

WHEN RECORDED RETURN TO:

DCP, L.L.C.
758 South 400 East
Orem, Utah 84097
(801) 362-6228

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
CANYON TRAILS
(formerly known as Deer Canyon Preserve)**

a subdivision located in Wasatch County, Utah

DECLARANT
DCP, L. L.C.
a Utah limited liability company

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR CANYON TRAILS
(formerly known as Deer Canyon Preserve)**

THIS AMENDED AND RESTATED DECLARATION (the "Declaration") is adopted this _____ day of December, 2006, by DCP, L.L.C., a Utah limited liability company (the "Developer") and shall apply to the Property described in Exhibit A, which shall be known as Canyon Trails (formerly known as Deer Canyon Preserve), a subdivision situated in Wasatch County, Utah. Developer intends that this Declaration amends, completely restates and replaces in its entirety, the Declaration of Covenants, Condition, and Restrictions for Deer Canyon Preserve recorded with the Wasatch County Recorder on March 11, 2005 as Entry No. 280702, in Book 0740, at Pages 0778-0803.

RECITALS

A. The Developer is the owner of certain real property (together with such other properties as may be properly annexed thereto in conformance with the requirements set forth in this Declaration) located in Wasatch County, Utah, described on Exhibit "A" attached hereto (the "Property").

B. The Developer has subdivided the Property into Lots 1 through 103, inclusive, which shall be known as the Canyon Trails Subdivision (the "Project"). The subdivision plat has been recorded in phases, and there may be more or less than 103 lots. Phase One was recorded in the Office of the Wasatch County Recorder on February 24, 2005 as Entry No. 280208 in Book 737, at Pages 767-806. Phase Two was recorded in the Office of the Wasatch County Recorder on October 9, 2005, as Entry No. 290117, in Book 793, at Pages 221-240. Phase Three was recorded in the Office of the Wasatch County Recorder on October 9, 2005, as Entry No. 290118, in Book 793, at Pages 241-270.

C. At the sole and absolute discretion of the Developer, Lots 102 and 103, which are adjacent to the development known as Black Rock Ridge, may be dedicated, exchanged, sold, or otherwise transferred to Black Rock Ridge, for residential development within Black Rock Ridge. In the event Lots 102 and 103 are so transferred to Black Rock Ridge, Developer shall record an amended Plat with the Wasatch County reflecting the transfer.

D. The Developer desires to provide a general plan for the development of the Property and for the establishment of covenants, conditions and restrictions to enhance and protect the value and attractiveness of the Property, all in accordance with the provisions of this Declaration. In addition, the Property may be subject to the additional restrictions set forth in the Jordanelle Basin Land Use Plan and in the Development Agreement between the Developer and Wasatch County.

E. The Project, if developed as currently planned, shall contain single-family residential dwellings. Currently planned recreational facilities in the Project consist of

unspecified hiking trails, entry gate, guardhouse, swimming pool, clubhouse, and fitness facility. Notwithstanding anything in this Declaration, Developer does not have and will not have any express or implied obligation to develop any portion of the Project, and Developer has not made, and hereby does not make any express or implied warranties, representations, assurances or promises that it will develop or require the development of all or any portion of the Project or that any such development will conform to present plans, but any development that does take place will be in accordance with plans approved by Wasatch County.

F. Declarant intends to sell to various purchasers the fee title to the individual Lots contained within the Property, together with an appurtenant undivided ownership interest in the Common Area and a corresponding membership interest in the Association of Owners, subject to the Plat, the covenants, conditions and restrictions set forth herein.

G. Since the completion of the Project may be in phases, the completed Project will consist of the original phase and all subsequent phases.

H. The Developer hereby declares that all of the Property (and any additions thereto as hereafter provided) shall be held, sold and conveyed subject to the following covenants, conditions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, and for maintenance of the Common Areas. These covenants, conditions and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property and shall inure to the benefit of each such party.

I. The Project shall be known as "Canyon Trails."

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above, the undersigned covenant, agree and declare that the Property shall be subject to the following covenants, conditions and restrictions:

1. **DEFINITIONS.** As used in this Declaration, each of the following terms shall have the indicated meaning:

(a) **Additional Land** means and refers to additional real property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference.

(b) **Articles of Incorporation** means the Articles of Incorporation of the Canyon Trails Homeowners Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "C."

(c) Assessment means an Owner's portion of the Common Expenses or any other amount charged by the Association.

(d) Association means the Canyon Trails Homeowners Association, a nonprofit corporation whose members shall be the Declarant and owners of the Lots in the Project.

(e) By Laws means the By Laws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "D."

(f) Capital Improvement means all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

(g) Committee means the Management Committee of the Association as duly constituted.

(h) Common Areas means all real property in the Project owned in common by the Owners including but not limited to the following items:

(i) The real property and interests in real property submitted hereby, including the entirety of the Property and all improvements constructed thereon, excluding the individual Lots.

(ii) All Common Roads, the Common Utilities, the Open Areas, Water Detention Areas, and the entrance area, gate, guardhouse, landscaping, sidewalks, clubhouse, swimming pool, fitness center, and other improvements as designated in the Plat;

(iii) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners, such as telephone, electricity, gas, water, cable TV and sewer;

(iv) All portions of the Project not specifically included within the individual Lots; and

(v) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

(i) Common Expense means:

- (i) all sums lawfully assessed against the Owners;
- (ii) expenses of administration, maintenance, repair and replacement of the Common Areas including, without limitation, the cost of maintenance and plowing the snow on the Common Roads;
- (iii) expenses allocated by the Association among the Owners including, without limitation, the Sewer Costs and the Water Costs; and
- (iv) expenses declared Common Expenses by the Declaration and expenses agreed on as Common Expenses by the Committee.

(j) Common Roads means those portions of the Property designated on the Plat as roads, together with all improvements constructed or installed on such roads. All such roads within the Project are private roads for the use of the Owners and their guests and invitees.

(k) Common Utilities means those portions of the sanitary sewer and culinary and secondary water pipes between the Lot lines and the respective meters for the Project, together with such meters if owned by the Association. The Developer retains a non-exclusive easement across all common areas for the installation of utilities.

(l) Community means the Project.

(m) Community Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Management Committee from time to time.

(n) County means Wasatch County, Utah.

(o) Declaration means this Declaration for Canyon Trails Subdivision.

(p) Design Guidelines means the Design Guidelines that will be recorded at Wasatch County. Also included in the definition of Design Guidelines are all of the requirements, design and otherwise, set forth in the Jordanelle Basin Land Use Plan, the codes of the County then in effect, and elsewhere within this declaration. The County shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion.

(q) Developed Lot means a Lot on which a Dwelling legally approved by Wasatch County and which is being constructed by Developer.

(r) Developer means DCP, L.L.C., its successors, assigns, and grantees. "Declarant" and "Developer" shall be used interchangeably throughout this Declaration.

(s) Dwelling means the detached single family residence, place of habitation, abode or living unit constructed on a Lot by Developer, together with all improvements located thereon, which are used on conjunction with such residence.

(t) Eligible Insurer means an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

(u) Eligible Mortgagee means a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

(v) Eligible Votes means those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

(w) Exterior Materials means stone, rock, stucco, wood, finished lumber, brick, or other similar materials but shall not mean cinder block or concrete block or aluminum or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the County. The County shall assume no responsibility for enforcement of the External Materials, but reserves the right to and may enforce any External Material requirement at any time and in its sole discretion. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by the Developer or its designee.

(x) Guest means an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.

(y) Land means all of the real property subject to this Declaration.

(z) Lot or Lots means the subdivided and recorded lot or lots within the Property and, where the context so requires, any Dwelling constructed thereon. Lots also include an undivided interest in the Common Areas.

(aa) Majority means those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(bb) Management Committee means the committee of Owners elected to direct the affairs of the Association.

(cc) Manager means the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

- (dd) Map means the Plat.
- (ee) Member, unless the context clearly requires otherwise, means the Owner of a Dwelling, each of whom is obligated, by virtue of his ownership to be a member of the Association.
- (ff) Mortgage means both a first mortgage or first deed of trust on any Dwelling or Lot but shall not mean or refer to an executory contract of sale.
- (gg) Mortgagee means a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Dwelling or Lot, but shall not mean or refer to a seller under an executory contract of sale.
- (hh) Official Records means the official records of the Wasatch County Recorder.
- (ii) Open Areas means those portions of the Property designated on the Plat as open area. The Open Areas will be left in their natural state.
- (jj) Owner or Owners means the record owner or owners, whether one or more persons, of fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.
- (kk) Period of Declarant's Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) thirty (30) days after the date of the closing on the sale of the last Lot; or (b) the Developer executes and records a written Waiver of his right to control.
- (ll) Person means a natural person, corporation, partnership, trust, limited liability company, or other legal entity.
- (mm) Phase means a particular stage or area of development within the Project so designated by the Developer.
- (nn) Plat means plat or plats for the Project, recorded in the Official Records.
- (oo) Project means all phases of the Canyon Trails Subdivision.
- (pp) Project Documents means the Declaration, By Laws, Design Guidelines, Rules and Regulations, and Articles of Incorporation.
- (qq) Property means all of the land or real estate, improvements and appurtenances submitted to the Act and this Declaration.

(rr) Repair means merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

(ss) Resident means any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

(tt) Sewer Costs means the costs of providing sanitary sewer service to the Lots, which shall be provided and serviced by the Jordanelle Special Service District. Each Owner shall, at its sole cost, install lateral sewer pipes for its Lot at the time a Dwelling is constructed on such Owner's Lot and pay for the sewer service used by their Lot.

(uu) Water Costs means the costs of providing culinary and secondary water to the Lots, which shall be provided and serviced by the Jordanelle Special Service District. Each Owner shall, at its sole cost, install a culinary and where required, a secondary, water meter and lateral water pipes for its Lot at the time a Dwelling is constructed on such Owner's Lot or at such time is water is otherwise placed in use at the Lot and shall be responsible for the cost of the water used by them in connection with their Lot. If water is used in the Common Areas by the Association, the cost of such water shall be a Common Area Expense.

(vv) Water Detention Areas means areas as designated on the Plat which are to be graded and maintained as detention areas for storm water. The Water Detention Areas shall be landscaped and irrigated.

2. **PROPERTY INITIALLY SUBJECT TO DECLARATION.** Developer intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement and desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property. Developer hereby declares that all the Property shall be held, sold, used and conveyed subject to the easements, restrictions, conditions, and covenants set forth in this Declaration, which are for the purposes of protecting the value and desirability of the Property, and which shall run with the Property. Developer further declares that this Declaration shall be binding upon all persons having any right, title or interest the Property or any part thereof, their successors, successors in title and assigns and shall inure to the benefit of each Owner thereof. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person, himself, his heirs, personal representatives, successors, transferees, and assigns, binds himself, his heirs, personal representatives, successors, transferees, and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by doing so thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease, and

use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive, and enforceable by the Association and all Owners. Developer, its successors, assigns, and grantees, covenant and agree that the Lots and membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may only refer to the Lot.

