I.25 "Properties"** means all parcels of real property (Common Area and Lots) described in Recital 1 hereof, together with all buildings, structures, utilities, Common Facilities, and other improvements now located or hereafter constructed or installed thereon and all appurtenances thereto.

**I.26 "Regular Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.2 hereof.

**I.27 "Residence"** means a private, single family dwelling to be constructed on a Lot.

**I.28 "Single Family Residential Use"** means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

**I.29 "Special Assessment"** means an Assessment levied on an Owner and his or her Lot in accordance with Section 4.3 hereof.

**I.30 "Special Individual Assessment"** means an Assessment made against an Owner and his or her Lot in accordance with Section 4.4 hereof.

**I.31 "Subdivision Map"** means the Subdivision Map for the Properties referenced in Recital 1 of this Declaration, as recorded in Weber County.

## ARTICLE II

### PROPERTY RIGHTS AND OBLIGATIONS OF OWNERS

**II.1 Owners' Nonexclusive Easements of Enjoyment.** Every Owner and the Association shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Properties, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to adopt Association Rules as provided in Section 3.8 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the common facilities, by an Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Section 12.6 hereof.

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and common facilities and in aid thereof to mortgage said property; provided, however, that the rights of any such Mortgagee in said properties shall be subordinate to the rights of the Owners hereunder; and

further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 4.3 hereof.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, and their first Mortgagees consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot. Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

**II.2 Persons Subject to Governing Documents.** All present and future Owners, tenants and occupants of Lots within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owners, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

### **II.3 Delegation of Use.**

(a) **Delegation of Use and Leasing of Residences.** Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to the Owner's tenants, lessees or contract purchasers who reside in the Owner's Residence, provided that any rental or lease may only be to a single family for Single Family Residential Use. During any period when a Residence has been rented or leased, the Owner-lessor, his or her family, guests and invitees shall be entitled to use and enjoy the Common Areas or Common Facilities of the Properties, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Residence, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Residence within the Properties.

Any rental or lease of a Residence shall be subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the Residency.

**(b) Discipline of Lessees.** Subject to subparagraph (c) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include suspension of the tenant's privileges to use any Common Facilities, or the imposition of fines and penalties against the Owner or tenant.

Any fine or penalty levied pursuant to this Section 2.3 shall be considered a Special Individual Assessment as defined in Section 4.4 below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, the renter or lessee agrees to be personally obligated for the payment of such assessments in the event the Owner-lessor fails to pay the assessments prior to the delinquency date. This provision, however, shall not be construed to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments, for which such Owner would otherwise be responsible. Any lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled as provided in the subparagraph (c) below. Any Owner who shall lease his or her Residence shall be responsible for assuring compliance by the lessee with the Governing Documents.

**(c) Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) The Owner has received written notice from the Board, if any, detailing the nature of the lessee's or tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is required by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing required hereunder shall be conducted in accordance with Section 12.6 hereof.

**(d) Recoverable Costs and Expenses.** In the event of (i) damage to, or destruction of, Common Areas or Common Facilities by a tenant or lessee or the Owner of a leased Residence; (ii) the imposition of a fine or penalty against an Owner-lessor as a result of any act or omission of the Owner's tenant or lessee; or (iii) expenses incurred by the Association in the successful prosecution of an eviction proceeding pursuant to subparagraph (b) above, the Association shall be entitled to the Recoverable Costs and Expenses.

**II.4 Obligations of Owners.** Owners of Lots within the Properties shall be subject to the following:

**(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers.**

Each Owner shall notify the Association of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

**(b) Contract Purchasers.** A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

**(c) Notification Regarding Governing Documents.** As soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("**Delinquency Statement**") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

**(d) Payment of Assessments and Compliance With Rules.** Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document.

**(e) Discharge of Assessment Liens.** Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

**(f) Joint Ownership of Lots.** In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

**(g) Prohibition of Avoidance of Obligations.** No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may

avoid the burdens and obligations imposed of such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

**(h) Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

**II.5 Distribution of Irrigation Water.** Owners of Lots within the Properties shall be entitled to a portion of the water available to the Properties from the Irrigation Company, subject to the following:

**(a) The Association's Share of Water Rights.** Each year, the Irrigation Company will provide to the Association a percentage of the total water available from the Irrigation Company for all properties serviced by the Irrigation Company.

**(b) Distribution of Water.** When water is allocated to the Association by the Irrigation Company, the water will be distributed to the Lots through the Irrigation Distribution System.

**(c) Owner's Rights to Irrigation Water; Enforcement of Distribution Procedure.** Each Owner will be entitled to irrigation water only when (i) such water has been distributed to the Association by the Irrigation Company and (ii) the Association has distributed the water to such Owner accordance with the distribution procedures established by the Association. In no event shall any Owner be entitled to any irrigation water in addition to the irrigation water distributed to such Owner by the Association or during any time when irrigation water is not being distributed to the Properties by the Irrigation Company. If any Owner violates the distribution procedures established by the Association and uses irrigation water in violation of such procedures, the Association will be entitled to exercise any and all remedies available to the Association in the Governing Documents, at law or in equity. In addition, the Association shall be entitled to impose reasonable fines and penalties for the use of irrigation water in a manner inconsistent with this Section 2.5.

**(d) Compliance with Irrigation Easement Agreement.** The Board shall be responsible for ensuring compliance by the Association with the certain Irrigation Easement Agreement between the Declarant and the Irrigation Company.



### ARTICLE III HOMEOWNERS ASSOCIATION

**III.1 Initial Control of Association.** Notwithstanding anything to the contrary contained herein, the Declarant shall have sole control of the Association until such time that 14 Lots have been sold or otherwise transferred by the Declarant. Within 120 days following satisfaction of this condition, the Declarant shall transfer control of the Association to the Members.

**III.2 Association Membership.** Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Ownership of Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

**III.3 One Class of Membership.** Once the Declarant has transferred control of the Association to the Members, the Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**III.4 Voting Rights of Members.** Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 12.6 hereof.

**III.5 Assessments.** The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Article IV of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

**III.6 Transfer of Memberships.** Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of the deed evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights or use pursuant to Section 2.3 hereof do not thereby become Members, although the tenant and Members of the tenant's family shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

**III.7 Powers and Authority of the Association.**

(a) **Powers Generally.** The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit corporation organized under the laws of the State of Utah in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Governing Board shall have the power to do any and all lawful things which may be authorized, required, or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article VIII of the Bylaws.

