

AFTER RECORDING RETURN TO: E 1/2 IS 3n-1w  
Nathan W. Pugsley  
Woodside Hunters Creek, LLC  
39 East Eagleridge Drive, Suite 100  
North Salt Lake, UT 84054  
*Hunters Creek*

E 2156775 B 4003 P 1662-1697  
RICHARD T. NAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
03/31/2006 03:49 PM  
FEE \$115.00 Pgs: 36  
DEP RTT REC'D FOR US TITLE COMPANY  
OF UTAH

ACCOMMODATION  
RECORDING ONLY  
U.S. TITLE

*08-353-0101 thru*

*0138 also* **DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS FOR  
HUNTERS CREEK SUBDIVISION**

*08-066-0005, 0006 08-065-0050, 08-067-0004, 0008*

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS (the "Declaration") is made this 30 day of March, 2006 by  
WOODSIDE HUNTERS CREEK, LLC, a Utah limited liability company ("Declarant").

**RECITALS**

A. Declarant owns certain real property in the City of Farmington, in Davis County, Utah, and a portion of said property, as more particularly described in Exhibit "A" attached hereto, shall constitute the property initially covered by this Declaration ("Original Property");

B. Declarant further reserves the right pursuant to the terms of this Declaration from time to time to add all or any portion of certain other real property, more particularly described in Exhibit "B" attached hereto (the "Annexable Property") to the Property.

C. In order to efficiently manage and to preserve the value and appearance of the Community, it is necessary and desirable to create a nonprofit corporation to maintain Common Elements in the Community; to collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Community and the Homeowners. The Hunters Creek Homeowners Association, a homeowners association and nonprofit corporation, has or will be organized for the purpose of exercising the aforementioned powers and functions.

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Property annexed pursuant to Article 12 (collectively, "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties (as defined in Article 1 hereof). The protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, and each Owner and their respective heirs, executors and

administrators, and successive owners and assigns. All Lots within the Properties shall be used, improved, devoted, and limited exclusively to single Family residential use.

## 1. DEFINITIONS

1.1 "Annual Assessment" shall mean the charge levied and assessed each year against each Lot pursuant to Section 4.2 hereof.

1.2 "Annexable Property" shall mean all real property described in Exhibit B of this Declaration, as amended.

1.3 "Architectural Committee" or "ARC" shall mean the architectural review committee created pursuant to Article 7 hereof.

1.4 "Architectural Committee Rules" shall mean the rules, if any, adopted by the Architectural Committee.

1.5 "Association" shall mean the Hunters Creek Homeowners Association, a Utah nonprofit corporation or limited liability company, organized or to be organized to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

1.6 "Board" shall mean the Board of Trustees of the Association.

1.7 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.8 "Common Element" shall mean all land within the Community, that is designated as Common Element by this Declaration and areas shown or otherwise designated as a Common Element or "Common Area" on the Plat, or for which the Association has been granted an easement or which the Association has been permitted to use. Common Elements shall include, but not be limited to, areas shown on the recorded Plat or the preliminary plat as:

1.8.1 Parcel/Common Area "A," which is approximately 5.357 acres of Common Area, but also includes HOA maintenance obligations for the frontage and fencing along 950 North east of 2175 West (Sharpshooter Drive) to 1875 West (Public Right of Way ("ROW")), the frontage and fencing along 1875 west between 850 North (Winchester Lane) and 950 North ("ROW"), the Community entry statement and fencing at the North corner of 850 North (Winchester Lane) and 1875 West, the frontage and fencing along 850 North (Winchester Lane) to Browning Drive, ("ROW"), active landscaping along the above referenced frontages, the tot lot / small park and active landscaping on Browning Lane (within Common Area A), open space, trail (trail will be maintained by the City), and storm channel (which will be maintained by Davis County Flood Control ("DCFC")) which is approximately 5.357 acres of Common Area;

1.8.2 Parcel/Common Area "B" which is approximately 0.73 acres of Common Area, and also includes maintenance obligations for the park strips, fencing and active landscaping along the frontage of 1875 West Street ("ROW") between approximately 700 North to 850 North (Winchester Land), and the Community entry statement at the South corner of 850 North

(Winchester Lane) and 1875 West. Common Area "B" also includes a City owned and maintained trail;

1.8.3 Parcel/Common Area "H" including approximately 110,402 sq. ft of open space, trail (which will be owned and maintained by City), and storm channel (which will be maintained by DCFC), as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.4 Parcel/Common Area "I" including approximately 5,574 sq. ft. of open space and trail area maintained by the HOA and through which runs a large sewer collection pipe, as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.5 Parcel/Common Area "J" including approximately 25,523 sq. ft. of open space, trail (which will be owned and maintained by City), and storm channel (which will be maintained by DCFC), as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.6 Parcel/Common Area "K" including approximately 5,561 sq. ft. of open space and trail area maintained by the HOA, and through which runs a large sewer collection pipe, as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.7 Parcel/Common Area "L" including approximately 3,184 sq. ft. of open space and trail area maintained by the HOA, and through which runs a large sewer collection pipe, as such parcel shall be more fully defined by the recorded Plat for such area.

1.8.8 Parcel/Common Area "M" consisting of approximately 39,833 square feet of open space , storm channel (the storm channel itself will be maintained by DCFC), and trail (which will be owned and maintained by City) , as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.9 Parcel/Common Area "N" consisting of approximately 35,177 square feet of open space, bathroom / cabana structure, fencing, pool and pool maintenance, and active landscaping, as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.10 Parcel/Common Area "O" including approximately 45,347 sq. ft. of open space frontage and active landscaping along the future 950 North, as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.11 Parcel/Common Area "P" including approximately 13,066 sq. ft. of open space frontage and active landscaping along the future 950 North, as such parcel shall be more fully defined by the recorded Plat for such area;

1.8.12 Parcel/Common Area "Q" including approximately 5.29 acres of wetlands and open space area, as such parcel shall be more fully defined by the recorded Plat for such area;

**THE OWNERS AND THE ASSOCIATION ACKNOWLEDGE THAT CERTAIN PORTIONS OF THE COMMON AREAS ARE RESTRICTED "WETLANDS" AREAS THAT CANNOT BE FURTHER DEVELOPED, LANDSCAPED, OR IMPROVED**

WITHOUT THE APPROVAL OF APPLICABLE LOCAL, STATE, AND FEDERAL AGENCIES.

IN THE EVENT OF ANY DIFFERENCE OR CONTRADICTION BETWEEN THE DEPICTIONS OF THE COMMON AREAS ON THE ATTACHED PRELIMINARY PLAT AND DEPICTIONS ON THE RECORDED PLATS, THE RECORDED PLAT(S) WILL CONTROL.