3. **SUPPLEMENTAL DECLARATION.** Developer reserves the right, but not the obligation, to record one or more supplemental Declarations against the Property. A supplemental Declaration may impose such additional covenants and restrictions as the Developer determines to be appropriate and reasonably necessary for the Project. A supplemental Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of (a) the Owners representing more than seventy-five percent (75%) of the votes in the Association held by the Owners of all Lots subject to the supplemental Declaration, (b) the Association; or (c) the Developer so long as the Developer owns any Lot or other real property in the Project. Such amendment shall certify that the amendment has been approved as required by this section, shall be signed by the President or Vice President of the Association, and the Developer, so long as the Developer owns any Lot or other real property in the Project, and shall be recorded.

4. **ANNEXATION OF ADDITIONAL PROPERTIES/EXPANSION OF PROJECT.**

(a) At any time on or before the date which is seven (7) years after the date of recording of this Declaration, the Declarant shall have the right to annex and subject this Declaration to additional property without the consent of any Owner or person or the Association. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date this Declaration is recorded, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Owners and shall be limited only as herein specifically provided. Such Lots shall be constructed on any or all portions of the Additional Property.

(b) Additional property may be annexed in separate parcels and at different times, or additional property may never be annexed, and there are no limitations upon the boundaries thereof. Additional property annexed by the Declarant pursuant to this section 4 need not be contiguous with other property in the Project, and the exercise of the right of annexation as to any additional property shall not bar the further exercise of the right to annexation as to any other additional property. The Declarant makes no assurances that additional property will or will not be annexed.

(c) Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Wasatch County, Utah, no later than seven (7) years from the date

this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Map or Maps containing the same information with respect to the new Lots as was required on the Map with respect to the initial phase for the Project. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Wasatch County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Lots in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Project as it existed, interest so acquired by the Owner of the Lot encumbering the new Common Areas added to the Project as a result of such expansion.

(d) Declaration Operative on New Lots. The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to such ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Wasatch County Recorder.

(e) Right of Declarant to Adjust Ownership Interest in Common Areas. Each deed of a Lot shall be deemed to irrevocably reserve to the Declarant the power to appoint to Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Declaration. The proportionate interest of each Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Declarations recorded pursuant hereto and each deed of a Lot in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Lots may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any

similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

(f) Other Provisions Concerning Expansion. If the Project is expanded as hereinbefore contained, then it is further provided that:

(i) All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Lots created must be restricted to having a single family residential dwelling constructed thereon.

(ii) Portions of the Additional Land may be added to the Project at different times without any limitations.

(iii) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association shall not allow anything to be built upon or interfere with said easement areas.

(iv) No assurances are made concerning:

(A) The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

(B) Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the Common Areas, facilities, Lots, Dwellings, and improvements will be comparable to the initial Common Areas, facilities, Lots, Dwellings, and improvements, and will be of a similar quality of materials and construction to the initial phase and will be substantially completed prior to annexation.

(C) Whether any Lots or Dwellings created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Lots and Dwellings will be constructed of an equal or better quality of materials and construction than those constructed during the initial phase of the Project.

(v) Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (b) the creation, construction, or addition to the Project of any additional property; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

5. **WITHDRAWAL OF PROPERTY.** At any time on or before the date which is seven (7) years after the date this Declaration is recorded, the Declarant shall have the right to withdraw property owned by the Declarant from the Project, without the consent of the Owners or any person. The withdrawal of all or any portion of the Project shall be effected by the Declarant recording a Declaration of Withdrawal setting forth the legal description of the property being withdrawn. Upon the withdrawal of property from the Project pursuant to this section 5, such property shall no longer be subject to any of the covenants, conditions, and restrictions set forth in this Declaration.

6. **DISCLAIMER OF IMPLIED COVENANTS.** Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or sales agents representing the Developer shall be deemed to create any implied covenants, servitudes, or restrictions with respect to the use of any property subject to this Declaration or additional property owned by the Developer or in which the Developer has an interest.

7. **DEVELOPMENT PLAN.** Notwithstanding any other provision of this Declaration to the contrary, the Declarant, without obtaining the consent of any other Owner or person, shall have the right to make changes or modifications to the development of the Project, with respect to any Property owned by the Declarant or in which the Declarant has an interest, in any way which Declarant desires, including but not limited to, changing the density of all or any portion of the Property owned by the Declarant or in which the Declarant has an interest, or changing the nature or extent of the uses to which the Property may be devoted.

8. **DISCLAIMER OF REPRESENTATIONS.** Declarant makes no representations or warranties whatsoever that (i) the Project will be completed in accordance with the plans for the Project as they exist on the date of this Declaration is recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

9. **RESTRICTIONS ON LIABILITY OF THE ASSOCIATION AND THE DECLARANT/DEVELOPER; RELEASE.**

(a) Declarant intends to construct a gated entrance leading into the Project from Highway 248 in order to limit access and to provide some privacy for the Owners; however, there are no guarantees that gated entrances will provide security and safety to Owners, their families, invitees, Guests, and licensees. Furthermore, each Owner, for themselves, and their families, invitees, Guests, and licensees, acknowledge that the gated entrances may restrict or delay entry into the Project by police, the fire department, ambulances, and other emergency vehicles or personnel. Each Owner, for themselves and their families, invitees, Guests, and licensees, agrees to assume the risk that the gated entrances will restrict or delay entry to the Project by emergency vehicles and personnel. Neither the Declarant/Developer, the Association, nor any director, officer, agent, or employee of the Association shall be liable to any Owners, their families, invitees, Guests or licensees for any claim or damages resulting directly or indirectly, from the construction, existence, or maintenance of a gated entrance to the Project.

(b) The Project is located adjacent to natural, undeveloped land and such land may contain species of insects, reptiles, and other wild animals, such as scorpions, snakes, spiders, bobcats, hawks, javelina, bears, mountain lions, moose, deer, elk and antelope. Such insects, reptiles and animals may enter upon the residential or recreational portions of the Project from time to time. Each Owner, for themselves and their families, invitees, Guests, and licensees, agrees to assume the risk that that such animals may be present and may present danger. Neither the Declarant/Developer, the Association, nor any director, officer, agent, or employee of the Association shall be liable to any Owners, their families, invitees, Guests or licensees for any claim or damages resulting directly or indirectly, from the existence of such animals within the Project.

(c) Each Owner hereby releases the Declarant/Developer and the Association from any and all claims, actions, suits, demands, causes of action, losses, damages, or liabilities (including without limitation, strict liability) related to or arising in connection with any nuisance, inconvenience, disturbance, injury or damage resulting from any construction, development or maintenance activities associated with the Project.

(d) Views Not Guaranteed. Although certain Lots in the Project currently may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot. Neither Declarant nor the Association makes any representation or warranty whatsoever, express or implied, concerning the view which any Lot will have whether as of the date this Declaration is recorded or thereafter. Any view which currently exists for a Lot may be impaired or obstructed by further construction within or outside the Project, including without limitation, by construction of improvements (including landscaping) by Declarant, construction by third parties and by the natural growth of landscaping. No third party, including without limitation, any broker or salesperson, has any right to bind Declarant or the Association with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

10. MEMBERSHIP IN THE ASSOCIATION. Since membership in the Association is mandatory, each Owner is a member of the Association and membership may not be partitioned from the ownership of a Lot.

11. ALLOCATION OF PROFITS, LOSSES AND VOTING RIGHTS. Profits, losses and voting rights shall be distributed among the Owners equally in accordance with their percentages of ownership interest.

12. CONVEYANCING. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows. This is "sample" language only.

All of Lot ____ contained within Phase ____, CANYON TRAILS SUBDIVISION, as the same is identified in the Plat recorded in Wasatch County, Utah as Entry No. ____ in Book ____ at Page ____ of the official records of the County Recorder of Wasatch County, Utah (as said Plat may have heretofore been amended or supplemented) and in the Declaration for CANYON TRAILS, recorded in Wasatch

County, Utah as Entry No. ____ in Book ____ at Page __ of the official records of the County Recorder of Wasatch County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, shall be separated from the Lot to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Lot to which they relate.

13. **ARCHITECTURAL AND DESIGN GUIDELINES.** The Declarant has prepared Design Guidelines for the Project. The approved Design Guidelines shall apply to all construction activities within the Project, whether performed by the Declarant, an Owner, or a third party developer of a Lot. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property. The Declarant or, after transition of the Project, the Association (through its Architectural Committee) must stamp all proposed plans and specifications to construct or remodel any Dwelling approved and in compliance with the Declaration and Design Guidelines before presenting such plans and specifications to the County for the issuance of a building permit. The Declarant does not make any assurances that structures, if any, erected on any portion, part, or the whole of Additional Land will be compatible with structures on land originally within the Project in terms of quality of construction, principal materials used, and architectural style.

(a) **Architectural Control.**

(i) Declarant (or any third party developer who has purchased a Lot from the Declarant) intends to construct a Dwelling on each Lot within the Project designated to have such Dwelling situated thereon, as indicated on the Plat. Declarant (or any third party developer who has purchased a Lot from the Declarant) shall construct all Dwellings in conformance with architectural standards set forth in the Design Guidelines. The Developer shall have the exclusive and absolute right to be the sole member of the Architectural Committee until the occurrence of the earlier of the following events, at which time control of the Architectural Committee (*subject to the perpetual right of the Developer to appoint one (1) member of the Architectural Committee*) shall be transferred by the Developer to the Owners and the Owners shall elect the Architectural Committee:

(A) forty-five (45) days after the date on which a Dwelling has been constructed and a certificate of permanent occupancy has been issued for all Lots in all phases of the Subdivision; or

(B) at such time as the Developer elects in writing to transfer management and control of the Association.

(ii) A fee, which shall be initially be set by the Developer, but may be changed or amended from time to time by the Developer and/or Architectural Committee (as the case may be) will be assessed to each builder/homeowner by the Architectural Committee for architectural compliance review, to be completed by the Architectural Committee within twenty (20) days after complete submission. The Developer and Architectural Committee further reserve the right to charge resubmission fees in the event a builder and/or Owner must resubmit plans. The Developer and Architectural Committee, in their sole and absolute discretion, may hire, consult with, and otherwise retain professionals, such as a licensed architect, to review and assist with the review of all submitted plans to ensure compliance with the Design Guidelines.