(b) **Association's Limited Right of Entry.** The Association, and/or its agents shall have the right, when necessary, to enter any Lot to perform the Association's obligations under this Declaration, including (i) exterior maintenance; (ii) obligations to enforce the architectural minimum construction standards, and land use restrictions of Article VI and Article VII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property of the Owners in common.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present. In all non-emergency situations, the Association or its agents shall furnish the Owner of his or her lessee with at least 24 hours' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Residence located on the Lot. In no event shall the Association's right of entry, as conferred hereunder, be construed to permit the Association or its agents to enter any Residence without the Owner's prior permission.

(c) **Maintenance of Drainage Facilities and Drainage Retention Basin.** The Association and its Governing Board shall have the responsibility of maintaining the drainage facilities and the drainage retention basin so that all drainage waters can be diverted into the retention basin. The Association and its Governing Board shall maintain a drainage

swale across the Properties so that drainage water from the upstream land can flow unimpeded to the westerly boundary of the Properties. <sup>EN 2133892 PG 11 OF 35</sup>

(d) **Maintenance of Street Trees.** The Association shall maintain all trees planted along streets within the Properties by the Declarant or the Association.

### **III.8 Association Rules.**

(a) **Rule-Making Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Properties.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) **Distribution of Rules.** A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available and open for inspection at all reasonable times upon prior arrangement with the Board.

(c) **Adoption and Amendment of Rules.** Association Rules may be adopted or amended from time to time by majority vote of the Board. Any duly adopted rule or amendment to the Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail.

**III.9 Breach of Rules or Restrictions.** Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XII hereof.

### **III.10 Limitation on Liability of Association's Trustees and Officers.**

(a) **Claims Regarding Breach of Duty.** No trustee or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

**(b) Other Claims Involving Tortuous Acts and Property Damage.** No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortuous act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

- (i)** The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (ii)** The act or omission was performed in good faith; and
- (iii)** The act or omission was not willful, wanton, or grossly negligent.

The payment of actual expenses incurred by a Board member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board member or officer for the purposes of this Section. However, any trustee or officer who receives direct or indirect compensation from the Declarant or from a financial institution that acquired a Lot within the Properties as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

## ARTICLE IV

### ASSESSMENTS

#### IV.1 Assessments Generally.

**(a) Covenant to Pay Assessments.** Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefore (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

**(b) Extent of Owner's Personal Obligation for Assessments.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

**(c) Creation of Assessment Lien.** All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof,

shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.9 hereof.

**(d) No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

#### **IV.2 Regular Assessments.**

**(a) Preparation of Annual Budget: Establishment of Regular Assessments.** Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing the distributing to all Association Members a budget.

**(b) Establishment of Regular Assessment by Board or Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (a) above, and subparagraph (c) below, the Governing Board may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association (see Section 4.7, below).

**(c) Assessments to Address Emergency Situations.** The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the pervious year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations.

**(d) Allocation of Regular Assessment.** The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the square footage of each Lot within the Properties owned by the assessed Owner to the total square footage of all Lots within the Properties. Based upon this ratio, the percentage share of the total Regular Assessment allocable to each Lot within the Properties shall be as set forth in Exhibit D attached hereto and incorporated herein by reference. It is the intent of this allocation to equitably allocate Assessments in proportion to the value of common services furnished to the Owner's separate interest.

**(e) Assessment Roll.** That portion of the estimated Common Expenses assessed

against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times upon prior arrangements with the Board by each Owner for any purpose reasonably related to the Owner's interest as a property Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The Delinquency Statement required by Section 2.4 (c) hereof shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

**(f) Mailing Notice of Assessment.** The Governing Board shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than 45 days prior to the beginning of the next fiscal year.

**(g) Failure to Make Estimate.** If, for any reason, the Governing Board fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.3 (a) (I) for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

**(h) Payment of Assessment.** The total Regular Assessment levied against each Owner and his or her Lot shall be all due and payable to the Association on or before January 1st of each year.

#### **IV.3 Special Assessments.**

**(a) Purposes for Which Special Assessments May be Levied.** Subject to the membership approval requirements set forth in subparagraph (b) below, the Governing Board shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

**(i) Regular Assessment Insufficient in Amount.** If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then, except as prohibited by Section 4.2 (a), the Governing Board shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this Section 4.3(a)(I) shall be subject to membership approval requirements under the circumstances described in Section 4.2 (a).

(ii) **Capital Improvements.** The Board may also levy Special Assessments for additional capital improvements within the Common Area or for Common Facilities (i.e., improvements not in existence on the date of the first sale of a Lot that are unrelated to repairs for damage to, or destruction of, the existing Common Areas or Common Facilities).

(b) **Special Assessments Requiring Membership Approval.** No Special Assessments described in (i) Section 4.3 (a) hereof, which in the aggregate exceed 20 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied; or (ii) in the last sentence of Section 4.2 (a), shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, provided that this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in this Section 4.2 (c).

(c) **Allocation and Payment of Special Assessments.** When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4.2 (d), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in this Section 4.3 (a) (i) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in this Section 4.3 (a) (ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within 30 days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

#### **IV.4 Special Individual Assessments.**

(a) **Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 4.3, above, the Governing Board may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, providing that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 4.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 12.6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

**(i) Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(ii) Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, including without limitation, Section 2.5 hereof, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(iii) Required Maintenance on Lots.** As more particularly provided in Section 3.7 (b) (and without limiting the generality of that subparagraph), if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash and junk automobiles; improper storage of vehicles; improper storage of farm equipment and other equipment of a similar nature; or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(b) Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in this Section 4.4 (a), such Special Individual Assessment shall be recorded on the Association's Assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment. Except as specifically prohibited by law, it is the intent of this Declaration that Special Individual Assessments (including without limitation those imposed to recover late payment penalties or to reimburse the association for the cost of repairing damage to the Common Areas or Common Facilities for which the assessed Member is responsible), if not paid prior to delinquency, may be collected either in an action at law or by resort to the lien and foreclosure remedies set forth in Section 4.9 (b), below.



**IV.5 Proper and Reasonableness of Assessments.** Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**IV.6 Exemption of Certain of the Properties from Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

**IV.7 Notice and Procedure for Member Approval Pursuant to Sections 4.2 and 4.3.** In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 4.2 and 4.3, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with Section 4.5 of the Bylaws or

at a meeting of the members called for that purpose, duly noticed in accordance with Section 5.4 of the Bylaws. The quorum required for such membership action shall be a majority of the Members.

**IV.8 Maintenance of Assessment Funds.**

(a) **Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest of late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Governing Board which has offices located within the State of Utah. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be

commingled in one or more accounts and need not to be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (b), below.

