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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
RIVER MEADOWS RANCH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RIVER MEADOWS RANCH ("**Declaration**") is made this 16th day of NOVEMBER, 2007, by Wentworth Development, LLC, a Utah limited liability company (the "Declarant").

RECITALS

A. Declarant is the owner of certain real property situated in Wasatch County, State of Utah, more particularly described on Exhibit A attached hereto (the "**Property**").

B. The Property is subject to that certain Development Agreement between the Declarant and the County dated NOVEMBER 16, 2007 ("**Development Agreement**"). To the extent the Development Agreement conflicts with the provisions of this Declaration, the provisions of the Development Agreement shall control.

C. Declarant desires to impose upon the Property certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges (collectively, the "**Restrictions**") for the benefit of the Property and all present and subsequent owners or occupants thereof, and all conveyances of Subject Property for any part thereof shall be subject to the Declaration.

DECLARATION

NOW, THEREFORE, Declarant hereby imposes upon the Property the following easements, conditions, covenants, restrictions, liens, charges, and reservations which shall run with the Property and be binding upon all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE 1
DEFINITIONS

The following capitalized terms shall, as used in this Declaration, have the following meanings:

- 1.1 "ADRC" shall mean the Architectural Design Review Committee.
- 1.2 "ADRC Design Standards" shall mean such standards promulgated by the Declarant and/or the ADRC as authorized by **Section 10.3**.
- 1.3 "Act" shall mean the Community Association Act, Utah Code Ann. §§ 57-8a-1 et seq., as the same may be amended from time to time.
- 1.4 "Articles" shall mean the Articles of Incorporation by which the Association is formed under the nonprofit corporation law of the State of Utah.
- 1.5 "Assessments" shall mean the charges against Owners to defray the Common Expenses, including, without limitation, Regular Assessments, Special Assessments, Limited Assessments, and Initial Assessments, all as provided in this Declaration.
- 1.6 "Association" shall mean and refer to River Meadows Ranch Subdivision Homeowners' Association, Inc., a nonprofit corporation organized under the laws of the State of Utah, its successors and assigns, whose membership shall include Declarant and each Owner of a Lot in the Project. It is contemplated that the Association will be incorporated as a Utah nonprofit corporation prior to the conveyance of the first Lot in the Project by Declarant.
- 1.7 "Association Rules" shall mean such rules promulgated by the Declarant and/or the Association pursuant to **Section 6.10(c)**.
- 1.8 "Board" shall mean the duly elected and qualified Board of Directors of the Association and serving as the management body of the Association.
- 1.9 "Building" includes any Dwelling Unit, house, or garage. A Building includes sheds, which have a full roof impervious to water and similar structures.
- 1.10 "Bylaws" shall mean any bylaws or regulations adopted by the Association for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.
- 1.11 "Common Area" shall mean all property within the Property that the Association owns, maintains, repairs, or administers, and shall include, without limitation:

- (a) All portions of the Property not specifically included within the Lots.
- (b) All Common Areas designated as such on the Plat, including easements over portions of the individual Lots reserved for common use as utilities.
- (c) All installations, equipment, and lines, if any, now or hereafter located on, over, or under the Common Areas and connected with or related to the furnishing of Project utility services such as water, electricity, and telephone, and which are not owned by or dedicated to a governmental or quasi-governmental authority or public or private utility company and which are not reserved by Declarant.
- (d) The open space areas within the Project as designed on the Plat.
- (e) The Drainage Area(s).
- (f) That certain fence (the "Fence") running south from River Road along the eastern and southern boundary of Phase I of the Project creating a distinction between the Project and the Federal Lands controlling the Provo River.

Subject to the provisions of this Declaration, the Common Areas are intended to be devoted for the benefit and enjoyment of the Owners and are not dedicated to the public unless provided otherwise in the Plat.