(b) Architectural Committee Considerations. In reviewing plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Committee, the Architectural Committee, among other things, may consider the quality of workmanship and design, harmony of external design with existing structure and location in relation to the surrounding structures and Dwellings as constructed by Developer, topography and finish grade elevation. The Architectural Committee may disapprove of plans and specifications for any construction, installation, addition, alteration, repair, change or other work which must be approved by the Architectural Review Committee pursuant to this section 13(b) if the Architectural Review Committee determines, in its sole and absolute discretion, that: (i) the proposed construction, installation, addition, alteration, repair, change or other work would violate any provision of this Declaration; (ii) the proposed construction, installation, addition, alteration, repair, change or other work does not comply with any Design Guidelines; (iii) the proposed construction, installation, addition, alteration, repair, change or other work is not in harmony with existing improvements in the Project or with improvements previously approved by the Architectural Committee but not yet constructed; (iv) the proposed construction, installation, addition, alteration, repair, change, or other work is not aesthetically acceptable; (v) the proposed construction, installation, addition, alteration, repair, change or other work would be detrimental to or adversely affect the appearance of the Project; or (vi) the proposed construction, installation, addition, alteration, repair, change or other work is otherwise not in accord with the general plan of development of the Project.

(c) Approval by Architectural Committee.

(i) Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct, or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

(ii) Any change, deletion, or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

(iii) All improvements to the Dwellings and on Lots shall be new construction and no buildings or other structures shall be removed from other locations onto any Lot or Dwelling. The provisions of this section and approval of the Architectural Committee shall be required for the construction, erection, installation, addition, alteration, change or replacement of any improvements made by any Owner and/or third party developer.

(iv) The provisions of this section do not apply to, and the approval of the Architectural Committee shall not be required for the construction, erection, installation, addition, alteration, change or replacement of any improvements made by, or Dwellings constructed by, or on behalf of the Declarant.

(v) The approval required of the Architectural Committee pursuant to this section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state, or local law, statute, ordinance, rule or regulation.

(vi) The approval of the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state, or local laws, statute, ordinance, rule or regulation.

(vii) The Architectural Committee may condition its approval of plans and specifications upon the agreement by the Owner submitting such plans and specifications (other than Declarant who shall not be subject to the provisions of this subsection) to furnish the Association a bond or other security acceptable to the Architectural Committee in an amount determined by the Architectural Committee to be reasonably sufficient to: (i) assure the completion of the proposed improvements or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such improvement; and (ii) to repair any damage which might be caused to any Common Area as a result of such work. Any such bond shall be released or security shall be fully refundable to the Owner upon: (a) completion of the improvements in accordance with the plans and specifications approved by the Architectural Committee; and (b) the Owner's written request to the Architectural Committee, provided that there is no damage caused to any Common Area by the Owner, or its agents or contractors.

(viii) If the plans and specifications pertain to an improvement which is within a Common Area so that the Association is responsible for the maintenance, repair, and replacement of such improvement, the Architectural Committee may condition its approval of the plans and specifications for the proposed construction, installation, addition, alteration, repair, change or other work with respect to the improvement on the agreement of the Owner to reimburse the Association for the future cost of the repair, maintenance, or replacement of such improvement.

(d) Rules and Regulations. The Architectural Committee may promulgate, adopt, amend and/or replace rules and regulations necessary to implement these covenants by the

affirmative vote of a majority of the Architectural Committee. By way of illustration only and without requirement to do so, the Architectural Committee rules and regulations may address, and the Architectural Committee shall have the power and authority to regulate, any or all of the following: application procedures and processing fees; charges by any outside professionals or other costs incident to evaluating any application, security deposits or other financial arrangements which are required of an Owner to guarantee the repair of any damage to Common Areas or other subdivision infrastructure and for revegetation and restoration of lands; colors and materials, including, but not limited to, roofs, chimneys, siding, masonry and glazing; setbacks, height limitations, building profiles and driveway locations; construction staging, construction hours which may be controlled during certain times of the year, storage for construction materials, location of temporary construction facilities such as trailers, dumpsters and toilets; routing of utility extensions; drainage, grading and erosion control; landscape and vegetation, fencing, lighting, signage, and trails; concerns or objectives regarding maintenance of agricultural lands and preservation of wildlife; and privacy and visual characteristics.

(e) Architectural Committee Not Liable. Neither the Architectural Committee (or any professional retained by the Architectural Committee), the Board, the Association or any of its Members shall be liable for damages to any person submitting any plans for approval, or to any Owner or owners of lands within the Project, by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such plans. The Architectural Committee shall have no liability or responsibility for any representations made to any Owner or prospective owner by any third parties. The decision of the Architectural Committee shall be governed by these covenants and any rules or regulations duly adopted by the Architectural Committee pursuant to these covenants.

(f) Written Records. The Architectural Committee shall keep and safeguard complete and permanent written records of all approved applications, including one set of the finally approved architectural and site development plans, and of all actions of approval or disapproval and all other formal actions taken by it under the provisions of this instrument. The records of the Architectural Committee shall be maintained by the Association at a location which it designates within the Project.

(g) Inspection and Compliance. The Architectural Committee shall have no duty or obligation to make inspections of any construction; however, nothing herein shall prevent the Architectural Committee from making inspections prior to, during, or after construction. Upon the completion of any work for which approved plans and specifications are required, the Owner shall give written notice of completion to the Architectural Committee. Within thirty (30) days after receipt of such notice, the Architectural Committee may inspect the work to determine its compliance with the approved plans. If the Architectural Committee finds that the work was not done in substantial compliance with the approved plans or any construction or change in natural conditions on any Dwelling or Lot was undertaken without first obtaining approval from Architectural Committee, written notice shall be sent by the Architectural Committee to such Owner specifying the noncompliance and requiring the Owner to cure such noncompliance within thirty (30) days or any extension thereof granted. If the Owner fails to cure the

noncompliance or to enter into an agreement to cure on a basis satisfactory to Architectural Committee within said thirty (30) day period or any extension thereof as may be granted, the Board may, at its option, cause the non-complying improvement to be removed or the noncompliance to be cured. Upon demand, the Owner shall reimburse the Association for all costs and expenses incurred by the Architectural Committee and/or the Board in taking corrective action, plus all costs incurred in collecting amounts due, including reasonable attorneys' fees and costs (the "Compliance Assessment"). The Owner shall be personally liable for all such costs and expenses, and the Association also shall have a lien against the non-complying Homestead for the amount of all such costs and expenses. Any amounts not paid, without waiver of any other right or remedy, may be collected as an Assessment Lien (as defined in Section 16(v)(iii) below). Such lien shall be (i) evidenced by a statement executed by the Association and recorded in the real estate records of Wasatch County, Utah, (ii) subordinate only to the first Mortgage, and (iii) subject to foreclosure in the manner provided by Utah law for mortgages upon real property. Notwithstanding any other provision hereof, the Architectural Committee shall not be responsible for: (a) determining that any construction or construction documents conform to applicable building codes, zoning or other land use regulations, (b) the accuracy or content of any construction documents or specifications prepared by any architect, engineer or any other person, (c) construction means, methods, techniques, sequences or procedures, safety precautions or subsequent loss, damage or failures due to soil or any other natural or man-made conditions that may exist, or (d) any failure to carry out any construction in accordance with plans or specifications.

14. **OWNERSHIP AND USE RESTRICTIONS.** The Lots are subject to the use and other restrictions set forth in this Declaration, which shall govern both the architecture of the Dwellings and the activities on and around the Lots:

(a) **Residential Purposes.** No Lot shall be used except for residential single family dwelling (or uses as may be designated by the Developer) and any Dwelling and structure thereon shall be maintained in good repair and in a clean and attractive appearance, compatible with surrounding Lots and Dwellings. Residences may not be leased or rented to tenants on a short-term basis, it being the intent of the Developer that the residences will be used by their Owners and their families. Residences may not be rented or leased out as short-term vacation accommodations. Upon request, a Lot Owner shall provide the Association with a copy of any lease then in effect affecting his Lot. Lots may also be used for the construction of typical residential amenities such as a family swimming pool, tennis court, etc. Accessory buildings, if approved, shall be consistent in design and materials with the primary residence. Gainful occupational, professional, trade or other nonresidential use (such as a model home) may be conducted on a Lot only if permitted by Wasatch County and approved by the Committee. No business activity shall be allowed that includes Guests, visitors, invitees, or employees (other than a Lot Owner) coming to a residence for business activities except on an intermittent basis. No person shall engage in such uses without the prior review and approval by the Committee and the appropriate officials of Wasatch County. All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the applicable municipalities and agencies governing land use and buildings. No structure such as a

trailer, RV shack, shed, tent, garage, or other out-building shall be used on any Lot at any time as a residence. No barns shall be permitted.

(b) Swimming Pool Standards. Swimming pools of permanent construction which are not enclosed within a building shall be set back at least twenty five (25) feet from all property lines and shall be completely surrounded by a fence or wall having a height of at least six (6) feet. Fences shall be designed so that openings will not permit a four (4) inch diameter sphere to pass through them, except for gates which shall be equipped with self-closing and self latching devices.

(c) Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate on or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit from any Lot so as to render all or any portion of any Lot or activity thereon unsanitary, unsightly, offensive or detrimental to the Owners or occupants of any other Lot in the vicinity. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity or to its occupants. A significant benefit of the subdivision is intended to be its quiet rural location. The use of motorbikes of any kind, ATV's and snowmobiles anywhere within the Project is considered a nuisance and is precluded, except when weather or other emergency conditions are such that they afford the only means of access over the streets in the subdivision. Motorized vehicles of all types are precluded from using the non-paved common areas within the subdivision. Motorcycles whose primary use is as a highway bike may be driven over the streets to go to and from a lot to the public highways.

(d) Parking or Storage of Vehicles. No articles, material, equipment or vehicles of any nature shall be parked or stored on any street or driveway located within the Project, except as expressly provided in this paragraph. Licensed, regularly used visitor passenger vehicles may be parked on the streets of the Project in approved areas for less than twenty-four hours. Overnight parking of such vehicles shall generally be restricted to the driveway of the Dwelling being visited. No automobiles, vans, sport utility vehicles, trucks, campers, motor homes, trailers, boats, watercraft, snowmobiles, recreational, commercial, oversized or other vehicles shall be stored outside, including on driveways, off paved surfaces, or on streets. No cars on blocks or non-running vehicles are permitted within the Project unless kept inside an enclosed garage or accessory building. Step vans and larger trucks shall not be parked outdoors within the project, except during periods of actual use.

(e) Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted on or within any Lot, Dwelling, or otherwise within the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odors shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of the neighboring Lots only when set out for a reasonable period of time (not exceeding twenty-four (24) hours before and after scheduled trash collection hours). There shall be no exterior fires whatsoever except barbecue fires contained within appropriate receptacles therefor.

(f) **Repair of Improvements.** No improvements on any Lot shall be permitted to fall into disrepair and all improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling or other structure is damaged or destroyed, then, subject to the requisite Committee approvals, such Dwelling or other structure shall be repaired, rebuilt or demolished at the sole expense of the Owner of such Lot, within a reasonable amount of time, as it previously existed or as otherwise approved by the Association.