ANY PRELIMINARY PLAT IS CONCEPTUAL AND NATURE. IT IS NOT A REPRESENTATION OR WARRANTY THAT ANY PORTION OF THE PROPERTY WILL BE APPROVED OR BUILT IN A MANNER CONSISTENT WITH THE PRELIMINARY PLAT.

1.9 “Common Expenses” shall mean all expenses for maintenance, repairs, landscaping, utilities and taxes incurred on or in connection with Common Elements within the Community, including snow removal and regular garbage collection, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws.

1.10 “Community” shall mean the collective reference to all real, personal and mixed property shown on the Plat and governed by this Declaration.

1.11 “City” shall mean the city of Farmington.

1.12 “County” shall mean Davis County.

1.13 “Declarant” shall mean Woodside Hunters Creek, LLC, a Utah limited liability company, and any Person to which it shall have assigned any rights hereunder of a Declarant by an express written and Recorded assignment executed by Woodside Hunters Creek, LLC.

1.14 “Dwelling” shall mean a residential building located on a Unit, designed and intended for use and occupancy as a residence by a single Family.

1.15 “Family” means (a) one or more natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group not so related who maintain a common household in a Residence on a Lot.

1.16 “Governing Documents” shall mean the Declaration, articles of incorporation for the Association, bylaws, Plat, and rules and regulations.

1.17 “Improvement” shall mean any structure or appurtenance thereto of every type and kind, whether above, on, or below the land surface, placed in the Community, including but not limited to the Residence and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, walls, party fences, private roads, fences, screening walls, block walls, retaining walls, stairs, decks,

landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softener fixtures or equipment.

1.18 "Lot" shall mean any numbered portion of a parcel of real property shown upon any recorded plat of the Property together with any improvements constructed thereon, with the exception of the areas designated as lettered tracts and areas dedicated to the public. Each Lot shall be a separate freehold estate.

1.19 "Maintenance Charges" shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Association for work done pursuant to Sections 5.2, 5.3 and 5.4 and fines, penalties and collection costs incurred in connection with delinquent Annual or Special Assessments pursuant to Section 4.6.

1.20 "Member" shall mean any person that is a member of the Association pursuant to the provisions of Section 2.1.

1.21 "Owner" means the Person or Persons, including Declarant, holding fee simple interest of record to any Lot. The term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees.

1.22 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.23 "Plat" shall mean the final plat maps of Hunters Creek, Recorded on February 3, 2005, in Book 3719 of Plats, Page 641, and any other plat map(s) of additional parcel(s) subsequently Recorded, as said plat map from time to time maybe amended or supplemented of record by Declarant, together with any map which may, in the future, be Recorded with respect to the Annexable Property.

1.24 "Property" or "Properties" shall mean the real, personal, or mixed property described in Recital A above which is subject to this Declaration, and all property as may be brought within this Declaration pursuant to Article 12 ("Annexation") and Exhibit B of this Declaration.

1.25 "Record," "Recorded," "Recorder," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of the County.

1.26 "Residence" means a building located on a Lot designed and intended for use and occupancy as a residence by a single Family.

1.27 "Rules and Regulations" shall mean any rules or regulations adopted by the Association pursuant to this Declaration, including Section 11.4.

1.28 "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 4.3.

1.29 "Unit" shall mean that portion of this Community to be separately owned by each Owner (as shown and separately identified on the Plat), and shall include a Lot and all Improvements thereon. The boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

## 2. MEMBERSHIPS AND VOTING

2.1 Membership. Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and any such transfer shall automatically transfer the membership appurtenant to such Lot to the new Owner thereof.

2.2 Voting Rights. The Association shall have the following-described two (2) classes of voting membership:

2.2.1 Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Lot shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Lot. Which of the multiple Owners of a single Lot shall cast the vote on the basis of that Lot is determined under Section 2.3 of this Article 2.

2.2.2 Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which the interest required for membership in the Association is held. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following: (i) the expiration of one hundred and twenty (120) days after fee titles to seventy-five percent (75%) of the Lots contained in the Community have been conveyed by Declarant to purchasers; or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Lot.

2.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

2.4 Quorum. A quorum for any such meeting shall be the presence in person or by proxy of no fewer than twenty-five percent (25%) of all Owners entitled to cast a vote ("Qualified Owners"). Absent a quorum, the Qualified Owners who are present at the noticed meeting may adjourn the meeting to a date, time and place specified prior to adjournment which is no less than five (5) and no more than thirty (30) days after the time of the noticed meeting. A

quorum at such later "adjourned meeting" shall be the presence in person or by proxy of no fewer than ten percent (10%) of all Owners.

2.5 Conduct of Meeting. If a quorum is present at any meeting or adjourned meeting, the first item of business thereat shall be the selection of a Director of Election, who shall preside over the conduct of the meeting. The Owners shall act by majority vote of a quorum, except that members of the Board shall be elected by plurality such that the individual receiving the highest number of votes shall be elected to fill one vacancy, the individual receiving the next highest number of votes shall be elected to fill a second vacancy (if any), and the individual receiving the next highest number of votes shall be elected to fill a third vacancy (if any).

2.6 Lists of Owners. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Lot which is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Davis County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Davis County, Utah. The address of an Owner shall be deemed to be the address of the lot owned by such person unless the Association is otherwise advised.

### 3. ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit Utah corporation or limited liability company charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws and the Association. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

3.2 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) natural persons, who need not be Members of the Association. The Board may also appoint various committees and may appoint and hire at Association expense a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association. For as long as Declarant controls the Board, the Declarant may appoint and substitute members of the Board.

3.3 Board Composition. Except for the initial Board appointed by Declarant, all members of the Board must be Owners at the time of their election. Should any Member move his or her residence outside of the Community, such Member shall automatically be deemed to have resigned and the Board shall declare a vacancy. At such time that all lots owned by the Declarant are sold, the aforementioned Initial Board shall be released from responsibility. The

reorganization of the Board shall be by a two-thirds (2/3) majority vote of the then current Owners within the Community.

3.4 Term of Office. The term of office of each Board member elected following the termination of Declarant's control shall be two (2) years, commencing on the date of election and extending until a successor is elected pursuant to the Bylaws of the Association. Any such Board member may succeed himself, and there shall be no limit to the number of terms of any such member. In addition, any such ARC member may be removed from office for any reason at any time by election of the Qualified Owners noticed and conducted pursuant to this Section 3.12 provided that such ARC member is afforded personal prior notice (by mail or otherwise) of his proposed removal and a reasonable opportunity to be heard at the election; and further provided that any such removal shall require approval by majority vote of a quorum of Qualified Owners.