1.12 "*Common Expenses*" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Areas; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) the establishment of reasonable reserves, including a working capital fund, as the Board shall deem appropriate in its discretion for the periodic maintenance, repair, and replacement of the Common Areas; (e) utilities for the Common Areas, if any, and all insurance premiums for the Common Areas, if any; (f) real and personal property taxes levied against the Common Area; (g) the maintenance, operation, repairs and replacement of the Fence; and (h) other miscellaneous charges incurred by the Association or the Board pursuant to the Governing Documents in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association, including, without limitation, all expenses pertaining to the Association or its authorized representatives making inspections, removing or otherwise correcting violations of this Declaration, Bylaws, the ADRC Design Standards, and/or the Association Bylaws.

1.13 "Common Facilities" shall mean and refer to those physical improvements constructed upon and under the Common Area, including, without limitation, benches, bridges, walkways, pedestrians paths and bicycle paths, street lights, drainage facilities, ponds, and the pressurized irrigation system servicing the Common Area landscaping (the Pressurized Irrigation System").

1.14 "County" shall mean Wasatch County, Utah and its various departments, divisions, employees and representatives.

1.15 "Declarant" shall mean Wentworth Development, LLC, a Utah limited liability company, and the successors and assigns of Declarant's rights hereunder.

1.16 "Declaration" shall mean this Declaration, as it may be amended from time to time.

1.17 "Dwelling Unit" shall mean any structure intended to be occupied as a single-family residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.18 "Drainage Area" shall mean areas within the Property that shall be used primarily for retention pond/drainage basins. Drainage Area shall remain free of all encroachments and obstructions (including fences and trees) which may adversely affect drainage or the maintenance of the storm water facilities. Drainage Areas are considered Common Areas.

1.19 "First Mortgagee" shall mean a holder of a first mortgage or first deed of trust on a Lot.

1.20 "Governing Documents" shall mean this Declaration, the Articles, the Bylaws, the Association Rules, and the ADRC Design Standards, as the same may be amended from time to time.

1.21 "Limited Assessment" shall mean an Assessment levied by the Association in accordance with the provisions of Section 8.3 of this Declaration.

1.22 "Lot" shall mean any one of the separately numbered and individually described lots described on the Plat, which lot is intended for separate ownership or occupancy.

1.23 "Nonprofit Act" shall mean the Revised Nonprofit Corporation Act, Utah Code Ann. §§ 16-6a-101 et seq., as the same may be amended from time to time.

1.24 "Occupant" shall mean a Person or Persons, other than an Owner, in possession of, or using a Lot, including, without limitation, family members, tenants, guests, or invitees.

1.25 "Owner" shall mean and refer to the record owner of fee simple title to any Lot, excluding those record owners having title merely for security for the performance of an obligation.

1.26 "Person" shall mean a natural individual, corporation, estate, partnership, limited liability company, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.

1.27 "Plat" shall mean and refer to the record of survey map of the Property of record with the Wasatch County, Utah, Recorder. "Plat" shall also refer to any additional plat which may be recorded with any Supplemental Declaration. The Plat is hereby incorporated into, and made an integral part of, this Declaration.

1.28 "Project" shall mean the Property, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto, and any additional land annexed thereto in accordance with the provisions of this Declaration.

1.29 "Regular Assessment" shall mean an Assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

1.30 "Special Assessment" shall mean an Assessment levied by the Association other than a regular or Limited Assessment.

1.31 "Special Declarant Rights" shall mean all rights that Declarant reserves for itself in this Declaration, including, without limitation, the right to (i) construct any improvements within the Project; (ii) maintain sales offices, models, and signs advertising the Project; (iii) exercise rights to easements upon the Common Areas for the purpose of making improvements or marketing Lots within the Property; (iv) appoint or remove any officer of the Association, member of the Board of Directors, and member of the ADRC prior to the Transition Date; (v) annex additional property to the Property as provided in **Article 10** of this Declaration, and (vi) complete all of Developer's obligations under the Development Agreement.