**(b) Separate Accounts: Commingling of Funds.** Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, under funded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this Section 4.3 (a) (I) shall be accounted for together with the receipts and disbursements of Regular Assessments; and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the Utah Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

#### **IV.9 Collection of Assessments; Enforcement of Liens.**

**(a) Delinquent Assessments.** If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning 30 days after the due date unless the same is paid. In addition to the accrual of interest, the Governing Board is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to an limitations imposed by law.

**(b) Effect of Nonpayment of Assessments.**

**(i) Creation and Imposition of a Lien for Delinquent Assessments.**

The amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article IV, (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

**(ii) Remedies Available to the Association to Collect Assessments.**

The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot or accepted a deed in lieu of Foreclosure by the Association of its lien may be by any means allowed under the Law.

**(iii) Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

**IV.10 Transfer of Lot by Foreclosure.** The following rules shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot.

**(a)** Except as provided in paragraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

**(b)** The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "Prior encumbrance" means any first mortgage or other mortgage or lien recorded before the Association's assessment lien.

**(c)** No sale or transfer of a Lot as the result of foreclosure shall relieve the new Owner of that Lot (whether it be the former beneficiary of the first mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any

assessments thereafter becoming due or from the lien thereof.

(d) Any assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by paragraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.

(e) No sale or transfer of a Lot as the result of foreclosure shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Lot personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

**IV.11 Priorities.** When a Notice of Delinquent Assessments has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage or record (meaning any recorded Mortgage or deed or trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

**IV.12 Common Area Taxes.** The Common Areas are located within non-exclusive easements across Lots 1, 4, 5, and 6. If the Association is not separately assessed for property taxes for the Common Areas, the Association shall reimburse the owners of Lot 1, 4, 5, and 6 for the portion of the property taxes assessed against those Lots that reasonably relates to Common Areas located on those Lots. The amount reimbursed shall be a part of the annual budget and expense of the Association.

## ARTICLE V

### ARCHITECTURAL CONTROL

#### V.1 Architectural Committee Approval of Improvements.

(a) **Approval Generally.** Before commencing construction or installation of any Improvement within the Properties, the Owner planning such improvement must submit to the Association's Architectural Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans satisfying the requirements of Section 5.5. Unless the Committee's approval of the proposal is first obtained, no work on the Improvement shall be undertaken. The Architectural Committee

shall base its decision to approve, disapprove or conditionally approve the proposed improvement on the criteria described in Section 5.6. No excavation, grading, filling, draining, landscaping, or installation or removal of existing vegetation shall be made without the advance written consent of the Architectural Committee.

**(b) Modifications to Approved Plans Must Also Be Approved.** Once a work of improvement has been duly approved by the Architectural Committee, no material modifications shall be made in the approved plans and specifications and no subsequent alteration, relocation, addition or modification shall be made to the work of Improvement, as approved, without a separate submittal to, and review and approval by, the Committee. If a work of Improvement, or any modification thereof, is proceeding without proper approval, the Association may exercise the enforcement remedies specified in Section 5.15.

**V.2 Committee Membership.** Until such time that the Declarant has sold or otherwise transferred 142 Lots, the Architectural Committee shall be composed of Declarant and any persons or entities appointed by Declarant. Once Declarant is no longer the Owner of any of the Lots, the Architectural Committee shall be composed of three Members of the Association appointed by the Board. The Board may serve as the Architectural Committee. Committee members shall serve for one-year terms subject to the Board's power to remove any Committee member and to appoint his or her successor. Neither the members of the Architectural Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. The Committee shall establish a client relationship with a Utah licensed architect for the purpose of rendering advise with respect to plan submittals and other review matters before the Committee.

**V.3 Duties of Committee.** It shall be the duty of the Architectural Committee to consider and act upon the proposals and plans submitted to it pursuant to this Declaration, to adopt Architectural Rules pursuant to Section 5.5, to perform other duties delegated to it by the Governing Board and to carry out all other duties imposed upon it by this Declaration.

**V.4 Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Committee members shall constitute the action of the Committee and the Committee shall keep and maintain a written record of all actions taken.

The Owner-Applicant shall be entitled to appear at any meeting of the Architectural Committee at which the Owner's proposal has been scheduled for review and consideration. The Owner shall be entitled to be heard on the matter and may be accompanied by his or her architect, engineer and/or contractor. Other Owners whose properties may be affected by the proposed Improvement shall also be entitled to attend the meeting.

Reasonable notice of the time, place and proposed agenda for Architectural Committee meetings shall be communicated before the date of the meeting to any Owner-Applicant whose application is scheduled to be heard. If the proposed Improvement will be visible from any neighboring Lot, the Owner of the other affected Residences shall be notified promptly of the

Owner-Applicant's submittal and shall be furnished with notices of any Committee meeting where the application is scheduled to be heard.

**V.5 Architectural Rules.** The Architectural Committee may, from time to time and with approval of the Governing Board, adopt, amend and repeal rules and regulations to be known as "**Architectural Rules.**" Said Rules shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Architectural Committee review; and (b) the criteria and procedures for requesting variances from any property use restrictions that would otherwise apply to the proposed improvement under the Governing Documents (see Section 5.16 below). Notwithstanding the foregoing, no Architectural Rules shall be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail.

**V.6 Basis for Approval of Improvements.** When a proposed Improvement is submitted to the Architectural Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner has complied with the provisions of Section 5.7 below;

(b) The Owner's plans and specifications (i) conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her property, including, without limitation, the other Owner's right to scenic and solar access free of unreasonable obstructions; and

(c) The residence is within the Building Site.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Lot, even if the same or a similar improvement or component has previously been approved for use at another location within the Properties if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or prior adverse experience with the product of components used in construction of the Improvement, design of the Improvement or its use at other locations within the Properties mitigate against erection of the Improvement or use of a particular component thereof on the Lot involved in the Owner's submittal. It is expressly agreed that the Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the committee acts reasonably and in good faith.

**V.7 Procedures for Obtaining Architectural Committee Approval of Plans and Specifications.**

(a) **Application for Preliminary Approval.** In order to afford an Owner who is proposing to make substantial Improvements an opportunity to obtain guidance and comment

from the Architectural Committee prior to the expenditure of substantial sums on complete plans and specifications, an Owner shall apply to the Committee for preliminary approval of the proposed Improvement project. Applications for preliminary approval shall be considered and processed as follows:

(i) Any application for preliminary approval shall be in writing and shall present sufficient detail to apprise the Architectural Committee of the general nature, location, dimensions and contemplated exterior colors and finishes of the proposed Improvement.