3.5 Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, including any decision to not institute Proceedings as described in Section 6.4, except for their own individual acts performed intentionally and with malice and any acts that are *ultra vires* under Section 6.4(d) or otherwise. The officers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association may, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

#### 4. ASSESSMENTS

4.1 Purpose of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner, except Declarant, by acceptance of a deed to a Lot is deemed to covenant and agree, to pay to the Association the following assessments and charges: (a) Annual Assessments, (b) Special Assessments, and (c) Maintenance Charges, all such assessments and charges to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs and reasonable attorneys' fees, shall be secured by a lien (the "Assessment Lien") on the



Lot to which they relate, in favor of the Association, which shall be a continuing servitude and lien upon the Lot against which each such assessment or charge is made. The Assessment Lien shall be a charge on the Lot, shall attach from the date when the unpaid assessment or charge shall become due, and shall be a continuing lien upon the Lot against which each assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The Assessment Lien may be foreclosed by the Association in substantially the same manner as provided for non-judicial foreclosure of deeds of trust on real property upon the Recording of a Notice of Delinquent Assessment or charge as set forth in Section 4.6 hereof. The Association shall be entitled to purchase the Lot at any foreclosure sale. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged, and is exempt from paying, any assessments, whether Annual, Special, Maintenance or otherwise, with respect to Lots owned by Declarant.

4.2 Annual Assessments. Commencing on January 1, 2008, an Annual Assessment shall be made against each Lot, except any Lot owned by Declarant, for the purpose of paying (or creating a reserve for) Common Expenses. The Annual Assessment for all Lots, except any Lot owned by Declarant, shall be Six Hundred Sixty Dollars (\$660.00) per Lot.

4.2.1 After January 1, 2008, the Annual Assessment may be increased each year in the discretion of the Board by not more than the lesser of: (i) twenty-five percent (25%) of the Annual Assessment for the previous year or (ii) Two Hundred Fifty Dollars (\$250.00).

4.2.2 From and after January 1, 2008, the Annual Assessment may be increased above twenty-five percent (25%) or the Two Hundred Fifty Dollars (\$250.00) per year limit by a vote of sixty-six and two-thirds percent (66.66%) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

4.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Lots owned by Declarant, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Element, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall have the assent of a majority of the total number of votes held by the Members who are voting in person or by proxy at a meeting duly called for such purpose.

4.4 Uniform Rate of Assessment. Annual Assessments shall be fixed at a uniform rate for all Lots, except owned by Declarant, and may be collected on a yearly basis or more frequently (such as monthly or on a quarter-annual basis) if the Board shall so determine.

4.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the twelve month period beginning January 1, 2004. The Board, in its sole discretion from time to time, may change the Assessment Period by Recording with the County an instrument specifying the new Assessment Period. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in

advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

4.6 Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty (30) days after the due date until paid at the legal rate of interest or other reasonable rate not to exceed the legal rate, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also Record a Notice of Delinquent Assessment or Charge against any Lot as to which an assessment or charge is delinquent. The Notice shall be executed by an officer of the Association or a member of the Board, set forth the amount of the unpaid assessment, the name of the delinquent Owner, and a description of the Lot. The Board may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency, and Recording a release of such lien, which fixed fee shall be treated as part of the Maintenance Charge of the Association secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against such Owner's Lot. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the benefits derived from assessments or abandonment of his or her Lot. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged and is exempt from paying any assessments, whether Annual, Special, Maintenance, or otherwise, with respect to Lots owned by Declarant.

4.7 Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with a Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien.

## 5. MAINTENANCE OBLIGATIONS

5.1 Common Elements. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Elements in the Community. This maintenance will include the mowing, watering, sweeping, snow removal and appropriate upkeep and repair of any designated Common Elements. The Board shall be the sole judge as to the appropriate maintenance of all Common Elements and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative.

5.2 Assessment of Certain Costs. In the event that the need for maintenance or repair of Common Elements and other areas maintained by the Association is caused through the willful or negligent act of any Owner (except Declarant), his or her family, guests or invitees, the

cost of such maintenance or repairs shall be added to and become part of the Maintenance Charge to which such Owner's Lot is subject and shall be secured by the Assessment Lien.

5.3 Improper Maintenance. In the event any portion of any Lot, except Lots owned by Declarant, is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Community which are substantially affected thereby or related thereto; or in the event any portion of a Lot, except Lots owned by Declarant, is being used in a manner which violates this Declaration; or in the event any Member, except Declarant, is failing to perform any of its obligation under this Declaration or the architectural guidelines and standards of the Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Member that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at such Owner's cost. If at the expiration of such fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge and shall be secured by the Assessment Lien. No strict or absolute liability shall be imposed on an Owner for damage to the Common Elements or other Lots in the Community caused by such Owner.

5.4 Party Walls or Fences. Each wall or fence which is built as a part of the original construction by Declarant and placed on the property line between Units shall constitute a party fence. In the event that any party fence is not constructed exactly on the property line, the Owners affected shall accept the party fence as the property boundary. The cost of reasonable repair and maintenance of party fences shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party fence is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party fence is destroyed or damaged by fire or other casualty, the party fence shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the wall. Subject to the foregoing, any Owner whose Unit has or had use of the wall may restore it to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 5.4, an Owner who by his negligent or willful act causes a party fence to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection, repair or replacement. The right of any Owner to contribution from any other Owner under this Section 5.4 shall be appurtenant to the land and shall pass to such Owner's successors in title. Any other provision herein notwithstanding, no Owner shall alter, add to, or remove any party fence constructed by Declarant, or portion of such wall, without the prior written consent of the other Owner(s) who share such party fence, which consent shall not be unreasonably withheld. Due to the location of a party fence on a slope between Lots, the apparent height of a party fence may differ between Lots.

5.5 Snow Storage Easement. The Association hereby reserves a snow storage easement for itself and its agents across the front portion of the front yards of each Lot in the

Community as may be reasonably required to store snow in the normal course of street snow removal.

## 6. RIGHTS AND POWERS OF ASSOCIATION

6.1 Association's Rights. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws.

6.2 Rights of Enforcement. The Association, as the agent and representative of the Members, shall have the right to enforce the covenants set forth in this Declaration. The Association or Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If the Association prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action. Failure by the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association fails or declines to take action to enforce the covenants set forth in this Declaration within thirty (30) days after the written request of an Owner, then and in such event that Owner may take legal action to enforce the covenants set forth in the Declaration.

6.3 Insurance. The Association may obtain in its name and keep in full force and effect at all times, insurance policies for such casualty and public liability and other insurance policies, as the Board deems necessary.

6.4 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

6.4.1 Operational Proceedings. Any Proceeding commenced by the Association to: (i) enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, (ii) otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, (iii) protect against any matter which imminently and substantially threatens the health, safety and welfare of the Owners, (iv) pursue a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) recover money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding". The Board from time to

time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization;

6.4.2 Non-Operational Controversy. Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies". To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Board and individual members of the Board or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 6.4 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

6.4.2.1 Dispute Resolution. The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(a) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Utah attorney regularly residing in Salt Lake or Davis Counties, Utah, with a Martindale – Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars (\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefore, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$5,000.00 limit, with the express consent of more than fifty percent (50%)

of all of the Members of the Association, at a special meeting called for such purpose;

(b) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(c) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (a) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (b) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment

Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees, costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of the attorney's fees and costs incurred to date in connection therewith.