1.32 "Supplemental Declaration" shall mean a written instrument recorded in the records of the County Recorder of Weber County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

1.33 "Transition Date" shall mean the later of the following: (i) the date of the conveyance by Declarant of eighty percent (80%) of the Lots which may be created at any time or from time to time by this Declaration to Owners (other than Declarant or an affiliate of Declarant), and (ii) the date the Declarant

certifies in writing to the Association that Declarant has completed all of its obligations under the Development Agreement.

Whenever the context so requires, the use of the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

**ARTICLE 2
PURPOSE**

2.1 Purpose. The Property is hereby made subject to the Restrictions, all of which shall be deemed to be imposed upon and run with the land and each and every Lot, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the following purposes:

- (a) Insuring Owners and Occupants of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Buildings.
- (b) The prevention of the erection within the Property and Buildings of improper design or construction with improper or unsuitable materials or with improper quality and method of construction.
- (c) Encouraging and insuring the erection of quality and attractive improvements appropriately located within the Property to assure visual quality and harmonious appearance and function.
- (d) Securing and maintaining proper set-backs from streets and open areas within the Property and adequate open spaces.
- (e) The integration of development of the different Lots by setting common general standards consistent with the ADRC Design Standards from time to time.
- (f) Insuring attractive landscaping and the conservation of existing natural features with minimum adverse impact on the ecosystem.

**ARTICLE 3
EASEMENTS; USE RESTRICTIONS**

The following restrictions shall be applicable to Property and shall be for the benefit of and limitation upon all present and future Owners and the Association, which is hereby empowered, in addition to each Owner, to enforce

the same:

3.1 Use. Each Lot shall be used only for residential purposes. As used herein "residential" shall mean the use of the Dwelling Unit on a Lot for living accommodations for not more than two (2) unrelated persons, excluding guests, which guests may reside therein on a temporary basis. "Residential" is not intended, nor shall the same be construed to include the use of the Lot for the operation of a shelter home for persons unrelated to each other or unrelated to the Owner or Occupant.

3.2 Easements.

- (a) Easements to Association to Operate Common Areas. The Association, acting through the Board, the ADRC, or its authorized agents shall have non-exclusive easements on, over and under the Lots and the Common Areas, to access the Common Areas, to make inspections of and to remove or otherwise correct violations on the Common Areas and all facilities serving the Common Areas, and to maintain, repair, replace or effectuate the operation of the Common Areas. The Association, acting through the Board or its authorized agent, shall have a non-exclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Areas for purposes necessary for the proper operation of the Project and the Common Areas; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access.
- (b) General Easements to Association to Lots. The Association, acting through the Board, the ADRC, or its authorized agent shall have non-exclusive easements with the right of access to each Lot to make inspections, to remove or otherwise correct violations, or otherwise to exercise its duties under this Declaration, Bylaws, and the Association Rules; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access.
- (c) Public Utilities. Easements and rights over the Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Project are hereby reserved to Declarant and, after the Transition Date, to the Association, together with the right to grant and transfer the

same; provided, however, such easements and rights shall not unreasonably interfere with the use of the Common Areas and the Lots by the Owners or Occupants. Declarant or the Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Project for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, gas lines or pipes, and any similar public or quasi-public improvements or facility necessary for the proper operation of the Project and the Common Areas, and each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association and Declarant (prior to the Transition Date) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. However, no such easement can be granted if it would permanently interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Lot.