(ii) Within 30 days after receipt of the application for preliminary approval, the Architectural Committee shall grant the preliminary approval only if the proposed Improvement, to the extent that its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Architectural Committee to act within 30 days from the filing date shall constitute a preliminary approval. In granting or denying approval, the Architectural Committee may give the applicant such directions or recommendations concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the Applicant.

(iii) Any preliminary approval granted by the Architectural Committee shall be effective for a period of 180 days from the date of issuance or such longer periods may, in the Committee's discretion, be granted. During said period, any application for final approval that presents complete plans and specifications for the proposed Improvements, consistent with the provisions of the preliminary approval and otherwise acceptable under the terms of this Declaration and the Architectural Rules, shall be approved by the Architectural Committee.

(iv) In no event shall any preliminary approval of a proposed Improvement be deemed to constitute final approval authorizing construction of the Improvement. Final approval shall be based on a complete submittal conforming to the requirements of subparagraphs (b) and (c), below, providing that the Committee may, in its preliminary approval, waive an requirements of subparagraph (c) which do not pertain to the proposed Improvement project.

(b) **Application for Final Approval.** All Owners who desire to undertake any work of Improvement must apply to the Architectural Committee and receive Final Approval. The application shall be in writing and shall contain all information that is necessary to reasonably evaluate the nature, design, location and extent of the proposed Improvement, including, at a minimum, two complete sets of plans and specifications for the Improvement project (satisfying the requirements set forth in subparagraph (c) below) and such additional information as the Committee may reasonable request, either by Architectural Rule or while the project is under review.

(c) **Content of Plans and Specifications.** In order to be complete, the plans and

specifications for the proposed improvement shall include:

- (i) A professionally prepared plot plan, which indicates (A) the size of the Lot, (B) Lot contour lines, (C) the location of all existing and proposed Improvements, (D) the proposed drainage plan for the Lot, as improved, and (E) the location of all proposed utility installations.
- (ii) A professionally prepared (prepared by an architect or licensed building designer) set of plans showing all (A) elevations (including foundation), (B) floor plans, (C) location of all heating and/or cooling equipment, (D) decking, (E) screening devices, and (F) retaining walls.
- (iii) Description of exterior materials (if not included with the above plans) and samples of roofing material and exterior colors.
- (iv) A complete and professionally prepared landscape plan which includes the names, location, and sizes of all proposed trees, shrubbery, and lawn area(s), identifies any trees scheduled for removal and describes the Owner's plans for replanting trees and vegetation and for stabilizing slopes during and after construction.
- (v) The Owner's proposed construction schedule.

If the contemplated Improvement project is of a nature that does not merit extensive plans and specifications, the Architectural Committee may (but shall not be obligated to) waive or modify any of the above plan and specification requirements upon receipt of a written request from the applicant to do so. Said request can be made as part of a preliminary approval submittal pursuant to subparagraph (a), above.

**(d) Inspection Fee and Deposits.** Once the Architectural Committee is under the control of the Association, the Architectural Rules may require that the submission of plans and specifications be accompanied by a reasonable fee.

**V.8 Time Limits for Approval or Rejection.** Within 45 days after submission of plans and specifications satisfying the requirements of Section 5.7, above, the Architectural Committee shall return one set of such plans to the applicant, with either written notice of approval or disapproval or with written suggestions of changes required for approval or disapproval. If the Committee recommends that the plans and specifications be modified, the applicant may implement such changes to the plans, and within 30 days, resubmit plans incorporating such changes for approval to the Committee, which approval shall not be unreasonably withheld so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the Owner-applicant within 45 days after the Owner's plans and specifications (or revisions thereto) are submitted to the Committee, the plans shall be deemed to have been approved as submitted.

In approving a request for construction of an Improvement, the Architectural Committee may



condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions.

**V.9 Basis for Approval of Improvements.** When a proposed work of Improvement is submitted to the Architectural Committee for review, the Committee shall grant the requested approval only if the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner's plans and specifications: (i) conform to this Declaration and to the Architectural Rules in effect at the time those plans are submitted to the Committee; (ii) will result in the construction of an improvement that is in harmony with the external design of other structures and/or landscaping within the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Owner of his or her Lot;

(b) The proposed improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standard prevailing within the Properties and with the overall plan and scheme of development of the Properties and the purpose of this Declaration.

Through it is recognized that the Committee's determination to approve or disapprove an improvement will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith. Factors commonly considered by the Committee in reviewing proposed improvements include the quality of workmanship and materials proposed for the improvement project; the harmony of the proposed improvement's exterior design, finish materials, and color with that of the existing structure; and the purposed location of the improvement.

The Committee shall be entitled to determine that a proposed improvement or component thereof is unacceptable in the context of a particular Lot, even if the same or a similar improvement/component has previously been approved for use at another location that was previously approved at another site include: poor drainage; unique topography; visibility from roads, common areas, or other Lots; proximity to other residences or common facilities; or prior adverse experience with the product of design of the proposed improvement of any component thereof.

**V.10 Employment of Architect or Engineer.** If at any time the Architectural Committee determines that it would be in the best interests of the Association and its Members for an applicant to employ an architect, licensed building designer or engineer to design or review any proposed Improvements or component thereof, the Committee shall advise the applicant in writing of its determination whereupon all plans and specifications so designated by the Architectural Committee must thereafter bear appropriate evidence of such preparation or review.

**V.11 Proceeding With Work.** Upon receipt of approval of an Improvement from the Architectural Committee, the Owner shall, as soon as practicable, (a) satisfy all conditions thereof, (b) obtain any necessary grading or building permits (grading and building permits shall not be

obtained prior to receipt of approval from the Architectural Committee) and (c) diligently proceed with the commencement of construction and excavation, if required, pursuant to said approval. In all cases, work on an Improvement project shall commence within one year from the date of such approval. If the Owner fails to comply with this paragraph, any approval given pursuant to this Article V shall be deemed revoked unless the Architectural Committee, upon written request of the Owner prior to the expiration of the initial one-year period, extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the Improvement project within the time specified in the extension request.

**V.12 Failure to Complete Work.** Unless the Owner has been granted an extension of time to complete the project by the Architectural Committee, construction, reconstruction, refinishing or alteration of any such Improvement must be complete within two years after construction has commenced, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner because of strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his or her agents. If the Owner fails to comply with this Section, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of subparagraphs (c) and (d) of Section 5.13 below as though the failure to complete the Improvement was non-compliance with approved plans.