(d) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

6.4.2.2 In no event shall any Association working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy).

6.4.2.3 Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 6.4, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 6.4, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the Association or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.4 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 6.4 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the

Board; and any purported amendment or deletion of this Section 6.4, or any portion hereof, without both of such express prior written approvals shall be void.

## 7. ARCHITECTURAL CONTROL

7.1 Purpose. In order to create, maintain and improve the Community as a pleasant and desirable environment, to establish and preserve a harmonious design for the Community and to protect and promote the value of the Property, all Improvements, exterior design, landscaping and changes or alterations to existing use, landscaping and exterior design and development shall be subject to design review by the Architectural Control Committee (the "Committee").

7.2 Creation. The Architectural Committee shall consist of three (3) persons, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Committee. In the event of death or resignation of any of the Committee members, the surviving members of the Committee shall have full authority to appoint another person to fill the said vacancy. The initial Committee will consist of three (3) persons to be appointed by Declarant in its sole discretion for so long as there is a Class B Member. At such time that the Class B Membership shall have ceased to exist, the initial Committee shall be released from responsibility and a new Committee shall be selected which shall consist of three (3) Members. The term for which each Committee Member shall serve shall be four (4) years, plus any time required to duly select a successor Committee Member, unless such Member shall have died or resigned prior to such time. The Members on the Committee shall be selected by a two-thirds (2/3) majority vote of the Owners voting in person or by proxy, at a meeting duly called for that purpose. No Member may serve on the Committee for more than two (2) consecutive terms at a time.

Except for the initial Committee appointed by Declarant, all members of the Committee must be Owners at the time of their appointment. Should any Member move his or her residence outside of the Community, such Member shall automatically be deemed to have resigned and the Board shall appoint a new Member to the Committee.

In the event of violation of any of the provisions of this Declaration, the Board and/or the ARC is authorized and empowered to take such action as may be necessary to restrain or enjoin the violations of applicable governmental codes and regulations and these covenants. All costs, including attorneys' fees, of such enforcement shall be borne by the Owners who are in violation of this Declaration.

7.3 Powers. The Committee, subject to Board approval is hereby authorized to perform (or to retain the services of one or more consulting architects, landscape architects, or urban designers, who need not be licensed to practice in the State of Utah, to advise and assist the Committee in performing) the design review functions prescribed in this Declaration and the Association's Bylaws and to carry out the provisions set forth therein.

7.4 Architectural Control. Except as to construction by Declarant and its affiliates and agents, no development, erection, construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of the visible exterior of any



improvement, including without limitation any Residence, garage or outbuilding, or any other activity within the jurisdiction of the Architectural Review Committee pursuant to this Declaration ("Construction Activity") shall take place on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the ARC as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevations. No building, including without limitation, garages and other out-buildings, shall be painted or repainted other than its original colors until the color has been approved by the ARC.

7.5 Basic Architectural Requirements. No building shall be erected, altered, placed or permitted to remain on any lot other than a Single Family Residence, and is not to exceed two (2) stories in height (basement not included) and a private garage for not less than one vehicle. Power and telephone lines must be run underground. Housing construction costs must be a minimum of \$100,000.00 excluding the costs of the lot, loan costs, and closing. The height of all Residences must be consistent with all applicable zoning and building codes.

7.5.1 Additional Architectural Requirements. All Residences shall also meet the following additional architectural requirements:

7.5.1.1 All exteriors must be stucco, brick, cultured stone, rock, masonry siding or any combination thereof. Vinyl and aluminum siding are not permitted. Wood siding may be used only upon approval by the ARC.

7.5.1.2 Pitched roofs shall be at least 6/12 pitch and no greater than 10/12.

7.5.1.3 Three-bay garages are to be provided wherever possible.

7.5.1.4 One-story Residences shall have a minimum square footage of 1,300 finished square feet above ground level. Two-story Residences shall have a minimum of 1,800 square feet finished and multi-levels shall have a minimum of 1,500 finished square feet. Square footage of any style shall be measured excluding garages, porches, verandas, carports, patios, basements, porches and steps.

7.5.1.5 Any variances from these requirements must be approved in writing by the ARC, which approval may be withheld in the ARC's sole discretion.

7.6 Submittals to ARC. Submittals to the ARC must comply with the provisions herein. Persons submitting proposals or plans and specifications to the ARC (such Person is referred to in this Article 7 as the "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the ARC with the address to which further communications from the ARC to the Applicant are to be directed. Until changed by the ARC or until the automatic resignation of Declarant's representatives therefrom pursuant to Article 7, whichever occurs first, the address for submittal of plans and specifications shall be Declarant's business address, c/o the Architectural Review Committee. The ARC may require with each submission a one-time review fee of \$250 for the costs of consultants or other professionals to assist the ARC in its duties hereunder.

7.6.1 Preliminary Drawings. The following information shall be the minimum to be initially submitted to the ARC for approval:

- (a) A plot plan to scale of the entire proposed site with buildings located and elevation of floors shown above or below a designated point on the street;
- (b) Floor plans of each floor level to scale;
- (c) Elevations to scale of all sides of the Residence;
- (d) One major section through the Residence;
- (e) A perspective (optional);
- (f) Specifications of all outside materials to be used on the exterior of the Residence; and
- (g) The color scheme for the Residence.

7.6.2 Working Drawings. "Working drawings" shall be submitted to the ARC for approval. ARC acceptance is required before construction is commenced. The Working Drawings shall include the following as a minimum:

- (a) Plot plans to scale showing the entire site, building, garages, walks, drives, fences, carriage lights, retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street;
- (b) Detailed floor plans;
- (c) Detailed elevations, indicating all materials and showing existing and finished grades;
- (d) Detailed sections, cross and longitudinal;
- (e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc; and
- (f) Specifications shall give complete descriptions of materials to be used, and shall be supplemented with a notation of the colors of all materials to be used on the exterior of the Residence.

7.7 Approval and Disapproval. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, addition or other Construction Activity on the basis of satisfaction of the ARC with the grading plan; the location of the improvements on the Lot; the finished ground elevation; the color scheme, finish, design,

proportions, architecture, shape, height, style, and appropriateness of proposed improvements; the effect on adjoining Lots; the materials to be used; the kinds, pitch or type of roof proposed; the planting, landscaping, size, height, or location of vegetation on a Lot; and on the basis of aesthetic considerations and the overall benefit or detriment to the Community generally which would result from such improvement, alteration, addition or other Construction Activity. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all governmental requirements.