- (d) Development Easements for Declarant. Until all of the Property has been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Project for construction, display, maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of improvements within the Project; provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners or Occupants in the reasonable use and enjoyment of their Lots and the Common Areas.
- (e) Owners' Easements in Common Elements. Declarant reserves, for the benefit of every Owner, its permitted Occupants, tenants and guests, a nonexclusive easement for use of and enjoyment of the Common Areas and the Common Facilities. This easement is subject to the restrictions, rights and other easements as provided in this Declaration. Among other things, this easement is subject to the restrictions of **Section 3.3** of this Declaration.
- (f) Additional Easements. There are hereby reserved for the use and benefit of the Declarant and granted for the use and

benefit of each Lot, and for the use and benefit of each Owner and Occupant, and for the use and benefit of the Association, and their successors and assigns, for the purposes incident to such use, development and maintenance of the Property, the following easements:

- (i) For the installation and maintenance of public utility facilities of all kinds, including phone, power, gas and cable, if available, the easements so designated on the recorded Plat.
- (ii) For the purpose of permitting the Declarant of the Association, their contractors and agent, to enter onto those portions of Lots contiguous to any Common Area to maintain, replace and restore landscaping and other Common Facilities within the Common Area.
- (iii) Any additional easements, if any, as shown and designated on the Plat.
- (iv) No Buildings or improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use of purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities if any, located thereon or therein.

3.3 Restrictions on Use of Common Areas. Each Owner and such Owner's permitted Occupants shall be entitled to use the Common Areas, subject to the following:

- (a) Governing Documents. The provisions of the Governing Documents and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Common Areas, shall comply with the same.
- (b) Suspension of Rights. The right of the Association to suspend certain rights as provided in **Section 8.17**.
- (c) Dedications. The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the First Mortgagees on any Lot.

- (d) Drainage Areas. The Association may restrict the Owners' and Occupants' access to the Drainage Areas if the Association determines, in its reasonable discretion, that such restriction is necessary for the operation of the Drainages Areas. Wasatch County is hereby granted an easement for access and any necessary operations of detention areas and drainage swales leading to detention ponds.

3.4 Damages. An Owner shall be liable for any damages to the Common Area which may be sustained by reason of the negligence, reckless or intentional misconduct of said Owner or of Owner's Occupants, family, licensees, invitees, lessees or contract purchasers, both minor and adult. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be as a Limited Assessment against that Owner's Lot and may be collected as provided in **Article 8.**

3.5 Subdivision. No Lot may be further subdivided, unless otherwise authorized herein.

3.6 Animals. No animals, livestock, birds, insect or poultry of any kind shall be raised, bred, or kept on any Lot, except that no more than two (2) domesticated dogs and/or cats or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owners' Lot. Excessive barking shall constitute a nuisance.

3.7 Trash. All garbage, refuse and animal waste shall be properly and promptly cleaned and stored appropriately and removed from each Lot so as to prevent unsightliness, unsanitary conditions, or unnecessary or unpleasant odors. All trash receptacles shall be screened in accordance with the ADRC Design Standards.

3.8 Equipment and Vehicles.

- (a) No motor homes, trailers, boats, campers, recreational vehicles, and other mobile equipment, trailers, implements, and vehicles (excluding automobiles) of all kinds or nature shall be parked or stored on any Lot, unless such items are fully screened or enclosed from view, and unless the ADRC has otherwise approved the location and/or screening of said items. No vehicle should be parked or stored for a period in excess of twenty-four (24) consecutive hours on any street within the Project or on any portion of a Lot, including driveways. A minimum of two off street parking spaces for

automobiles shall be provided on each Lot. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. The Owner shall provide sufficient garage space for all automobiles and other vehicles used by the Occupants of a Lot, which vehicles shall be kept within the garage other than for temporary purposes (as determined by the ADRC.) No commercial vehicle, trucks with a capacity in excess of one (1) ton, shall be parked or stored upon any Lot or street within the Subdivision.

- (b) No truck, truck camper, tent, garage, or other outbuilding or vehicle shall at any time be used as a residence or living space on any part of Property.
- (c) The use of all vehicles, including but not limited to automobiles, trucks, bicycles, and motorcycles shall be subject to Association Rules and ADRC Design Standards, which may prohibit or limit the use thereof within the subject property, provide parking regulations and other rules regulating the same.