(g) **Animal Restrictions.** No insects, reptiles, poultry or animals of any kind shall be raised, bred or kept on or within any Lot, Dwelling, or otherwise within the Project, except that usual and ordinary dogs, cats, fish, birds and other household pets (excluding without limitations, equine, bovine, sheep, swine, goats and other such animals) may be kept on or within the Lots, subject to rules and regulations adopted by the Association, and provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided, however, that the Committee (or the Architectural Committee or other such person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association acting through the Committee, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Committee, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure, or on a leash being held by a person capable of controlling said animals. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Committee. Should any animal belonging to an Owner be found unattended, out of the enclosure, or not being held on a leash by a person capable of controlling the animal, such animal may be removed by the Committee or a person designated to do so, to a shelter under the jurisdiction of the local governmental entity in which the Project is situated and subject to the laws and rules governing such shelter, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept with the Project by an Owner or by members of his family, his tenants or guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used area within the Project.

(h) **Restriction on Further Subdivision; Property Restrictions and Rezoning.** No Lot shall be reconfigured or further subdivided or separated into smaller lots by any Owner without the prior written approval of the Committee, which approval must be evidenced on the official plat or other instrument creating the subdivision. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without having been first approved in writing by the Committee and Wasatch County. Any covenants, conditions, restrictions or easements recorded without such approval 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 use of the Lot has been approved by the Committee and the proposed use otherwise complies with the provisions of this Declaration.

(i) **Developer's Exemption.** Nothing contained in this Declaration shall be

construed to prevent the erection or maintenance by the Developer or its duly authorized agents of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of Lots.

(j) Utilities Easement and Right-of-Way. Easements and rights-of-way for the installation and maintenance of utilities and drainage facilities and other uses are reserved as shown on the Plat or as otherwise set forth herein, and all Lots shall have a ten (10) foot utility easement and right-of-way surrounding all sides for installation of various utilities and equipment, such as water, sewer, storm drainage, telephone, electricity, secondary water, natural gas, etc., in addition to whatever is shown on the Plat. All utilities shall be placed under ground. All easements may be utilized by the various utility companies at their discretion for placement of utilities and/or equipment. Within this easement and right-of-way, no structure, large planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, change the direction or flow of drainage channels in the area, or obstruct or retard the flow of water through drainage channels or easements. The easement and right-of-way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

(k) Common Roads. Easements and rights-of-way for vehicular ingress and egress to and from the Lots over and across, and for underground utilities and related facilities under, the Common Roads are reserved as shown on the Plat. Such easements and rights-of-way shall be prior and superior to any other instrument recorded after this Declaration is recorded in the Official Records. Each lot owner shall have a non-exclusive easement across all streets in the subdivision, and along and in existing easements for locating utilities used at a dwelling or accessory building on a lot within the subdivision.

(l) Fire Hazards. Wasatch County discourages the use of wood or coal burning fireplaces, and their use may be limited by the County or the Committee. All stacks and chimneys from fireplaces with combustible materials other than gas shall be fitted with a spark arrester. All Owners shall strictly comply with all state laws and county ordinances pertaining to fire hazard control.

(m) Hunting and Firearms. The discharge or shooting of firearms in the Project is prohibited. Hunting in the Project is prohibited.

(n) Fences. Fences are not permitted in the project to allow for wildlife migration and movement. Low (no more than 3' in height) decorative stone/landscape fences may be allowed at the discretion of the Architectural Committee. All dog kennels must be within a fenced enclosure located no more than five feet from the house, and shall be screened from the view of roads and adjoining Lots. In no circumstances may a kennel exceed 200 square feet in total area. All fenced enclosures must be approved in writing by the Architectural Committee prior to their installation. In no case shall fences be allowed to be built around the periphery of a Lot.

(o) Antennas. Except as may be permitted by applicable law or under the Design Guidelines, no antenna, aerial, satellite, television dish, or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation proposed to be erected, used, or maintained outdoors on any portion of the Project whether attached to a Dwelling or structure or otherwise, shall be erected or installed without prior written consent of the Architectural Committee.

(p) Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

(q) Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise encroach upon any trail, sidewalk, street, or pedestrian way from ground level to a height of twelve (12) feet.

(r) Signs. No signs whatsoever (including but not limited commercial, political, and similar signs) which are visible from neighboring property shall be erected or maintained on any Lot without prior written approval of the Architectural Committee except:

(i) Signs required by legal proceedings;

(ii) Residence identification signed provided the size, color, content, and location of such signs have been approved in writing by the Architectural Committee or are consistent with the provisions set forth in the Design Guidelines;

(iii) One (1) "for sale" sign placed by a professional residential real estate brokerage company or placed by the Owner of the Lot, provided that the Architectural Committee shall reserved the right to prescribe within the Design Guidelines the size, materials, colors, and format for such signs.

(s) Rooftop Air Conditioners Prohibited. No air conditioning units or appurtenant equipment shall be mounted, installed, or maintained on the roof of any Dwelling or other building on any Lot.

(t) Basketball Goals and Backboards. No basketball hoops, goal, or backboard shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee unless constructed or installed in accordance with the provisions of the Design Guidelines.

(u) Playground Equipment. No jungle gyms, swing sets, or similar playground equipment which would be visible from neighboring property shall be erected or installed on any Lot without the prior written approval of the Architectural Committee unless erected or installed in accordance with the provisions of the Architectural Committee.

(v) Easements -- Support, Maintenance and Repair. There is hereby RESERVED to the County and the Association, and the County and the Association are hereby GRANTED a non-exclusive easement over, across, through, above and under the Dwellings and the Common Area for the operation, maintenance, and repair of the Common Area and Facilities, and regulation of the Design Guidelines.

(w) Liability of Owners and Residents For Damages and Waste. Each Owner or Resident shall be liable to the Association, or other Owners or Residents, for damages to person or property and waste in the Community caused by his negligence.

(x) Encroachments. If any portion of Common Area or a Dwelling encroaches or comes to encroach upon other Common Area or Dwelling as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

15. THE ASSOCIATION. All Owners shall belong to the Association. The Association shall exist for the purpose of managing, operating, maintaining, repairing and replacing, as necessary, the Common Areas, including snow and ice removal from the Common Roads, and such other matters as are appropriate. The Common Areas shall be maintained in good repair and in accordance with the standards established by Wasatch County.

(a) Management Committee. The Association shall be managed by a Management Committee, and such officers as the Management Committee may elect or appoint in accordance with its Articles and By Laws as the same may be amended from time to time. The Association, by and through the Management Committee shall (a) govern and manage the Project and Property conveyed by the Declarant and any other Association Property and (b) enforce the provisions of this Declaration. The Declarant shall have the right to appoint and remove members of the Management Committee until the sooner of: (i) thirty (30) days after the closing of the sale of the last Lot; or (ii) if and when Declarant may elect to relinquish this right to appoint and remove members of the Management Committee sooner than provided above.

(b) Officers and Agents. The Management Committee shall elect and/or appoint officers and agents of the Association, including without limitation a President, Secretary, and Treasurer.

(c) Management Committee Meetings. The Management Committee shall meet at regular intervals and at least quarterly.

(d) Status and General Authority of Management Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection

with its exercise of any of the powers delineated in subparagraphs (i) through (xiii) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

(i) Access. The right, power and authority to have access onto each Lot: (1) from time to time during reasonable hours and after reasonable notice to the owner of the Lot being entered, as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities; or (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities, provided that a reasonable effort is made to provide notice to the owner of the Lot prior to entry. Except in the case of an emergency, residents shall be given at least twenty-four (24) hours' prior notice before the Committee or its representative shall exercise this power. In the event of an emergency entry without notice, the person entering the property shall leave in a conspicuous place written notice stating such person's name and title, as well as the date, time, and purpose of the entry.

(ii) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(iii) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment.

(iv) Standing. The power to sue and be sued.

(v) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(vi) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

(vii) Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five (75%) percent of the Association Members.

(viii) Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (vii) above to the Project, so long as it has been approved by at least seventy five percent (75%) of the Association Members.

(ix) Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by at least seventy-five percent (75%) of the Association Members.

(x) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

(xi) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

(xii) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

(xiii) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

(e) Delegation of Management Responsibilities: The Management Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause on thirty (30) days written notice provided by the Management Committee.

(f) Owners Meetings. The Association shall meet at least annually.

(g) Lists of Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Management Committee shall maintain up to date lists of the name, address and phone number of all Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Owners, Mortgagees, Insurers and Guarantors have a duty to provide this information to the Committee.

(h) Capital Improvements. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

(i) Committee Discretion/Expenditure Limit. Any capital improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Management Committee alone (the "Capital Improvement Ceiling").

(ii) Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area.

(iii) Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas.

(i) Operation, Maintenance and Alterations. Each Lot, Dwelling, and Common Area shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

(i) Clean, Safe, Sanitary and Attractive Condition. The Lots, Dwellings, and Common Areas shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition, consistent with Community Standards.

(ii) Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with any County landscaping maintenance plans or ordinances. Specific additional written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Management Committee from time to time. All landscaping shall be maintained in a safe, sanitary, aesthetic and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. All landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.

(iii) Area of Common Responsibility. Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Area and Facilities within or serving the Project, including by way of illustration but not limitation the Building structures, roofs, exterior walls, foundation, common walls and supports, common landscaping, open space, sidewalks, parking amenities, entry and monument.

(iv) Area of Personal Responsibility. Each Owner shall maintain, repair and replace his Lot and Dwelling, including without limitation all individual services such as power,

light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door systems, garage doors and garage door systems, patios, balconies and decks, plumbing fixtures, systems and lateral pipes or valves servicing only his Lot and Dwelling, including any damage caused thereby and not covered by insurance. No Owner shall allow his Lot or Dwelling to detract from the health, safety or uniform appearance or design of the Project.

(v) Default Provisions. If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Association, or Management Committee may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against an Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Common Expenses under U.C.A., Section 57-8-20.

(vi) Alterations to the Common Area. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without additional approval required, including without limitation the consent of the Management Committee or Members of the Association; provided, however, no Owner or Resident may make any structural alterations to the Common Area (including the Limited Common Area), without the express prior written consent of the Management Committee.

(vii) Certain Work Prohibited. No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Owners being first had and obtained.

16. COMMON EXPENSES/ASSESSMENTS. Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

(a) Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lots owned by it until such time as: (a) thirty (30) days after the date of the closing on the sale of the last Lot; or (b) Declarant elects in writing to pay the Assessments, whichever first occurs.

(b) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

(c) Creation of Assessments/Initial Assessment. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Management Committee from time to time, each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Committee. The initial assessment payable to the Association shall be \$200 per month per Lot, commencing from the date a Lot is first conveyed by the Declarant or its successor. Fees for the remainder of the calendar year in which a Lot is transferred from the Declarant shall be collected at the time of said initial transfer. The fees shall be adjusted annually by the Committee to reflect actual and anticipated costs. Payments after the first year shall be made on a quarterly, due March 31, June 30, and September 30, but the date payments are due may be adjusted by the Committee in the Committee's sole and absolute discretion.

(d) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

(i) Itemization. The Budget shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(ii) Basis. The Budget shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to obtain, including, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(e) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally to the Lot Owners, except as otherwise expressly provided in this Declaration with regard to Water Costs.