7.8 No Waiver of Future Approvals. The approval of the ARC to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

7.9 Time Requirements. Until receipt by the ARC of all plans, specifications or other materials deemed necessary by the ARC, and the review fee (if any), the ARC may postpone review of any plans submitted for approval. Within forty-five (45) days of its receipt of all such materials, ARC approval or disapproval and the reasons therefore shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval. Any application submitted pursuant to this Article III shall be deemed approved, unless the ARC's written disapproval or a request for additional information or materials is transmitted to the Applicant within forty-five (45) days after the date of receipt by the ARC of all required materials. The ARC approval for any particular Construction Activity shall expire and the plans and specifications therefore shall be resubmitted for ARC approval pursuant to this Article 7 if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months of the ARC's approval of such Construction Activity. All Construction Activities shall be performed as promptly and as diligently as possible and shall be completed within such reasonable period of time specified by the ARC.

7.10 Pre-Approvals. The ARC may provide for the pre-approval of certain specified types or categories of Construction Activities, provided that such pre-approved Construction Activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established for such pre-approved Construction Activities. The ARC may from time to time adopt, supplement or amend the Architectural Rules to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved Construction Activities.

7.11 Variance. The ARC may authorize variances from compliance with any of the architectural provisions of this Declaration or architectural rules adopted by the ARC, including, without limitation, restrictions on height, size, floor area, placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations may require. Such variances must be in writing and must be signed and acknowledged by at least a majority of the members of the ARC. If such variances are granted, no violation of this Declaration shall be deemed to have occurred with respect to the

matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Lot, including, but not limited to, zoning and building requirements of any governmental agency or entity having jurisdiction over the Properties.

7.12 Compensation of Members. The individual members of the ARC shall receive no compensation for services rendered.

7.13 Non-liability of ARC Members. Neither Declarant, the ARC, nor any members thereof, nor their duly authorized representatives shall be liable to any Owner for any loss, damage, or injury arising out of or in any way connected with the performance of the ARC's duties hereunder, unless due to willful misconduct. By approving such plan specifications, neither the ARC, the members thereof, nor Declarant, nor their agents, employee, attorneys or consultants assume liability responsibility therefore or for any defect or any improvement constructed as a result of such plans and specifications.

7.14 Nuisances; Construction Activities. Prior to commencing construction on a Lot an Owner shall post with the Association a one thousand dollar (\$1,000.00) cash construction bond to cover any damage done by Owner or their contractors, subcontracts and materialmen to streets, sidewalks, curbs and utilities lines and pipes, or any clean-up expense caused by such construction activities. The obligation under this paragraph includes construction activities related to the installation of a swimming pool by an Owner or the Owner's contractor. If no damage is done, and no repairs or clean up is required from such Owners construction activities, the bond, or the remaining portion thereof shall be refunded to Owner within sixty days of completion of construction activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be piled only in such areas as may be approved by the Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Committee, which may require screening of the storage areas.

## 8. USE RESTRICTIONS

8.1 Use Restrictions. The Properties shall be held, used and enjoyed subject to the following restrictions, and the exemptions of Declarant set forth in this Declaration.

8.2 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family (as the term "Family" is defined in this Declaration) and for no other purpose. No part of the Community shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending "reverse engineering," destructive testing, or any other nonresidential purposes; provided that Declarant, its successors and assigns, may exercise the reserved rights described in Article 11 hereof. The provisions of this Section shall not preclude a professional or administrative occupation, or an occupation of child care provided that the number of non-Family children, when added to the number of Family children being cared for at the Lot, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 8.9, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than thirty (30) days.

8.3 Landscaping. All front yard landscaping for each Lot shall be installed by the builder or Owner of the home no later than ninety (90) days after the initial close of escrow or occupancy (whichever is earlier) for the Residence on the Lot, provided, however, that if seasonal temperatures do not permit installation of the landscaping at that time, then the landscaping shall be installed by the builder within six (6) months thereafter. "Front yard landscaping" for purposes of this section is defined as landscaping in the front yards between the front line of the house and the sidewalk on the entire width of the lot excluding the driveway, and on corner lots, landscaping shall be installed in all areas between the sidewalk and the side line of the house between the front property line and the rear property line which are visible from the public right-of-way. Front yard landscaping shall include at least one (1) tree, combination of lawn, shrubs or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Any plants or trees installed by a builder of a Residence shall be maintained by the Owner of the Lot and shall be replaced with the same kind and caliber of plant or tree at the sole expense of the Owner of the Lot. Mature natural foliage on the lot shall be removed from each Lot only as is reasonably necessary for clearing the driveway, excavating for the foundation, and for lawns and patio areas.

8.4 Fencing. No fence or other similar structure shall be erected in any required front yard of a dwelling to a height in excess of three and one-half feet; nor shall any fence or other similar structure be erected in any side or rear yard to a height in excess of six feet. Front yard shall be defined as any lot area in front of the house structure facing the street. White or earth tone color vinyl, wrought iron, or masonry fencing material shall be used for any front yard, and for any "return" fencing used in a side yard from the side of a Residence to the Lot boundary. Chain-link fencing may not be used. All fencing shall require approval by the ARC.

8.5 Building Location. No building shall be located on any Lot nearer to the front and side street line than the minimum building set back lines as required by the City.

8.6 Storage of Building Materials. No building material of any kind or character shall be placed or stored upon any lot until the owner thereof is ready to commence improvements and

then the material shall be placed within the property lines of the plot upon which the improvements are to be erected, and shall not be placed in the streets or between the curb and the property line.

8.7 Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind (“animals”) shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats, birds, or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable City or County ordinance or any other provision of the Declaration. As used in this Declaration, “unreasonable quantities” shall ordinarily mean more than three (3) pets per household.

8.8 Nuisances. No noxious or offensive activities may be carried on upon the Properties or on any public street abutting or visible from the Properties nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

8.9 Signs. No signs, billboards, nor advertising structures may be erected or displayed on any lots, except that a single sign, not more than 3 feet by 3 feet in size, advertising a specific unit for sale or house for rent or construction sign, may be displayed on the premises affected; provided however that Declarant may erect such signs as are deemed necessary by Declarant for its construction and marketing activities, and all such signs must be removed at such time that all the lots in the subdivision are sold and Declarant has completed its marketing activities.

8.10 Antennae. Owners are prohibited from installing any antennae or “dish” on a Lot or on the exterior of a home for any purpose, except for: (i) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, or (ii) an antenna that is designed to receive video programming service or wireless internet service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement. Any antenna that is designed to receive television broadcast signals shall be installed in the attic of the Residence.

8.11 Trash Disposal. No trash, ashes, nor any other refuse may be dumped, or thrown, or otherwise disposed of, on any portion of the Properties. All homes must subscribe to a city garbage disposal service.

8.12 Temporary-type Structures. No structure of a temporary character, trailer basement, tent, shack, garages, barn or other out buildings shall be used on any Lot at any time as a residence, either temporary or permanently.