**V.13 Inspection of Work by Architectural Committee.** Inspection of the work relating to any approved Improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction, representatives of the Architectural Committee shall have the right to inspect the job site to confirm that the Improvement project is proceeding in accordance with the approved plans and specifications.

(b) Upon the completion of any work of Improvements for which Architectural Committee approval is required under this Article V, the Owner shall give the Architectural Committee a written notice of completion.

(c) Within 30 days thereafter, the Architectural Committee, or its duly authorized representative, may inspect the Improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Architectural Committee finds that the Improvement was not erected, constructed or installed in substantial compliance with the Owner's approved plans, then within the 30-day inspection period the Committee shall give the Owner a written notice of non-compliance detailing those aspects of the Improvement project that must be modified, completed or corrected. If the violation or non-conforming work is not corrected, the Association and its Architectural Committee shall have the enforcement rights and remedies set forth in Section 5.15, below.

(d) If for any reason the Architectural Committee fails to notify the Owner of any non-compliance within 30 days after receipt of the Owner's notice of completion, the

Improvement shall be deemed to have been constructed in accordance with the approved plans for the project, unless it can be demonstrated that the Owner knew of the non-compliance and intentionally mislead the Committee with respect thereto.

**V.14 Landscaping.** As specified in Section 5.1, landscaping shall be deemed to be a work of improvement requiring Architectural Committee approval hereunder. Landscaping shall include lawns, shrubs, trees, flowers and any landscape structures. The use of artificial materials such as plastic plants, or flowers, astro turf, or gravel gardens will be disapproved by the Committee. All approved landscaping must be completed within 60 days after a notice of occupancy has been filed with the County for the Owner's Residence.

**V.15 Enforcement.**

(a) In addition to other enforcement remedies set forth in this Declaration, the Architectural Committee shall have enforcement rights with respect to any matters required to be submitted to and approved by it, and may enforce such architectural control by any proceeding at law or in equity. In addition, the Architectural Committee shall have the authority to order an abatement of any construction, alteration or other matter for which approval is required, to the extent that it has not been approved by the Committee or if it does not conform to the plans and specifications submitted to the Committee. No work for which approval is required shall be deemed to be approved simply because it has been completed without a complaint, notice of violation, or commencement of a suit to enjoin such work. If any legal proceeding is initiated to enforce any of the provisions hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to the costs of such proceeding.

(b) If the Owner fails to remedy any noticed non-compliance within 30 days from the date of such notification, the Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall not be more than 30 days nor less than 15 days after the notice of the non-compliance is issued by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.

(c) At the hearing, the Owner, a representative(s) of the Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance is determined to exist, the Board shall require the Owner to remedy or remove the same within such period of within any extension of such period as the Board, at its discretion, may grant. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Board, at its option, may either remove the non-complying Improvement and remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not properly repaid by the Owner to the

Association, the Board shall recover such expenses through the levy of a Special Individual Assessment against such Owner.

(d) The approval by the Architectural Committee of any plans, drawings or specifications for any work of Improvement done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner. Different locations for Improvements, the size of the structure, proximity to other Residences or Common Facilities and other factors may be taken into consideration by the Committee in reviewing a particular submittal.

**V.16 Variances.** The Architectural Committee, in its sole discretion, shall be entitled to allow reasonable variances in any procedures specified in this Article V, the minimum construction standards specified in Article VI, or in any land use restrictions specified in Article VII to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants, provided that all of the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Architectural Committee must conduct a public hearing on the proposed variance after giving prior written notice to the Board and to all Owners. The notice shall be mailed to the Owners at least 15 days prior to the date when the Architectural Committee is scheduled to act until the 15-day comment period has elapsed.

(b) The Architectural Committee must make a good faith written determination that the variance is consistent with one or more of the following criteria: (i) that the requested variance will not constitute a material deviation from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite non-compliance; or (ii) that the variance relates to a land use restriction or minimal construction standard otherwise applicable hereunder that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance with respect, to any other Lot or Common Area within the Properties.

**V.17 Non-conforming Use of Properties.** In addition to its jurisdiction over the review and approval of new Improvements and regulation of the timely and proper completion of such Improvements, the Architectural Committee shall also be vested with authority and responsibility to regulate continued compliance on Lots with the provisions of Section 5.6, and Articles VI and VII of this Declaration. If the Architectural Committee has identified an architectural or a land use violation of any Lot, the Committee shall so notify the Owner, in writing. The notice shall detail the nature of the alleged violation and advise the Owner of his or her right to be heard on the matter in accordance with this Article V. If the Owner fails to make a timely request for a hearing, the Architectural Committee shall be entitled to make its own determination of whether a violation exists at the next regularly scheduled Committee meeting following expiration of the notice period.

**V.18 Estoppel Certificate.** Within 30 days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as established from time to time by the Board), the Architectural Committee shall record an estoppel certificate, executed by any two of its members, certifying (with respect to any Lot owned by the applicant Owner) that, as of the date thereof, either (a) all Improvements made and other work completed by said Owner comply with the Declaration or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on the Association's estoppel certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any person deriving any interest through them.

**V.19 Limitation on Liability.** Neither the Association, its Architectural Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any mistakes in judgment, negligence or nonfeasance arising out of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work of Improvement, whether or not pursuant to approved plans, drawings or specifications; (c) the development of any Lot within the Properties; or (d) the execution and filing of a Notice of Non-compliance pursuant to Section 5.17, above, or an estoppel certificate pursuant to Section 5.18, above, whether or not the facts therein are correct, provided that such member has acted in good faith upon the basis of such information as may be possessed by him or her. The Architectural Committee will not review or in any way be responsible for the adequacy and building code compliance of any structural plans, drawings and specifications. The Architectural Committee shall only review plans, drawings and specifications to determine if such drawings comply with appropriate community standards, including, without limitation, the standards and requirements listed in Articles VI and VII.

**V.20 Compliance with Governmental Regulations.** Review and approval by the Architectural Committee of any proposals, plans, or other submittals pertaining to Improvements shall in no way be deemed to constitute satisfaction of, or compliance with, any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the Owner who desires to construct, install, or modify the Improvement.

RESTRICTIVE  
COVENANTS

SHEEP CREEK ESTATES PHASE 1, 2, 3,

PART A: PREAMBLE

DECLARATION OF BUILDING AND USE RESTRICTIONS FOR SHEEP CREEK  
ESTATES PHASES 1,2, 3,, COUNTY OF WEBER, STATE OF UTAH, DATED  
JANUARY 15, 1998.