(f) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the

succeeding year, then and until such time as a new budget and new Common Area Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

(g) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

(h) Additional Services. The Management Committee may but is not obligated to add to the Assessment of any particular Lot or Owner additional charges for individual services offered or provided, not a Common Expense.

(i) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Lot; (2) the owner of record in the offices of the County Recorder of Wasatch County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

(j) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Common Area Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

(k) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

(l) Reserve Account. The Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements. Not less than ten percent (10%) of the annual assessment shall be placed in the Reserve Account.

(m) Analysis Report. The Management Committee shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

(n) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Area Assessment for delinquent Owners. If, however, the Common Area Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the committee, at its option and in its sole discretion, may elect

to decelerate the obligation.

(o) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

(p) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Lot hereby waives.

(q) Suspension of Right to Use Amenities for Non-Payment. At the discretion of the Management Committee, the right to use any amenities in the Project may be suspended for up to ninety (90) days if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

(r) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended for up to ninety (90) days if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

(s) Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

(i) Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100th Dollars (\$500.00) per Lot in any one fiscal year (the "Special Assessment Limit"), the Committee may impose the special assessment without any additional approval.

(ii) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

(t) Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

(i) Benefit only To Specific Lot. If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Lots according to the benefit received.

(ii) Unequal or Disproportionate Benefit. If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Lots according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

(u) Individual Assessments. Individual Assessments shall be levied by the Committee against a Lot and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Committee in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Lot Owner is responsible; (c) any other fine, charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration; and (e) individual services provided, such as cable television, additional lawn, yard or garden care, the cost of insurance covering the deductible on the master Association all-risk policy, and so forth.

(v) Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

(i) Delinquent Assessments. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Lot, regardless of whether a written notice is recorded.

(ii) Late Fees and Accruing Interest. A late fee of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on all tardy payments. Default interest at the rate of one percent (1.0%) per month or twelve percent (12%) per annum shall accrue on all delinquent accounts.

(iii) Lien. If any Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

(iv) Foreclosure of Lien and/or Collection Action. If the Assessments

remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

(v) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

(vi) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Lot.

(w) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

(x) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and Current Assessments.

(y) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Lot or Dwelling during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(z) Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

(aa) Attorney in Fact. Each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Lot or Dwelling, if the Lot or Dwelling is rented and Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

(bb). Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

(i) If an owner fails or refuses to pay any assessment when due, the management committee may (a) terminate the owner's right to receive utility services paid as a common expense; and (b) terminate the owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard.

(ii) Before terminating utility services or right of access and use of recreational facilities, the manager or management committee shall give written notice to the owner in the manner provided in the declaration, bylaws, or association rules. The notice shall state:

(A) utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

(B) the amount of the assessment due, including any interest or late payment fee; and

(C) the right to request a hearing.

(iii) An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association

(iv) The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules.

(v) If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

(vi) Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the

terminated utility services to the Lot or Dwelling and right to use of recreational facilities.

(cc) Assignment of Rents.

(i) If the owner of a Lot who is leasing the Dwelling fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or management committee must give the owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(A) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or association rules;

(B) state the amount of the assessment due, including any interest or late payment fee;

(C) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(D) provide the requirements and rights described herein.

(ii) If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or management committee may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(A) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the management committee's intent to collect all lease payments due to the association pursuant hereto.

(B) that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(C) payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (vi) suit or other action may not be initiated by the owner against the tenant for failure to pay.

(iii) All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the association.

(iv) Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or management committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the owner.

(v) As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a Lot or Dwelling by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

17. **LIABILITY OF MANAGEMENT COMMITTEE.** The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee 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 Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee 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 Committee, or former officer or member of the Committee, may be entitled. The Association shall, 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.

18. **INSURANCE.** The Manager, Management Committee or Association, will obtain insurance against loss or damage by fire and other hazards for: (a) all Common Areas and Facilities; and (b) all Buildings that contain more than, including any improvement which is a permanent part of a Building. The insurance coverage shall be written on the property in the name of the Manager, Management Committee or Association, as trustee for each of the Owners in the percentages established in this Declaration. The insurance premiums shall be a Common Expense. This Section is without prejudice to the right of each Owner to insure his own Lot and Dwelling for his benefit. The Manager, Management Committee or Association shall satisfy at least the following minimum requirements:

(a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard residential casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion. The Association may purchase a policy with a deductible up to \$10,000.00. The Association may require Owners or residents to obtain insurance covering the amount of the deductible if, under the Declaration, they would, but for insurance coverage, be responsible for the loss or claim.

(b) Flood Insurance. If any part of the Project's improvements are in a Special Flood Hazard Area -- which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM) -- the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

(c) Liability Insurance. A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

(d) Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

(e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(i) Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(ii) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3)

months' aggregate assessments on all Lots, plus reserve funds.

(iii) Quality of Coverage. The bonds required shall meet the following additional requirements: (a) they shall name the Committee, the Owners Association, and the Property Manager as obligee; (b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee.

(f) Earthquake Insurance shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.

(g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(i) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

(ii) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Owners for CANYON TRAILS, a subdivision, for the use and benefit of the individual Owners."

(iii) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(iv) Beneficiary. In any policy covering the entire Project, each owner and his Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(v) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(vi) Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(vii) Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

(viii) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Lot or Dwelling, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

(ix) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Lot, and may be enforced by them.

(x) Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(xi) Restrictions on Policies. No insurance policy shall be maintained where:

(A) Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, or the Management Committee.

(B) Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

(C) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including,

without limitation, the Committee, the Association, an Owner, or the borrowers) from collecting insurance proceeds.

(xii) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

(xiii) Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Owner, then the Association shall be responsible for the deductible.

(h) Adjusting Claims. The Management Committee has the authority to adjust claims and declare whether it is the intent of the Association that its master insurance policy is to provide primary or secondary coverage. The Management Committee may refuse to submit an insurance claim, if the claimant has coverage for the loss or there is a substantial likelihood that the claim will be covered by the Owner's or renter's insurance company, and (1) submitting the claim risks cancellation of the Association's insurance or a significant increase in premiums, or (2) the problem occurred within the Dwelling, or (3) was caused by the claimant or under his control, or (4) the claim is legally or primarily the responsibility of the claimant. The Management Committee may also elect to self-insure any claim and, in such an instance, the person legally responsible for the loss or maintenance shall pay a sum equal to the deductible.

19. DESTRUCTION, CONDEMNATION, AND OBSOLESCENCE. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

(a) Definitions. Each of the following terms shall have the meaning indicated:

(i) "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(ii) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

(iii) "Substantial Condemnation" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Project.

(iv) "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(v) "Substantial Obsolescence" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(vi) "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(vii) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(viii) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

(ix) "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Lot in which they are interested.

(b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

(c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Lots which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

(d) Notices of Destruction or Obsolescence. Within thirty (30) days after the

Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

(e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Section 16(s) above to pay for the deficiency.

(g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Lots will not be the subject of Restoration (even though the Project will continue as a subdivision) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Lots.

(h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, Ownership under this Declaration and the Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Lot is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

(i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

(j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

(k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Lot

therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

(l) Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

(m) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Lots that are subject to mortgages held by eligible holders.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Lots. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

20. CONSENT IN LIEU OF VOTE. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

(a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

(b) Change In Ownership. Any change in Ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and

(c) Notice. If approved, written notice of the approval must be given to all Owners at least ten (10) days before any action is required by them.

21. MORTGAGEE PROTECTION. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Lot in foreclosure. The lien or claim against a Lot for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

(a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Lot for such unpaid Assessments shall not be affected by any sale or transfer of such Lot, except that a sale

or transfer pursuant to a foreclosure of the Mortgage affecting such Lot or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot the lien of any Assessments becoming due thereafter.

(b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, By-Laws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

(c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

(d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

(i) Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

(ii) No contract may be for an initial term greater than one (1) year.

(e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(i) Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(ii) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.

(iii) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(iv) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

(f) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

22. AMENDMENT. This Declaration may be amended as follows:

(a) So long as the Developer owns at least one (1) Lot in the Project, no amendment shall be valid or enforceable without the Developer's prior written consent; and provided, however, that so long as the Developer owns at least fifteen (15) Lots in the Project, this Declaration may be amended in the sole discretion of the Developer.

(b) Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (i) necessary to correct typographical errors or inadvertent omissions; (ii) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (iii) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing. Further, prior to the expiration of the Declarant's control period, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner. Anything in this Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a Utah Division of Real Estate (or similar agency), and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Lots and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the

anticipated period of planning, development, and construction of the Project, and sale of the Individual Lots. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

(c) Consent of the Owners. After the termination of the Declarant's Period of Control, the affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

(d) Protection of Declarant Rights. No provision of this Declaration reserving or granting to Declarant the developmental rights shall be amended without the prior written consent of Declarant, which consent may be withheld for any reason or for no reason at Declarant's sole and exclusive discretion.

(e) Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Wasatch County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Wasatch County, Utah.

(f) Consent of Eligible Mortgagee to Terminate Legal Status of Project. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project.

(g) Consent of Eligible Mortgagees to Add or Amend Any Material Provision. The consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for maintenance, repair, and replacement of Common Areas;

- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area, and general or limited common elements, or rights to their use;
- Redefinition of any Lot boundaries;
- Convertibility of Lots into Common Area or Elements, or vice versa;
- Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Lots or Dwellings;
- Imposition of any restrictions on a Lot Owner's right to sell or transfer his Lot;
- A decision by the Association (if the Project consists of more than 50 Lots) to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this paragraph if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat or the termination of the legal status of the Project. If such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

23. **DECLARANT'S SALES PROGRAM.** Anything to the contrary notwithstanding, until Declarant has sold all Lots owned by it, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an

Owner to pay his portion of the Common Expenses or other Assessments, except as herein otherwise provided. Neither the Owners, the Association, nor the Management Committee shall interfere with the completion of improvements and sale of Declarant's Lots, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Declarant:

(a) Sales Office and Model Lots/Dwellings. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots and/or Dwellings at any one time. Such office and/or models may be one or more of the Lots and/or Dwellings owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

(b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

(c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project in any other way necessary to facilitate sales, including by way of illustration but not limitation as a sales office or offices. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as: (a) thirty (30) days after the date of the closing on the sale of the last Unit; or (b) Declarant elects in writing to pay the Assessments, whichever first occurs.

(d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Event, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

(e) Restrictions in Favor of the Declarant. The recreational amenities or facilities at the Project may not be subject to any restriction or reservation in favor of the Declarant or any of its affiliates.

24. LIMITATION ON IMPROVEMENTS BY ASSOCIATION. Until such time as the earlier of the following events occur: (a) all of the Additional Land has been added and the Declarant has sold all of the Lots, or (b) such time as Declarant chooses, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

25. DECLARANT'S RIGHTS ASSIGNABLE. All of the rights of Declarant under this

Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

26. **TRANSFER OF MANAGEMENT.** Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Committee.