8.13 Detached Buildings. Any detached accessory building erected on the lots shall conform in design and materials with the Residence on the Lot, and in accordance with the guidelines found in this Declaration, unless a variance is approved in writing by the Architectural Review Committee.

8.14 Parking and Storage. No inoperative automobile shall be placed or remain on any lot or adjacent street for more than 48 hours. No commercial type vehicles and no trucks shall be parked or stored on the front yard setback of any lot, or within the side yard building setback on

the street side of a corner lot, or on the residential street except while engaged in transportation. Semi-trucks and trailers may not be parked on the street except while loading or unloading. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors and maintenance or commercial equipment of any kind shall be parked or stored behind the front yard setback in an enclosed area screened from street view. Sufficient side yard gate access should be planned and provided for in the design of the Residence to permit ingress, egress and storage of trailers and recreational type vehicles on the side and rear yards. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited. Facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. In the event of any conflict between the provisions of this section and any city or county requirements, the more restrictive provision shall control.

8.14.1 No articles, material, equipment, or vehicles of any nature shall be parked or stored on any street location within the Property. Licensed, regularly used passenger vehicles (i.e., visitor vehicles) may be parked on streets within the Property for brief periods of time (i.e., less than twenty-four (24) hours). Overnight parking of such vehicles should generally be restricted to driveway of the dwelling being visited.

8.14.2 The use or operation of snowmobiles on Community streets is not permitted. The use of motorcycles and other motorized recreational vehicles which may produce audible annoyance to the Owners shall be limited to ingress and egress of the Property.

8.14.3 No oil or gas drilling, development, operations, refining, storage, quarrying, or mining operations of any kind shall be permitted upon any Lot.

8.14.4 The burning of rubbish, leaves, or trash on the Property is prohibited. Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection.

8.14.5 No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

8.14.6 The Board or ARC, in its sole discretion, shall have the right to determine the existence of any nuisance.

8.15 Maintenance. Every lot, including the improvements in said tract, shall be kept in good repair and maintained by the owner thereof in a clean, safe and attractive condition. In the event any building or structure is damaged or destroyed, such building or structure shall be immediately repaired, rebuilt or demolished, subject to the approvals required by Article 7 above.

8.16 Fuel Storage Tanks. No tank for storage of fuel may be installed or maintained on any lot.

8.17 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred

by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivisions, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be Recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions, or easements Recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot and no applications for variances or use permits shall be filed with any governmental authority unless the proposed uses of the Lot has been approved by the Board and the Committee and the proposed use otherwise complies with this Declaration. The Common Elements cannot be mortgaged, pledged or conveyed without the prior written consent of at least two thirds of the Owners other than Declarant.

8.18 Easements. Easements for installation of and maintenance of utilities, drainage facilities, and water tank access and lines are reserved as shown on the Recorded Plat. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or water tank lines or which may change the direction of flow of drainage channels in the areas or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

8.19 Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, quarry tile, brick, or paving blocks. Gravel areas are not permitted.

8.20 Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be compatible with roof colors, all equipment must be screened from view, and prior written approval must be obtained from the ARC.

8.21 Pools, Spas, Fountains, Game Courts. Pools, spas, fountains, and game courts must be approved by the ARC and shall be located to avoid impacting adjacent properties with light or sound. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or similar area ramps, which structures shall be prohibited.

8.22 Water Discharge. It shall be unlawful for any person owning, occupying, or having control of any premises to suffer or permit irrigation or water from the roof or eaves of any house, building, or other structure or from any source under the control of such person, to be discharged and spread upon the surface of any sidewalk, street, or adjoining Lot. This is intended to require that the Owner maintains water on his property.

8.23 Declarant Exemption. Lots owned by Declarant are exempt from the provisions of this Article 8, until such time as Declarant conveys title to the Lot to a third-party. All activities of Declarant reasonably related to Declarant's development, construction, sales, and marketing efforts, shall be exempt from the provisions of this Article 8. This Article 8 may not be amended without Declarant's prior written consent.



8.24 Variance. Any exceptions to the provisions of Article 8 must be obtained by the written permission of the Board. Any variance must also be in accordance with city and other governmental requirements.

## 9. TERM OF DECLARATION; TERMINATION AND AMENDMENTS.

9.1 Term: Method of Termination. This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of Recordation. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting seventy-five percent of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. The Declaration may be terminated at any time if at least ninety-percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded in the office of the Davis County Recorder a "Certificate of Termination," duly signed by the President and Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, the covenants herein contained shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.2 Amendments. This Declaration may be amended by Recording in the office of the Davis County Recorder a "Certificate of Amendment," duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws of the Association, the Owners casting seventy-five (75%) percent of the votes at the election voted affirmatively for the adoption of the amendment. Notwithstanding all of the foregoing, for so long as Declarant owns a Unit or Lot, Declarant shall have the power from time to time to unilaterally amend this Declaration to: (a) correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, and otherwise to ensure that the Declaration conforms with requirements of applicable law, or (b) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without limitation, Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Mortgagees.

9.3 Agency Consents. If any Lots herein are, or will be, financed and/or mortgages insured through or by FHA/VA loan programs, so long as there is a Class B membership, the annexation of additional properties into the Community beyond those identified herein, dedication of additional property as Common Elements, and amendment of this Declaration other than as provided in Section 9.2 above, shall require prior FHA/VA approval.

**10. LIMITED WARRANTY; MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT**

Each Owner, and the Association, by taking title to a Lot and/or any portion of the Common Elements, acknowledges and agrees as follows:

10.1 Limited Warranty by Declarant. Declarant may issue a “Home Builder’s Limited Warranty” (the “Limited Warranty”) regarding the Lots to each initial third-party Owner upon the close of escrow, and regarding the Common Elements to the Association. The Limited Warranty is currently administered by Professional Warranty Service Corporation, or its successor (“PWC”). The actual terms of the Limited Warranty are defined by the Limited Warranty documents themselves. If issued, a copy of the Limited Warranty will be provided to each initial third-party Owner, and may be obtained from PWC at its current address of P.O. Box 800, Annandale, VA 22003-0800. Each Owner whether they are an initial purchaser of a Lot or a subsequent purchaser, and the Association, as concerns the Common Elements, are hereby advised and agree that:

10.1.1 the Limited Warranty is the only warranty provided by the Declarant;

10.1.2 that all allegations of “Construction Defects,” as that term is defined in the Limited Warranty documents provided to the initial third-party Owner and to the Association, will be resolved under and in accordance with, the Limited Warranty;

10.1.3 that final, binding arbitration is the sole remedy for resolving disputes involving alleged Construction Defects;

10.1.4 that by taking title to a Lot or the Common Elements, each Owner (whether an initial purchaser of a Lot or a subsequent purchaser) and the Association agree to be bound by the terms of the Limited Warranty;