WHEREAS, THE UNDERSIGNED BEING THE OWNERS OF THE FOLLOWING  
DESCRIBED REAL PROPERTY LOCATED IN THE COUNTY OF WEBER, STATE  
OF UTAH, TO WIT:

LOTS 1 -118 INCLUSIVE, SHEEP CREEK ESTATES PHASE 1,2,3, ACCORDING  
TO THE PLAT THEREOF, AS RECORDED IN THE OFFICE OF COUNTY  
RECORDER OF SAID COUNTY.

DO HEREBY ESTABLISH THE NATURE OF THE USE AND ENJOYMENT OF  
ALL LOTS IN THE SAID SUBDIVISION AND DO DECLARE THAT ALL  
CONVEYANCES OF SAID LOTS WILL BE MADE SUBJECT TO THE  
FOLLOWING CONDITIONS, RESTRICTIONS, AND STIPULATIONS:

PART B: RESIDENTIAL AREA COVENANTS

- 1: LAND USE AND BUILDING TYPE. NO LOT WILL BE USED EXCEPT FOR  
RESIDENTIAL PURPOSES. NO BUILDING WILL BE ERECTED, ALTERED,  
PLACED, OR PERMITTED TO REMAIN ON ANY LOT OTHER THAN A  
DETACHED SINGLE FAMILY DWELLING NOT TO EXCEED TWO STORIES IN  
HEIGHT AND TWO OR MORE ATTACHED PRIVATE GARAGES; NO CARPORTS  
ARE ALLOWED. ALL CONSTRUCTION TO BE OF NEW MATERIALS, EXCEPT  
THAT USED BRICK MAY BE USED WITH PRIOR WRITTEN APPROVAL OF THE  
ARCHITECTURAL CONTROL COMMITTEE.

NO BUILDING WILL BE ERECTED, ALTERED OR PLACED ON ANY LOT  
EXCEPT BY A LICENSED GENERAL CONTRACTOR DULY QUALIFIED AND  
LICENCED BY THE APPROPRIATE GOVERNMENTAL AUTHORITIES. NO  
CONSTRUCTION WILL COMMENCE UNTIL THE CONSTRUCTION PLANS AND  
SPECIFICATIONS AND A PLAN SHOWING THE LOCATION OF THE  
CONSTRUCTION HAS BEEN APPROVED BY THE ARCHITECTURAL CONTROL  
COMMITTEE AS TO THE QUALITY OF WORKMANSHIP AND MATERIALS,  
HARMONY OF EXTERNAL DESIGN WITH EXISTING HOMES AND AS TO  
LOCATION WITH RESPECT TO THE TOPOGRAPHY AND FINISH ELEVATION.

2. ARCHITECTURAL CONTROL. NO BUILDING WILL BE ERECTED, PLACED, OR ALTERED ON ANY LOT UNTIL THE CONSTRUCTION PLANS AND SPECIFICATIONS AND PLANS SHOWING THE LOCATION OF THE STRUCTURE HAVE BEEN APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE AS TO QUALITY OF WORKMANSHIP AND MATERIAL HARMONY OF EXTERNAL DESIGN WITH EXISTING STRUCTURES, AND AS TO LOCATION WITH RESPECT TO TOPOGRAPHY AND FINISH GRADE ELEVATION. APPROVAL WILL BE AS PROVIDED IN PART C.
3. PLANS AND SPECIFICATIONS. ALL PLANS AND SPECIFICATIONS MUST BE APPROVED BY THE COMMITTEE PRIOR TO STARTING CONSTRUCTION. TWO COMPLETE SETS OF PLANS MUST BE SUBMITTED TO THE COMMITTEE, ONE SIGNED AND RETURNED TO THE CONTRACTOR AND ONE SIGNED SET WILL BE RETAINED IN A PERMANENT FILE BY THE OWNER /DEVELOPER. THE COMMITTEE IS ENTITLED TO APPROVE PLANS AND SPECIFICATION WHICH ARE NOT IN STRICT COMPLIANCE WITH THESE COVENANTS, IF THE COMMITTEE DETERMINES SUCH WOULD BE IN THE BEST INTEREST OF THE SUBDIVISION.
4. DWELLING QUALITY AND SIZE. NO DWELLING WILL BE PERMITTED ON ANY LOT WITH THE GROUND FLOOR AREA OF THE MAIN STRUCTURE, INCLUSIVE OF PEN PORCHES AND GARAGES, OF LESS THAN 1800 SQUARE FEET FOR ONE STORY DWELLINGS, NOR LESS THAN 2400 SQUARE FEET FOR A DWELLING OF MORE THAN ONE STORY. A SPLIT ENTRY, BI-LEVEL, OR SPLIT LEVEL DWELLING MUST EXCEED 2000 SQUARE FT ON TWO MAIN LEVELS AS DEFINED BY THE ARCHITECTURAL CONTROL COMMITTEE. THE CONSTRUCTION MATERIALS WILL BE OF SUPERIOR QUALITY. NO PLAN WILL BE ALLOWED TOO BUILT MORE THAN ONCE IN THE SUBDIVISION WITHOUT SPECIAL APPROVAL OF THE ARCHITECTURAL COMMITTEE.

ALL DWELLINGS WILL INCLUDE AND MAINTAIN ONE EXTERIOR YARD LIGHT EQUIPPED WITH A PHOTOELECTRIC CELL TO BE OPERATIONAL DURING THE NIGHT TIME HOURS.

ALL EXTERIOR BUILDING MATERIALS WILL BE BRICK, ROCK, OR MAN-MADE ROCK, WOOD, OR STUCCO. OTHER EXTERIOR BUILDING MATERIALS MUST BE APPROVED BY THE COMMITTEE. ALUMINUM OR VINYL SIDING WILL NOT BE USED. ROOFING MATERIALS WILL BE ARCHITECT SHINGLE OR BETTER. ALL OUT BUILDINGS BARN, SHEDS, GARAGES, AND ECT. , WILL BE CONSTRUCTED OF THE SAME MATERIAL AND HAVE THE SAME DESIGN AS THE MAIN HOME.

THERE WILL BE NO FENCING ALLOWED BETWEEN LOTS OTHER THAN

THOSE APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE.