27. **WORKING CAPITAL FUND.** A working capital fund shall be established by the Declarant equal to or greater than six (6) months' Assessments for each Lot. Each Lot's share of the working capital fund shall be collected and transferred to the Management Committee at the time of closing of the sale of each Lot by Declarant. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Lot shall be paid to the Management Committee at the time such Lot is first occupied for residential purposes or a certificate of permanent occupancy is issued, whichever first occurs. With respect to each Lot for which the Declarant pays the contribution to the working capital fund, the Declarant shall be reimbursed for such contribution by the buyer of such Lot at the time of closing. The purpose of the working capital fund is to insure that the Management Committee will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Project, including using said funds for maintenance of the Common Areas until the time control of the Association is relinquished by the Declarant as set forth herein. Thereafter, the Management Committee may continue the working capital fund by charging a reasonable transfer or impact fee when Lots are sold or rented.

28. **SEPARATE TAXATION.** Each Lot and its percentage of undivided interest in the Common Areas and Facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing Lot and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. No Dwelling, property or any of the Common Areas and Facilities may be considered a parcel for tax purposes.

29. **RELATIONSHIP WITH TAX-EXEMPT ORGANIZATIONS.** The Association may create, enter into agreements or contracts with, grant exclusive and/or non-exclusive easements over the Common Area to, or transfer portions of the Common Area to non-profit, tax-exempt organizations, including, but not limited to, organizations that provide facilities and services designed to meet the

physical and social needs of older persons, for the benefit of the Project, the Association, its Members and residents. The Association may contribute money, real or personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and shall be included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as may be amended from time to time.

30. **INTERPRETATION.** To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. Except for judicial construction, Declarant shall have the exclusive right to construe and interpret the provisions of this Declaration until the occurrence of the earliest of the following events: (a) thirty (30) days after the date of the closing on the sale of the last Lot; or (b) the Declarant executes and records a written Waiver of his right to control. Thereafter, the exclusive right to construe and interpret this Declaration shall rest with the Association acting by and through its Management Committee. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the construction or interpretation of the provisions hereof by Declarant and thereafter the Association shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration and provisions hereof. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development, operation and maintenance of Project.

31. **COVENANTS TO RUN WITH LAND.** This Declaration shall apply to all phases of the Project, including those subsequently recorded. The Developer shall have the right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded. This Declaration and all the provisions hereof shall constitute covenants running with the land and equitable servitudes, and shall be binding on and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or the Project and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration. In the event there is any tort liability against the Association which is not completely covered by insurance, only those Owners, if any, directly responsible for the grossly negligent or willful acts or omissions giving rise to the tort shall be obligated to contribute to any Special Assessment made to cover such liability. Any insurance carried by the Association shall be primary.

32. **ENFORCEMENT AND RIGHT TO RECOVER ATTORNEYS FEES.** Should the County, Association Management Committee or an aggrieved Owner be required to take action to enforce the

Declaration, By-Laws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

33. **DECLARANT'S RIGHT TO CURE ALLEGED DEFECTS.**

It is the Declarant's intent that all improvements constructed or made by Declarant in the Project be built or made in compliance with all applicable building codes and ordinances and that such improvements be of a quality that is consistent with quality and construction standards. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and whether Declarant and/or an agent of Declarant is responsible. It is Declarant's intent to resolve all disputes and claims regarding Alleged Defects (defined below) amicably, and without the necessity of time-consuming and costly litigation. The Association, Management Committee, and all Owners shall be bound by the following claim resolution procedure:

(a) **Declarant's Right to Cure.** In the event the Association, any individual Member of the Association, Management Committee, any individual Manager, or any Owner (collectively "Claimant") claim, contend or allege that any portion of the Project, including without limitation, any Additional Land, any Dwelling, any Capital Improvement, all Common Areas, the entire Project, the Property, and all Lots, are defective or that Declarant or its agents, consultants, contractors, or subcontractors were negligent in planning, design, engineering, grading, construction, or other development thereof (collectively "Alleged Defect"), Declarant hereby reserves the right to inspect, repair, and/or replace such Alleged Defects as set forth below.

(b) **Notice to Declarant.** In the event a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant's Registered Agent, or such other address at which the Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) **Right to Enter, Inspect, Repair, and/or Replace.** Within a reasonable time after receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, as part of Declarant's reservations of rights, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Lot and/or improvement (including Common and Limited Common Areas), or other portions of the Project and/or Property for the purposes of inspecting and if deemed necessary by Declarant, repairing or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, Declarant shall be entitled to take any action, as it shall deem reasonably necessary under the circumstances.

(d) **Legal Actions.** No Claimant shall initiate any legal action, cause of action, proceeding, reference or arbitration against the Declarant alleging damages (i) for the cost

of repairing or replacing any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, unless and until (1) Claimant has delivered to Declarant a Notice of Alleged Defect, and (2) Declarant has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) fails to repair or replace such Alleged Defect, or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, fails to commence such repair or replacement of the Alleged Defect and, thereafter fails to pursue diligently such repair or replacement to completion.

(e) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Paragraph 33 shall be construed to impose any obligation on Declarant to inspect, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law. The right of Declarant to enter, inspect, repair, and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by Declarant in the Office of the Wasatch County Recorder.

(f) Waiver. Notwithstanding anything to the contrary in this Paragraph 33, Declarant hereby disclaims any representations and warranties in respect of, shall have no continuing liability to any Owners for, any design or construction defects (whether known or unknown) relating to the Project or Property, including latent defects.

34. AGENT FOR SERVICE OF PROCESS. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Richard T. Wolper and the initial office of the Registered Agent is 758 South 400 East, Orem, Utah 84097.

35. ENFORCEMENT AND RIGHT TO RECOVER ATTORNEYS' FEES. If the Association, the Committee or an aggrieved Owner takes any action to enforce or construe this Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided in this Declaration or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses which may arise or accrue.

36. LIMITATION OF LIABILITY/SECURITY. The protective covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the Committee, are established for the benefit of the Developer, the Project and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act or failure to act of the Developer or the Committee or any of its members shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The Committee and its members shall be indemnified, saved and held harmless by the Association from any such action or failure to act by the Association, and exempt from any civil claim or action which may result from any act or failure to act (whether intended or implied) while functioning as a member of the Committee, or for decisions that they may render during the course of their service,

unless said party is guilty of gross intentional negligence. No claim may be made by any lot owner, guest, or invitee against the Association or the Committee for any weather related damages or loss incurred as a result of damage to a person or vehicle being operated on the streets within the subdivision. The property is situated in an area where snow and ice are a part of the environment, and the clearing of streets is both difficult and may be delayed for reasons beyond the control of the Committee or the Association.

The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the Association, nor the Declarant shall in any way be considered insurers or guarantors of security within the Project, however, and neither the Association, nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners, residents, tenants, guests and invitees acknowledge that the Declarant, the Association and its Management Committee do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglar alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner, resident, tenant, guest or invitee acknowledges and understands that the Declarant, Association and Management Committee are not insurers and that each Owner, resident, tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that Declarant, Association and Management Committee have made no representations or warranties nor has any Owner, resident, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

37. **DURATION.** This Declaration shall survive for a term of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall, unless terminated by a vote of two-thirds (2/3) of the then present Lot Owners, be automatically be extended for successive periods of ten (10) years.

38. **GRANT OF EASEMENTS.** Each Lot Owner is hereby granted a permanent, perpetual, non-exclusive easement for the benefit of and appurtenant to the Lot for the purpose of vehicular and pedestrian ingress and egress, and for the installation, maintenance and use of all utilities of every type across and along the Streets within the subdivision, and to use all other Common Areas in a manner consistent with their intended and designed use. The Developer is granted an easement for all purposes over all Common Areas and the Streets until an Event of Transfer occurs, in which event, any easement rights of the Developer shall pass to the Committee.

39. **INTERPRETATION.** The captions which precede the paragraphs of this Declaration are for convenience purposes only and shall in no way affect the manner in which any provision is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part and any gender shall include both other genders

or the neuter. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder of this Declaration.

40. **CONFLICT WITH PLAT.** In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat(s) affecting the Project, including the plat notes thereon, the provisions of said plats or plat notes, as the case may be, shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said plats, including any plat notes.

41. **RIGHTS OF ELIGIBLE MORTGAGEE.** Any Eligible Mortgagee shall be entitled to:

- (a) upon request, inspect the books and records of the Association during normal business hours;
- (b) receive written notice of meetings of the Association where the consent of any Eligible Mortgagee is required;
- (c) upon request, obtain copies of Association financial statements;
- (d) receive written notice of condemnation proceedings affecting any of Association's Property;
- (e) receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration; and
- (f) where the Owner shall be deemed delinquent in the payment of any Assessment, any Eligible Mortgagee of the Owner's Lot shall be given written notice of such delinquency by the Association, provided the Eligible Mortgagee shall have been notified by the Association of its lien.

42. **PROVISIONS INCORPORATED IN DEEDS.** Each provision contained in this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any Lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

43. **NO DEDICATION.** Unless expressly provided, nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Project to the public or for any public use.

44. **NOTICES.** Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been posted in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. Any notice to the Association shall

be sent to such address as it may from time to time designate in writing to each Owner.

45. **UTAH LAW.** The interpretation, enforcement or any other matters relative to this Declaration shall be construed and determined in accordance with the laws of the State of Utah.

46. **DISCLAIMER.** No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness or intended use or operation, cost of maintenance or taxes except as expressly set forth in this Declaration or except as set forth in any Disclosure Statement required to be given under applicable rules of the Utah Division of Real Estate.

47. **DESIGNATION OF SUCCESSOR.** For purposes of this Declaration and the easements, dedications, rights, privileges and reservations set forth herein, a successor and assign of Declarant shall be deemed a successor and assign only as specifically designated by Declarant by instrument recorded in the real estate records of Wasatch County, Utah, and, only with respect to the particular rights or interests specifically designated therein.

48. **SEVERABILITY.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant shall have the right by amendment to this Declaration to replace such provision with a new provision, as similar thereto as practicable, but which in Declarant's reasonable opinion would be considered not to be unconscionable.

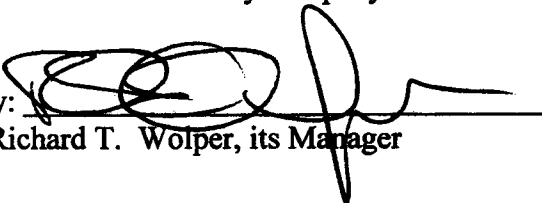
49. **RESTATEMENT OF DECLARATION.** To assure uniformity and ease in determining what provisions of this instrument apply, Declarant shall have the right, from time to time, incorporating cumulatively into one document all prior amendments, to publish and adopt a restatement of this Declaration (the "Second, Third, Fourth Declaration" as the case may be).

50. **RECORDING REFERENCES.** All references in this Declaration to maps, plats, agreements, instruments or other documents of record shall mean and refer recordings with the Office of the Recorder of Wasatch County, Utah.