10.1.5 the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

10.2 Mandatory Binding Arbitration for Matters Involving Declarant. To the fullest extent permitted by law, all claims and disputes of any kind that an Owner or the Association may have arising from or in any way related to a Lot or Lots or the Common Elements involving the Declarant or any affiliate, agent, employee, executing officer, manager, or owner of Declarant (a “Dispute”) shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving disputes between the Declarant and any Owner and/or the Association. Disputes subject to binding arbitration include but are not limited to:

10.2.1 Any disagreement that a condition in the Lot or in the Common Elements is a Construction Defect (as defined in the Limited Warranty) and is therefore covered by the Limited Warranty;

10.2.2 Any disagreement as to whether a Construction Defect has been corrected in compliance with the Limited Warranty;

- 10.2.3 Any alleged breach of the Limited Warranty;
- 10.2.4 Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- 10.2.5 Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- 10.2.6 Any disputes concerning the issues that should be submitted to binding arbitration;
- 10.2.7 Any disputes concerning timeliness of performance and our Buyer's notifications under the Limited Warranty;
- 10.2.8 Any dispute as to the payment or reimbursement of the arbitration filing fee;
- 10.2.9 Any dispute as to whether the Limited Warranty, or any provision thereof, including, but not limited to any waiver under the Limited Warranty, is unenforceable; and
- 10.2.10 Any other claim arising out of or relating to the sale, design, or construction of the Lot or the Common Elements, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by the Limited Warranty.

10.3 The arbitration shall be conducted by Construction Arbitration Services, Inc. or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization that are in effect at the time the request for arbitration is submitted will be followed.

10.4 The arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) to the exclusion of any inconsistent state law, regulation, or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

10.5 Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. This filing fee shall be no more than the amount charged by the arbitration service to PWC for arbitration. Owners may contact PWC to determine the arbitration filing fee in effect at the time arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

10.6 If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Dispute be arbitrated in accordance therewith.

10.7 The obligations of Section 10.2 to submit all disputes to final, binding arbitration is wholly independent and separate from the rights and obligations under the Limited Warranty provisions of Section 10.1. In the event any Unit is not issued a Home Builder's Limited Warranty as described in Section 10.1, all Disputes shall be resolved by final, binding arbitration conducted by Construction Arbitration Services, Inc., or such other organization as the parties to the Dispute may agree upon, pursuant to the terms of Section 10.2.

10.8 Obligation of Owners to Provide Copies of Limited Warranty Documents to Subsequent Purchasers. Each Owner that transfers his or her interest in a Unit shall provide a copy of the Limited Warranty to the subsequent owner and shall thereby transfer to the subsequent owner all remaining coverage for the Lot under the Limited Warranty.

10.9 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the written consent of the Declarant.

## 11. RESERVATION OF RIGHTS

11.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

11.1.1 Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements in the Community and an easement over the Community for such purpose; provided, however, that if Declarant still owns any property in the Community on such fifteenth (15th) anniversary date, then such rights and reservations shall continue for one additional successive period of sixty (60) months thereafter. Any damage to any Unit or the Common Elements caused by Declarant or its agents in the use or exercise of said right and/or easement shall be repaired by and at the expense of Declarant.

11.1.2 Exercise of Developmental Rights. Declarant reserves the right to add or withdraw real property from the Community.

11.1.3 Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Community, and signs anywhere on the Common Elements, for so long as Declarant owns or leases any Lot.

11.1.4 Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.2 hereof.

11.1.5 Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 9.2, above, during the time periods set forth therein.

11.1.6 Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

11.1.7 Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration.

11.1.8 Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Community, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Community, in Declarant's sole discretion, to accommodate Declarant's construction activities and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Community.

11.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

11.2.1 Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Community, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Community, for so long as any Unit owned by Declarant remains unsold.

11.2.2 This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.

11.2.3 Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

11.2.4 Without limiting Section 11.1.3, above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

11.2.5 All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

11.2.6 The prior written approval (which shall not be unreasonably withheld) of Declarant, as developer of the Community, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 11) can be effective.

11.2.7 The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 11.1.1 above.

11.3 Additional Disclosures, Disclaimers and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Lot or possession of a Lot, each Owner (for purposes of this Section 11.3, the term "Owner" shall include the Owner, any resident, and their respective families, guests and tenants), shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

11.3.1 that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, and other construction-related "nuisances". Each Owner acknowledges and agrees that it is purchasing a Lot and/or Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "nuisances" until the subdivision (and any neighboring or nearby land), have been completed and sold out, and that such construction-related "nuisances" are not a violation of any restriction herein;

11.3.2 that the Community may be located nearby a religious center, and subject to levels of traffic and sound and noise and other nuisance resulting from proximity to such religious center;

11.3.3 that the Community is located adjacent to or nearby certain designated commercial sites, and subject to substantial levels of sound and noise, and other nuisances, from such commercial sites, and commercial facilities developed thereon

11.3.4 that the Community is or may be located adjacent to or nearby major roadways, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles; that Declarant hereby specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to roads and/or noise, dust, and other nuisance therefrom;

11.3.5 that the Community is or may be located nearby a school, and subject to levels of noise, dust, and other nuisance resulting from proximity to such school or otherwise related nuisance resulting from proximity to such school or otherwise related to such school;

11.3.6 that the Lot and other portions of the Community are or from time to time may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; and

11.3.7 that the Community is or may be located adjacent to or nearby a storm drain detention basin and may be subject to certain nuisances resulting from proximity to such detention basin.

11.4 Releases. By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant specifically disclaims any and all representations and warranties, express and

implied, (other than to the extent expressly set forth in the foregoing disclosures) with regard to any of the foregoing disclosed or described matters; and (b) to fully and unconditionally release Declarant and the Board, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration.

11.5 Reservation of Easements. Declarant hereby reserves for the benefit of each Owner and such Owner's Lot reciprocal, nonexclusive easements over the adjoining Lot or Lots for the control, maintenance and repair of the utilities serving such Owner's Lot. Declarant expressly reserves for the benefit of all of the real property in the Community, and for the benefit of all of the Lots and of the Owners, reciprocal, nonexclusive easements over all Lots, for maintenance and repair of utility services, for drainage and flow from the Lots of water resulting from the normal use of adjoining Lots, and for maintenance and repair of any Residence. Declarant and the Owners of each Lot on which there is constructed a Residence along or adjacent to such Lot line shall have an easement appurtenant to such Lot over the Lot line to and over the adjacent Lot for the purposes of accommodating any natural movement or settling of any Residence located on such Lot, any encroachment of any Residence due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features comprising parts of the original construction of any Residence located on such Lot.