5. BUILDING LOCATION.

- (A) NO BUILDING WILL BE BUILT ON A LOT NEARER THAN 30FT FROM THE FRONT LOT LINE, OR NEARER THAN 20 FEET TO ANY SIDE STREET LINE OR AS COUNTY ALLOWS.
- (B) NO DWELLING WILL BE LOCATED NEARER THAN 10 FEET TO ANY INTERIOR LOT LINE, EXCEPT THAT A ONE-FOOT MINIMUM SIDE YARD WILL BE PERMITTED FOR A GARAGE OR OTHER PERMITTED ACCESSORY BUILDING LOCATED 45 FEET OR MORE FROM THE MINIMUM FRONT BUILDING SET BACK LINE. NO DWELLING WILL BE LOCATED ON ANY INTERIOR LOT NEARER THAN 30 FT TO THE REAR LOT LINE. DETACHED GARAGES OR OTHER PERMITTED ACCESSORY BUILDING MAY BE LOCATED WITHIN 7 FEET OF THE REAR LOT LINE, SO LONG AS SUCH BUILDINGS DO NOT ENCROACH UPON ANY EASEMENTS.
- (C) FOR THE PURPOSE OF THIS COVENANT; EAVES, STEPS, AND OPEN PORCHES WILL BE CONSIDERED AS PART OF THE BUILDING, PROVIDED, HOWEVER, THAT WILL NOT BE CONSTRUED TO PERMIT ANY PORTION OF ANY BUILDING ON A LOT TO ENCROACH UPON ANOTHER LOT.

6. EASEMENTS. SUCH EASEMENTS AND RIGHTS OF WAY WILL BE RESERVED TO THE UNDERSIGNED, ITS SUCCESSORS AND ASSIGNS, ON AND OVER MAINTENANCE AND OPERATION THEREIN OR THEREON OF DRAINAGE PIPES OR CONDUITS AND PIPES, CONDUITS, POLES, WIRE AND OTHER MEANS OF CONVEYING TO ANY FROM LOTS IN SAID TRACT, GAS ELECTRICITY, POWER, WATER, TELEPHONE SERVICES, SEWAGE AND OTHER THINGS FOR CONVENIENCE TO THE OWNERS OF THE LOTS IN SAID TRACT AS MAY BE SHOWN ON SAID MAP AND THE UNDERSIGNED, ITS SUCCESSORS, AND ASSIGNS, WILL HAVE THE RIGHT TO RESERVE ANY OR ALL THE LOTS SHOWN ON SAID MAP. NO STRUCTURES OF ANY KIND WILL BE ERRECTED OVER ANY OF SUCH EASEMENT EXCEPT UPON WRITTEN PERMISSION OF THE OWNER OF THE EASEMENT, THEIR SUCCESSORS OR ASSIGNS.

7. NUISANCES. NO NOXIOUS OR OFFENSIVE ACTIVITY WILL BE CARRIED ON UPON ANY LOT, NOR WILL ANYTHING BE DONE THEREON WHICH MAY BE OR BECOME ANY ANNOYANCE OR NUISANCE TO THE NEIGHBORHOOD. NO CLOTHES DRYING OR STORAGE OF ANY ARTICLES WHICH ARE UNSIGHTLY ON PATIOS, UNLESS IN ENCLOSED AREAS BUILT AND DESIGNED FOR SUCH PURPOSES. NO AUTOMOBILES, TRAILERS, BOATS, OR OTHER VEHICLES ARE TO BE STORED ON STREETS OF FRONT AND SIDE LOTS UNLESS THEY



- ARE IN RUNNING CONDITION, PROPERLY LICENSED, AND ARE BEING REGULARLY USED. AUTOMOBILES MUST BE MOVED EVERY 24 HOURS.
8. ALL RV STORAGE TO BE ON THE SIDE OR REAR OF HOMES BEYOND THE FRONT SET BACK LINES. ALL ROOF MOUNTED HEATING AND COOLING EQUIPMENT TO BE SET BACK TO THE BACK SIDE OF THE ROOF OUT OF VIEW OF THE STREET. ALL TV ANTENNAS ARE TO BE PLACED IN THE ATTIC OUT OF VIEW. SATELLITE DISHES, ECT, TO BE HIDDEN FROM THE VIEW FROM THE STREET.
  9. TEMPORARY STRUCTURES. NO STRUCTURES OF ANY TEMPORARY CHARACTER; TRAILER, BASEMENT, TENT, SHACK, GARAGE, BARN, OR OTHER OUT BUILDING WILL BE USED ON ANY LOT AT ANY TIME AS A RESIDENCE EITHER TEMPORARILY OR PERMANENTLY. NO MOBILE HOMES ARE PERMITTED.
  10. SIGNS. NO SIGN OF ANY KIND WILL BE DISPLAYED TO THE PUBLIC VIEW ON ANY LOT, EXCEPT ONE PROFESSIONAL SIGN OF NOT MORE THAN FIVE SQUARE FEET FOR ADVERTISING THE PROPERTY FOR SALE OR RENT, OR SIGNS USED BY A BUILDER TO ADVERTISE THE PROPERTY DURING THE CONSTRUCTION AND SALES PERIOD.
  11. ANIMALS. NO ANIMALS OF ANY KIND WILL BE RAISED OR KEPT ON ANY LOT, EXCEPT THAT DOG, CATS, OR OTHER HOUSEHOLD PETS MAY BE KEPT PROVIDED THAT THEY ARE NOT KEPT, BRED, OR MAINTAINED FOR ANY COMMERCIAL PURPOSE AND ARE RESTRICTED TO THE OWNER'S PREMISES OR ON A LEASH UNDER HANDLER'S CONTROL. ANY TYPE OF DOG RUN OR STRUCTURE USED TO PEN UP ANY PETS OUTSIDE WILL BE PLACED IN AN AREA AT THE BACK OF THE HOUSE AND ATTACHED TO THE HOUSE, SO NOT TO BE VISIBLE FROM THE STREET.
  12. GARBAGE AND REFUSE DISPOSAL. NO LOT MAY BE USED OR MAINTAINED AS A DUMPING GROUND FOR RUBBISH. TRASH GARBAGE OR OTHERWISE, WASTE WILL BE KEPT IN SANITARY CONTAINERS. ALL INCINERATORS OR OTHER EQUIPMENT FOR STORAGE OR DISPOSAL OF SUCH MATERIALS WILL BE KEPT IN A CLEAN AND SANITARY CONDITION. EACH LOT, AND ITS ABUTTING STREET, ARE TO KEPT FREE OF TRASH, AND OTHER REFUSE BY THE LOT OWNER. NO UNSIGHTLY MATERIALS OR OTHER OBJECTS IS TO BE STORED ON ANY LOT IN VIEW OF THE GENERAL PUBLIC. PURCHASER OR CONTRACTOR OF ANY LOT WILL BE HELD RESPONSIBLE FOR DAMAGES CAUSED BY HIM OR HIS CONTRACTOR TO ANY LOTS IN THE SUBDIVISION.
  13. SIGHT DISTANCE AT INTERSECTION. NO FENCE, WALL, HEDGE, OR SHRUB PLANTING WHICH OBSTRUCTS SIGHT LINES AT ELEVATIONS BETWEEN TWO AND SIX FEET ABOVE THE ROADWAYS WILL BE PLACED OR PERMITTED TO REMAIN ON ANY CORNER LOT WITHIN THE TRIANGULAR