51. **EFFECTIVE DATE.** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Wasatch County, Utah.

THE DEVELOPER has executed this Declaration on the date set forth above.

DCP, L.L.C.,
a Utah limited liability company

By: 
Richard T. Wolper, its Manager

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On the 21st day of December, 2006, personally appeared before me Richard T. Wolper, who by me being duly sworn, did say that he is the Manager of DCP, L. L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of its Articles of Organization or a resolution of its Members, and said Richard T. Wolper duly acknowledged to me that said Company executed the same.


Notary Public

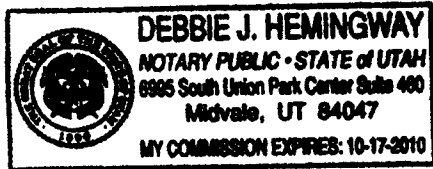


EXHIBIT "A"**Legal Description****Deer Canyon Preserve
Overall Boundary**

Beginning at the East Quarter Corner of Section 6, Township 2 South, Range 5 East, Salt Lake Base and Meridian, and running thence South 00°33'50" West, along the East line of said Section, 2569.98 feet, to the Southeast Corner of said Section 6; thence South 00°22'42" East, along the East line of Section 7, 121.18 feet; thence South 67°39'00" West, 1144.07 feet, to the Northeasterly line of US Highway 189; thence along said Northeasterly line on a non-tangent curve to the left, with a radius of 3990.94 feet, the center of which bears South 54°03'21" West, through a central angle of 1°42'11", an arc distance of 118.63 feet; thence North 45°23'02" West, along said Northeasterly line, 187.54 feet, to the Westerly line of a 100.00 foot wide County road; thence North 02°27'57" West, along said Westerly line, 308.06 feet, to the South line of Section 6; thence South 89°01'23" West, along said Section line, 43.57 feet; thence South 00°22'11" East, 128.23 feet; thence along the arc of a non-tangent curve to the right, with a radius of 390.86 feet, the center of which bears North 63°41'48" West, through a central angle of 8°33'11", an arc distance of 58.35 feet, to the Northeasterly line of US Highway 189; thence along said Northwesterly line, on a non-tangent curve to the left, with a radius of 3990.94 feet, the center of which bears South 47°27'57" West, through a central angle of 13°40'38", an arc distance of 952.68 feet; thence North 56°12'40" West, along said Northeasterly line, 262.47 feet; thence North 35°54'08" West, along said Northeasterly line, 518.76 feet; thence North 49°53'11" West, along said Northeasterly line, 514.43 feet; thence North 45°05'06" West, along said Northeasterly line, 545.95 feet; thence North 29°27'41" West, along said Northeasterly line, 747.09 feet; thence along said Northeasterly line, on a curve to the left, with a radius of 11692.72 feet, the center of which bears South 60°32'19" West, through a central angle of 2°05'28", an arc distance of 426.74 feet; to a point on the North - South forty acre line of the Northwest Quarter of said Section 6; thence North 00°28'16" West, along said forty acre line, 2534.97 feet, to the North line of said Section 6; thence South 89°58'18" East, along said North line 1003.34 feet, to the Wasatch - Summit County line; thence South 54°15'59" East, along said County line, 895.13 feet; thence North 64°40'31" East, along said County line, 323.80 feet; thence South 80°30'29" East, along said County line, 824.30 feet; thence North 52°13'31" East, along said County line, 418.80 feet; thence South 75°05'59" East, along said County line, 838.00 feet, to the East line of said Section 6; thence South 00°38'53" East, along said East line, 2204.71 feet, to the point of beginning.

Less and Excepting that portion within the Wasatch County Right of Way, more particularly described as follows:

Commencing at the Southeast corner of Section 6, Township 2 South, Range 5 East, Salt Lake Base and Meridian, thence South 89°01'23" West, along the South line of said Section, 1178.07 feet to the Point of Beginning for this description; thence South 01°08'41" East, 400.26 feet, to the said Northeasterly Right of Way line of said U.S. Highway; thence North 45°23'02" West, along said line, 129.21 feet; thence North 02°27'57" West, 308.06 feet; thence South 89°01'23" West, along the South line of said Section, 2.75 feet; thence North 01°08'41" West, 46.66 feet; thence Northwesterly along the arc of a 360.30 foot radius tangent curve to the left, through a central angle of 42°48'28", an arc distance of 269.19 feet; thence North 44°03'41" West, 293.55 feet; thence Westerly along the arc of a 360.30 foot radius tangent curve to the left through a central angle of 54°06'59", an arc distance of 340.31 feet; thence South 81°40'19" West, 351.74 feet, to the Northeasterly Right of Way line of US Highway 189; thence North 56°12'40" West, along said line, 54.14 feet; thence North 35°54'08" West, along said line, 71.85 feet; thence North 81°40'19" East, 425.29 feet; thence Easterly along the arc of a 460.30 foot radius non-tangent curve to the right, center bears South 08°11'42" East, through a central angle of 54°08'01", an arc distance of 434.90 feet; thence South 44°03'41" East, 293.64 feet; thence Southeasterly along the arc of a 460.30 foot radius non-tangent curve to the right, center bears South 46°02'06" West, through a central angle of 42°49'14", an arc distance of 344.01 feet; thence South 01°08'41" East, 46.95 feet to the Point of Beginning.

Contains 396.179 acres, more or less

EXHIBIT "B"**Legal Description
Additional Land**

Lot 132, being more particularly described as follows:

Beginning at a point that is due South 12,284.822 feet and due East 1,731.011 feet from the Northeast corner of Section 30, Township 1 South of Range 5 East Salt Lake Base and Meridian, Summit County, Utah. (said Northeast corner bearing North 89°23'18" East from Northwest corner and being the basis of bearing for this description). And running thence South 17°52'30" West 1,023.117 feet to South line of the Northwest quarter of Section 5, Township 2 South, Range 5 East, Salt Lake base and Meridian; thence South 89°28'18" West along the South line 1,305.660 feet to a point on the West line of said section 5, 1,371.493 feet; thence South 76°37'21" East 1,667.151 feet to the point of beginning.

Together with and subject to a 50 feet right-of-way designated as Right-of-way "U".

A 50 foot Right-of-Way, 25 feet on each side of its center line described as follows:

Beginning at a point North 89°38'12" East along the section line 350.826 feet and due South 8008.005 feet from the Southwest Corner of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian, which corner is North 89°23'18" East (used as the basis of bearing for this description) from the Northwest Corner of Section 30, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 42°13'15" East 364.589 feet; thence South 57°52'30" East 253.870 feet; thence South 5°17'24" East 271.155 feet; thence South 5°16'33" West 399.325 feet; thence South 17°07'28" West 568.585 feet; thence South 23°04'33" West 926.473 feet; thence South 0°05'42" East 623.474 feet; thence South 27°30' East 744.107 feet; thence South 8°30' East 805.00 feet; thence South 8°30' West 135.00 feet to a point on the South line of the Northwest Quarter of Section 5, Township 2 south, Range 5 East, Salt Lake Base & Meridian, said point being North 89°28'18" East along said South line 465.00 feet from the Southwest Corner of said Northwest Quarter.

Lot 130, more particularly described as follows:

Beginning at a point that is due South of 10,504.222 feet and due East 2234.134 feet from the Northeast Corner of Section 30, Township 1 South, Range 5 East Salt Lake Base & Meridian, Summit County, Utah, (said Northeast Corner bearing North 89°23'18" East from Northwest Corner and being the basis of bearing for this description); Thence; South 14°43'47" West 834.732 feet;
Thence; North 71°West 1844.910 feet;
Thence; North 23°04'33" East 554.462 feet
Thence; North 17°07'28" East 563.585 feet;
Thence; South 61°41'15" East 1785.486 feet to the point of beginning.

Together with and subject to a 50 feet right-of-way designated as Right-of-way "U".

A 50 foot Right-of-Way, 25 feet on each side of its center line described as follows:

Beginning at a point North 89°38'12" East along the section line 350.826 feet and due South 8008.005 feet from the Southwest Corner of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian, which corner is North 89°23'18" East (used as the basis of bearing for this description) from the Northwest Corner of Section 30, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 42°13'15" East 364.589 feet; thence South 57°52'30" East 253.870 feet; thence South 5°17'24" East 271.155 feet; thence South 5°16'33" West 399.325 feet; thence South 17°07'28" West 568.585 feet; thence South 23°04'33" West 926.473 feet; thence South 0°05'42"

East 623.474 feet; thence South 27°30' East 744.107 feet; thence South 8°30' East 805.00 feet; thence South 8°30' West 135.00 feet to a point on the South line of the Northwest Quarter of Section 5, Township 2 south, Range 5 East, Salt Lake Base & Meridian, said point being North 89°28'18" East along said South line 465.00 feet from the Southwest Corner of said Northwest Quarter.

Lot 131, more particularly described as follows:

Beginning at a point that is due South 12,1284.622 feet and due East 1,731.011 feet from the Northeast corner of Section 30, Township 1 South, Range 5 East, Salt Lake Base & Meridian, summit County, Utah (said Northwest corner bearing North 89°23'18" East from Southwest corner and being the basis of bearing for this description). Thence North 76°37'21" West 1667.151 feet to a point on the West line of Section 5, Township 2 South, Range 5 East, Salt Lake Base & Meridian, (not surveyed); thence north 0°05'42" West along said West line 787.525 feet; thence North 23°04'33" East 435.548 feet; thence South 71°East 1844.910 feet; thence South 14°43'40" West 381.806 feet; thence 17°52'30" West 634.679 feet to the point of beginning.

Together with and subject to a 50 feet right-of-way designated as Right-of-way "U".

A 50 foot Right-of-Way, 25 feet on each side of its center line described as follows:

Beginning at a point North 89°38'12" East along the section line 350.826 feet and due South 8008.005 feet from the Southwest Corner of Section 20, Township 1 South, Range 5 East, Salt Lake Base & Meridian, which corner is North 89°23'18" East (used as the basis of bearing for this description) from the Northwest Corner of Section 30, Township 1 South, Range 5 East, Salt Lake Base & Meridian; thence South 42°13'15" East 364.589 feet; thence South 57°52'30" East 253.870 feet; thence South 5°17'24" East 271.155 feet; thence South 5°16'33" West 399.325 feet; thence South 17°07'28" West 568.585 feet; thence South 23°04'33" West 926.473 feet; thence South 0°05'42" East 623.474 feet; thence South 27°30' East 744.107 feet; thence South 8°30' East 805.00 feet; thence South 8°30' West 135.00 feet to a point on the South line of the Northwest Quarter of Section 5, Township 2 south, Range 5 East, Salt Lake Base & Meridian, said point being North 89°28'18" East along said South line 465.00 feet from the Southwest Corner of said Northwest Quarter.