11.6 No Limitation. This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposition of each lot within the Community.

## 12. ANNEXATION

12.1 Right of Annexation and Deannexation. Declarant hereby expressly reserves the right until fifteen (15) years from the date of recording of this Declaration to expand or reduce the Property, without the consent of any Owner, Mortgagee or any other party with an interest in the Property, by annexing all or any portion of the Annexable Property or deannexing any portion of the Property or the Annexable Property. The annexation of any or all of the Annexable Property or deannexation of any real property shall be accomplished by the Declarant recording with the County Recorder a Declaration of Annexation or Declaration of Deannexation, as the case may be. Declarant shall not be obligated to annex all or any portion of the Annexable Property. The Declarant may annex non-contiguous property hereunder. A Declaration of Annexation annexing property as permitted hereunder may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the general plan of this Declaration. In no event, however, shall any such document revoke, modify or add to the covenants established by this Declaration and applicable to the Original Property or to any property previously covered by

a recorded Declaration of Annexation. Declarant hereby expressly reserves the right from time to time to unilaterally supplement or modify by recorded instrument the description of the Annexable Property described in Exhibit "B" of this Declaration.

12.2 Effect of Annexation. Upon the effective date of an annexation pursuant to this Article 12: (a) the property so annexed shall immediately be and become a part of the Property and be subject to all of the provisions hereof; (b) any Lot then or thereafter constituting a part of the annexed property, and the Owner of such Lot, shall thereupon be subject to all of the provisions of this Declaration; and (c) improvements then or thereafter situated upon the annexed property shall be subject to the provisions of this Declaration and shall be reasonably consistent, in terms of quality of construction, with the improvements situated upon other portions of the Property prior to such annexation.

12.3 Withdrawal. Notwithstanding any other provisions of this Declaration, Declarant reserves the right to amend this Declaration so long as it has the right to annex additional property pursuant to this Article, for the purpose of removing property then owned by the Declarant or its assignees from coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property, provided such withdrawal is not unequivocally contrary to the overall scheme of development for the Property.

12.4 No Obligation to Annex. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successors or assigns of Declarant, or any other Person will subject any additional property to the provisions of this Declaration, nor shall Declarant, any successors or assigns of Declarant, or any other person be obligated so to do, and Declarant may, by recorded instrument executed by Declarant, waive their rights so to do, in whole or in part, at any time or from time to time.

12.5 FHA/VA Approval. In the event that, and for so long as, the FHA or the VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Annexable Property with respect to the initial sale by Declarant or builder to the initial purchaser of any Residence, then a condition precedent to any annexation of any property other than the Annexable Property shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

### **13. MISCELLANEOUS**

13.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

13.2 Severability. The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or



portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

13.3 Construction of This Declaration. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community, and any violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise.

13.4 No Public Right or Dedication. Nothing contained in this Declaration constitutes a gift or dedication of all or any part of the Properties to the public, or for any public use.

13.5 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties or any portion thereof.

13.6 Business of Declarant. Except to the extent expressly provided herein, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, its agents or representatives in connection with or incidental to Declarant's improvement, development, and sales and marketing activities regarding the Properties, so long as any Lot therein owned by Declarant remains unsold.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, Declarant has executed the instrument this 30<sup>th</sup> day of March, 2006.

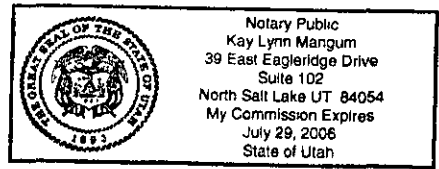
DECLARANT  
Woodside Hunters Creek, LLC  
a Utah limited liability company

By: *Nathan W. Pugsley*  
Nathan W. Pugsley  
Its: Manager

STATE OF UTAH     )  
                                  ) ss  
County of Davis

On the 30<sup>th</sup> day of March 2006, personally appeared before me Nathan W. Pugsley who being by me duly sworn did say that he, Nathan W. Pugsley is Manager of said Woodside Hunters Creek, LLC, that executed the within instrument.

*Kay Lynn Mangum*  
Notary Public  
Residing at: Davis City, UT  
My Commission Expires: 7/29/06



## EXHIBIT A

ORIGINAL PROPERTY

The Original Property is described as follows:

Hunters Creek Subdivision No. 1: Lots **One-hundred-one (101)** through **One-hundred-and-thirty-six (136)**, inclusive, of Hunters Creek Subdivision No. 1 as shown by map thereof in **Book 3719 of Plats, Page 641**, in the Office of the County Recorder of Davis County, Utah; and

All that real property described by the external boundaries of the Preliminary Plat as defined herein, and more particularly described as follows:

A parcel of land located in Section 15 and the West Half of Section 14, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah described as follows:

Beginning at the Center Quarter Corner of Section 15, Township 3 North, Range 1 West, Salt Lake Base and Meridian in Davis County, Utah and thence coincident with the north line of the Southeast Quarter of said Section 15 South 89°57'52" East 931.12 feet to an existing fence; thence coincident with said fence and the east line of the property described in Book 2289 at Page 48 of the Davis County records North 00°16'01" East 509.96 feet to the south right-of-way line of a 4 rod street; thence coincident with said south line of the street South 89°46'49" East 1,593.95 feet; thence South 00°13'11" West 14.00 feet to the north line of Hunters Creek Plat 1; thence coincident with the north and west lines of said Plat 1 the following 2 courses: South 89°46'49" East 586.78 feet, and South 00°13'11" West 1,230.83 feet to the southeast corner of said Plat 1; thence coincident with the south line of said plat and its extension South 89°57'26" West 1275.99 feet to a boundary line agreement between McKittrick and Woodside homes; thence coincident with said boundary line agreement the following 5 courses: South 13°56'49" East 112.82 feet, South 55°15'57" East 80.71 feet, South 34°44'03" West 172.44 feet to a point of non-tangency of a 415.00 foot radius curve to the left, of which the radius point bears North 38°32'01" East; thence southeasterly 151.89 feet along said curve through a central angle of 20°58'13", and South 17°33'48" West 221.13 feet; thence South 89°56'45" West 1,891.31 feet to the West line of the Southeast Quarter of said Section 15; thence coincident with said line South 00°10'19" East 1,003.92 feet; thence North 37°17'37" West 2,928.20 feet to a point directly west of the Center Quarter Corner of said Section 15; thence East 1,767.20 feet to the POINT OF BEGINNING Said parcel contains 150.66 acres, more or less.

**EXHIBIT "B"**

**ANNEXABLE AREA**

The Annexable Area is described as follows:

All real property comprising parcels 080670008 of Hunters Creek, as such real property and lots shall be described on the respective Recorded plats for such property, and any other real property adjacent to or near the Original Property.

**EXCEPTING THEREFROM ONLY:** the "Original Property" described on the foregoing Exhibit "A".

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY SUPPLEMENT OR MODIFY OF RECORD ANY AND ALL OF THE FORGOING LEGAL DESCRIPTIONS]