AREA FORMED BY THE STREET PROPERTY LINES AND A LINE CONNECTING THEM AT POINTS 25 FEET FROM THE INTERSECTION OF THE STREET PROPERTY LINES EXTENDED. THE SAME SIGHT LIMITATIONS WILL APPLY ON A DRIVEWAY OR ALLY PAVEMENT. NO TREE WILL BE PERMITTED TO REMAIN IN SUCH DISTANCE OF SUCH INTERSECTIONS UNLESS THE FOLIAGE LINE IS MAINTAINED AT SUFFICIENT HEIGHT TO PREVENT OBSTRUCTION OF SUCH SIGHT LINES.

14. SLOPE AND DRAINAGE CONTROL. NO STRUCTURES, PLANTING, OR OTHER MATERIAL WILL BE PLACED OR PERMITTED TO REMAIN OR OTHER ACTIVITIES UNDERTAKEN WHICH MAY DAMAGE OR INTERFERE WITH ESTABLISHED SLOPE RATIOS, CREATE EROSION, OR SLIDING PROBLEMS, OR WHICH MAY CHANGE THE DIRECTION OF FLOW OF DRAINAGE CHANNELS. THE SLOPE CONTROL AREAS OF EACH LOT AND ALL IMPROVEMENTS IN THEM WILL BE MAINTAINED CONTINUOUSLY BY THE OWNER OF THE LOT, EXCEPT FOR THOSE IMPROVEMENTS FOR WHICH A PUBLIC AUTHORITY OR UTILITY COMPANY IS RESPONSIBLE.

#### PART C FEES

1. ALL LOTS ARE SUBJECT TO CERTAIN FEES THAT WILL BE KNOWN AS HOME OWNER ASSOCIATION FEES, TO BE ASSESSED THROUGH MONTHLY BILLINGS. THESE FEES WILL HELP KEEP ALL COMMON AREAS IN REPAIR AND OPERATION.

#### PART D ARCHITECTURAL CONTROL COMMITTEE

1. MEMBERSHIP. A MAJORITY OF THE COMMITTEE MAY DESIGNATE A REPRESENTATIVE TO ACT FOR IT. IN THE EVENT OF DEATH OR RESIGNATION OF ANY MEMBER OF THE COMMITTEE, THE REMAINING MEMBERS OF THE COMMITTEE WILL HAVE FULL AUTHORITY TO SELECT A SUCCESSOR. NEITHER THE MEMBERS OF THE COMMITTEE NOR ITS DESIGNATED REPRESENTATIVE WILL BE ENTITLED TO ANY COMPENSATION FOR SERVICES PERFORMED PURSUANT TO THIS COVENANT. THE ARCHITECTURAL CONTROL COMMITTEE WILL BE COMPOSED OF THREE PERSONS APPOINTED BY THE DEVELOPER.
2. PROCEDURE. THE COMMITTEE'S APPROVAL OR DISAPPROVAL AS REQUIRED IN THESE COVENANTS WILL BE IN WRITING. IN THE EVENT THE COMMITTEE OR ITS DESIGNATED REPRESENTATIVE FAILS TO APPROVE OR DISAPPROVE WITHIN 30 DAYS AFTER PLANS AND SPECIFICATION HAVE BEEN SUBMITTED TO IT, OR IN ANY EVENT, IF NO SUIT TO ENJOIN THE CONSTRUCTION HAS BEEN COMMENCED PRIOR TO THE COMPLETION THEREOF, APPROVAL WILL BE REQUIRED AND THE RELATED COVENANTS WILL BE DEEMED TO HAVE BEEN FULLY COMPLIED WITH.

PART E: COMMON AREA PROVISIONS

1. COMMON AREA A, AS REFERRED TO ON SHEEP CREEK SUBDIVISION PHASE ONE, SHALL HAVE AN OPTION TO WEBER COUNTY FOR A PERIOD OF 5 YEARS, AFTER COMPLETION OF PHASE ONE, WHERE AS THE COUNTY MAY TAKE OVER SAID COMMON AREA. THIS TAKE OVER WOULD PLACE ALL COST OF MAINTENANCE AND OPERATION UNDER THE COUNTY, AND THE AREA WOULD BE AVAILABLE FOR PUBLIC ACCESS.

PART F GENERAL PROVISIONS

1. TERM. THESE COVENANTS ARE TO RUN WITH THE LAND AND WILL BE BINDING ON ALL PARTIES AND ALL PERSONS CLAIMING UNDER THEM FOR A PERIOD OF FIFTY YEARS FROM THE DATE THESE COVENANTS ARE RECORDED, AFTER WHICH TIME SAID COVENANTS WILL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF TEN YEARS UNLESS AN INSTRUMENT SIGNED BY THE MAJORITY OF THE THEN OWNERS OF THE LOTS HAS BEEN RECORDED, AGREEING TO CHANGE SAID COVENANTS IN WHOLE OR IN PART.
2. ENFORCEMENT. ENFORCEMENT WILL BE PROCEEDINGS AT LAW OR IN EQUITY AGAINST ANY PERSON OR PERSONS VIOLATING OR ATTEMPTING TO VIOLATE ANY COVENANT, EITHER TO RESTRAIN VIOLATION OR TO RECOVER DAMAGES.
3. SEVERABILITY. INVALIDATION OF ANY ONE OF THESE COVENANTS BY JUDGMENT OR COURT WILL IN NO WAY AFFECT ANY OF THE OTHER PROVISIONS, WHICH WILL REMAIN IN FULL FORCE AND EFFECT.
4. LOT NUMBER 143 IN PHASE 4 WILL BE EXEMPT FROM ALL RESTRICTIVE COVENANTS HERE IN.

DATE \_\_\_\_\_

SHEEP CREEK ESTATES \_\_\_\_\_

DEVELOPER \_\_\_\_\_

STATE OF UTAH