Exhibit C

RECEIVED
DEC 21 2006
Utah Div. Of Corp. & Comm. Code

ARTICLES OF INCORPORATION
OF
CANYON TRAILS HOMEOWNERS ASSOCIATION,

a non-profit organization
under the laws of the State of Utah

The undersigned, as incorporator of Canyon Trails Homeowners Association, hereby adopts the following Articles of Incorporation (the "Articles").

ARTICLE I.
Name

The name of the Owners' Association shall be "Canyon Trails Homeowners Association" (the "Association").

ARTICLE II.
PERIOD OF DURATION

This Association shall exist perpetually unless dissolved according to law.

ARTICLE III.
INCORPORATOR

The name and address of the initial incorporator is Richard T. Wolper, 758 South 400 East, Orem, Utah 84097.

ARTICLE IV.
PURPOSES AND DEFINITIONS

4.1 The Association is organized exclusively for the purpose of constituting the owners association to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Canyon Trails, a Subdivision located in Wasatch County, Utah (the "Declaration"), that has been or will be recorded in the Official Records of Wasatch County, Utah, and to perform all obligations and duties of the Association and to exercise all rights and powers of the Association. The Association shall have no capital stock and shall make no distributions of income or profits to the members of the Association (the "Members").

4.2 This corporation is a non-profit corporation.

4.3 Unless otherwise defined herein, all defined terms shall have the meaning set forth in the Declaration.

Date: 12/21/2006
Receipt Number: 1982291
Amount Paid: \$22.00

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**ARTICLE V.
POWERS OF THE ASSOCIATION**

5.1 The Association shall be responsible for the operation and administration of the Association in accordance with Utah law, the Bylaws and the Declaration.

5.2 In furtherance of its purposes, the Association through the Management Committee of the Association (the "Committee") shall have and may exercise all of the rights, powers, and privileges now or hereafter conferred upon nonprofit corporations by the common law and the statutes of the State of Utah in effect from time to time and by the Declaration, Bylaws, and other governing documents of the Association, including all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers of the Association under the Declaration and Utah law.

5.3 The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of these Articles.

**ARTICLE VI.
MEMBERS**

The Owners shall be the Members, each of whom shall be a voting Member. The rights of the Members are as set forth in the Bylaws.

**ARTICLE VII.
REGISTERED AGENT AND REGISTERED OFFICE**

The initial registered agent of the Association shall be Richard T. Wolper and the address of the initial registered office shall be 758 South 400 East, Orem, Utah 84097. Either the registered office or the registered agent may be changed in the manner provided by applicable law.

**ARTICLE VIII.
MANGEMENT COMMITTEE**

8.1 The business and affairs of the Association shall be conducted, managed, and controlled by the Management Committee. The Management Committee shall consist of three (3) managers (each a "Manager") as provided in the Bylaws. Subject to the limitations set forth in these Articles, terms of office and provisions regarding election, removal, and filling of vacancies on the Management Committee shall be set forth in the Bylaws.

8.2 The Management Committee may appoint such committees as it deems necessary or appropriate in the conduct of its affairs.

8.3 The first Association meeting shall take place within 30 days after the sale of the last Lot.

**ARTICLE IX.
OFFICERS**

The officers of the Association shall consist of a President, a Vice-President, a Secretary, and a Treasurer, and such other officers as provided in the Bylaws. The officer shall be elected or appointed and shall have duties as may be prescribed in the Bylaws and by applicable law.

**ARTICLE X.
DISTRIBUTION OF ASSETS UPON DISSOLUTION**

Upon dissolution of the Association, the Management Committee shall provide for the distribution of all assets and liabilities of the Association in the following manner:

(a) All liabilities and obligations of the Association shall be paid and discharged or adequate provisions shall be made therefor;

(b) Assets held by the Association on condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirement; and

(c) Assets received and held by the Association after provision for liabilities, conditions, or use limitations, as specified in paragraphs (a) and (b) above, shall be distributed to the Members as provided in the Bylaws.

**ARTICLE XI.
AMENDMENTS**

Amendments to or restatements of these Articles shall be adopted as follows:

11.1 Except as otherwise provided by Utah law or the Declaration, an amendment to or restatement of these Articles shall be adopted by the written consent or the affirmative vote of a majority of the Management Committee

11.2 Once so adopted, the President or Vice-President and Secretary shall execute the Articles of Amendment or the Restated Articles of Incorporation, as applicable, in the format required by Utah law, and shall cause originals thereof to be delivered to the Utah Division of

12-21-06A09:35 RCVD

Corporations and Commercial Code for filing.

11.3 No amendment to or restatement of these Articles of Incorporation shall be contrary to or inconsistent with the laws of Utah or the provisions of the Declaration.

11.4 In the event of a conflict between the provisions of the Declaration, the Articles, and the Bylaws, the provisions of the Declaration shall control.

ARTICLE XII. INDEMNIFICATION

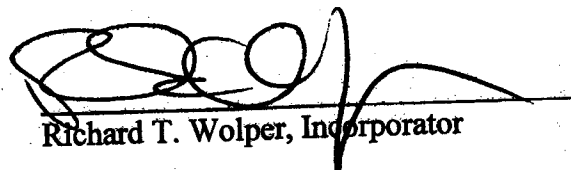
The Association shall indemnify, to the fullest extent permitted or not prohibited by Utah law, each of its managers, directors, officers, employees, agent, and fiduciaries (hereinafter, for purposes of these Articles, individually referred to as a "party"), against all costs, expenses and liability, including reasonable attorney's fees, incurred in, relating to or as a result of any action, suit or proceeding to which such person may be involved or made a party by reason of being or having been a manager, director, officer, employee, or fiduciary of the Association at the time such costs and/or expenses were incurred. The Association shall not be liable under this Article for any amounts paid in settlement of any action, suit or proceeding affected without written consent of the Management Committee. The Association shall not settle any action, suit or proceeding in any manner that would impose any penalty or limitation on a party without a party's written consent. The rights to indemnification and advancement of expenses provided in this Article shall be in addition to any other rights a party may have or hereafter acquire under applicable law, the Declaration, Bylaws, or otherwise.

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ARTICLE XIII. LIMITATION ON LIABILITY

To the fullest extent permitted or not prohibited by the laws of Utah, as the same exist or may hereafter be amended, a Manager shall not be personally liable to the Association or its Members for monetary damages for breach of fiduciary duty as Manager. Any repeal or modification of this Article by the Members of the Association shall be prospective only and shall not adversely affect any right or protection of a Manager of the Association existing at the time of such repeal or modification.

IN WITNESS WHEREOF, the incorporator has caused these Articles to be executed on this ___ day of December, 2006.


Richard T. Wolper, Incorporator

ACKNOWLEDGEMENT OF REGISTERED AGENT

I, Richard T. Wolper, hereby acknowledge that I have been named as the registered agent of the Canyon Trails Homeowners Association., and I hereby consent to act as such.

DATED this 20 day of December, 2006.


Richard T. Wolper, Registered Agent

12-21-06A09:35 RCVD

Exhibit D**BY-LAWS FOR
CANYON TRAILS HOMEOWNERS ASSOCIATION****ARTICLE I
REGISTERED AGENT AND OFFICE**

1. Office and Registered Agent. The initial Registered Agent shall be Richard T. Wolper. However, after transfer of management and control of the Association is made by the Declarant to the members of the Association, the Registered Agent shall be the President of the Association and the Registered Office shall be the home of the President or such other place as shall be designated by him.

**ARTICLE II
ASSOCIATION**

1. Composition. The association of Lot Owners is a mandatory association consisting of all Owners.

2. Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Management Committee from time to time and stated in the notice of meeting.

3. Notice of Meeting. It shall be the duty of the Secretary to hand deliver, mail by first-class mail, postage prepaid, by facsimile transmission, or by email transmission addressed to each Owner at the Owner's last known address, facsimile number, or email address as the same shown on the records of the Association notice of (a) each annual meeting of the Association not less than ten (10) and not more than thirty (30) days in advance of such meeting. The notice shall state the purpose, day, date, time and place of the meetings. The mailing or proof of transmission via facsimile or email of a notice of meeting in the manner provided in this Section shall be considered service of notice.

4. Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he is in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid his share of the Common Expenses and all Assessments and/or Additional Charges due.

5. Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Lot Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically (a) if the Owner attends the meeting in person, (b) it is revoked in writing and written notice of the revocation is given to the Secretary of the Association prior to the

meeting, and (c) upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Association prior to the meeting. Only individual Owners or the legal representative of an institutional Owner may be proxies.

6. Quorum Voting. Fifty-one (51.0%) percent of the members of the Association shall constitute a quorum for the adoption of decisions. If however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an oral announcement at the meeting to be rescheduled. Those Owners present, either in person or by proxy, at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association in person or by proxy, shall decide any question brought before the meeting. If the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.

7. Order of Business. The order of business at all meetings of the Association shall be as follows:

- a. roll call;
- b. proof of notice of meeting;
- c. reading of minutes of preceding meeting;
- d. reports of officers;
- e. report of special committees, if any;
- f. election of inspectors of election, if applicable;
- g. election of Committee Members, if applicable;
- h. unfinished business; and
- i. new business.

8. Conduct of Meeting. The President shall, or in his absence the Vice-President, preside over all meetings of the Association; and the Secretary shall keep the minutes of the meeting as well as record of all transactions occurring thereat.

9. Open Meeting Policy. All Management Committee meetings shall be open to all voting members, but attendees other than members of the Management Committee may not participate in any discussion or deliberation unless a majority of a quorum requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

10. Action May Be Taken Without A Meeting. Any action to be taken at the meeting of the Management Committee or any action that be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting for the action so taken, shall be signed by all the members of the Management Committee. An explanation of the action taken shall be posted at a prominent place or places within the common areas with three (3) days after the written consents of all of the members of the Management Committee have been obtained.

11. Executive Session. The Management Committee, with approval of a majority of a quorum, may adjourn a meeting and reconvene an executive session to discuss and vote upon personnel matters, litigation or threatened litigation in which the Association is or may become involved, and orders of business of a privileged, confidential, sensitive or similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

ARTICLE III MANAGEMENT COMMITTEE

1. Powers and Duties. The affairs and business of the Association shall be managed by the Management Committee consisting of three (3) or more Lot Owners. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things necessary to operate and maintain the Project. The Committee shall have the power from time to time to adopt any Rules and Regulations deemed proper for the exercise of its management powers. The Committee may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Committee shall be responsible for at least the following:

- a) Preparation of an annual budget;
- b) allocating the Common Expenses;
- c) Providing for the operation, care, upkeep, replacement, maintenance, and regulation of all the Common Areas and Facilities.
- d) Designating, hiring, and dismissing the personnel necessary to operate and maintain the Project.
- e) Collecting and depositing the Assessments.
- f) Making, amending, and enforcing the Rules and Regulations.
- g) Opening and closing of bank accounts for and in behalf of the Association, and designating the signatories required therefor.
- h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of the By-Laws, after damage or destruction by fire or other casualty.
- i) Enforcing by legal means the Project Documents.