3.9 Commercial Use Prohibited. Unless expressly permitted in a Supplemental Declaration, no Lot shall be used at any time for commercial or business activity, provided however, that the Declarant or other persons authorized by the Declarant may use Lot(s) for development and sales activities related to the Property; further provided that a portion of a Dwelling Unit can be used to conduct a business or profession only if: (1) such use is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (2) such use is approved by the ADRC; (3) such use is of a type traditionally conducted in a single-family residence; and (4) such use is ancillary to the primary use as a single-family residence. Any Owner shall be permitted to rent the Owner's Lot and improvements thereon for residential purposes, provided that the use is limited to the use specified in **Section 3.1** herein and otherwise in compliance with the Governing Documents. Any lease allowing occupancy or residence of any Lot, or use of any portion of any Lot within the Property, shall be subject in all respects to the Governing Documents.

3.10 No Offensive Use. No noxious, offensive or unsightly conditions, as determined by the ADRC, shall be permitted upon any part of any Lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood.

3.11 Agricultural Use. The Owners have been made aware that the Property has been developed in an agricultural community and that there will continue to be agricultural uses on some of the surrounding properties. The agricultural uses of the surrounding properties, including the use of agricultural machinery, burning and chemical weed control and fertilization, and the raising

of livestock, although restricted from the Property are not necessarily restricted from neighboring properties. This provision specifically puts the Owners on notice of such potential conditions.

**ARTICLE 4
BUILDING RESTRICTIONS; MAINTENANCE**

4.1 Plans. No Dwelling Unit, Building, fence, wall or other structure, improvement, or substantial landscaping or screening planting shall be undertaken, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials and locations of the same shall have been submitted to and approved in writing by the ADRC.

4.2 Set Backs. All building setbacks shall comply with the Wasatch County Code, Zoning Regulations.

4.3 Dwelling Unit Size. No Dwelling Unit shall be constructed or placed on any Lot containing a total floor area on all floors intended and suitable for use as living area, not including a garage, of less than three-thousand (3,000) square feet and of more than eight thousand five hundred (8,500) square feet measured from the outside of the exterior walls. In computing floor area, basement space or any floor with a finished elevation more than three feet below the natural contour of the surrounding area shall not be included. THE OWNER (OR HIS/HER BUILDER) SHOULD REVIEW THE ADRC DESIGN STANDARDS. THE ADRC SHALL CONSIDER THE ADVERSE AFFECT OF DWELLING UNIT SIZE MINIMUMS AND HEIGHT RESTRICTIONS ON OTHER LOTS WITHIN A PARTICULAR PHASE OF THE SUBDIVISION IN GRANTING OR WITHHOLDING ITS APPROVAL OF THE PLANS AND SPECIFICATIONS FOR THE PROPOSED IMPROVEMENTS TO A LOT. Each Dwelling Unit shall have an attached or detached fully enclosed garage adequate for a minimum of two (2) standard size automobiles. No carports shall be allowed.

4.4 Antennae. No exterior radio antennae, television antennae, or other antennae, including a satellite dish, shall be erected or maintained on a Lot, except as permitted in the ADRC Design Standards.

4.5 Exterior Energy Devices. All energy production devices including, but not limited to, generators of any kind and solar energy devices, shall not be constructed or maintained on any Lot without the prior written approval of the ADRC, except for heat pumps or similar appliances shown on the plans approved by the ADRC.

4.6 Lighting. If required by the ADRC, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be set forth in the ADRC Design Standards.

4.7 Roofs. The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the ADRC Design Standards.

4.8 Maintenance. The following provisions shall govern the maintenance of each Lot, its landscaping, and all improvements thereon:

- (a) Each Owner shall maintain the Dwelling Unit located on such Owner's Lot, the Building, and all improvements located thereon in good and sufficient repair and shall keep the Buildings and improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds controlled and otherwise maintain the same in a neat and aesthetically pleasing condition and in such condition as not to detract from the attractive appearance of the Project and not to affect adversely the value or use of any other Lot, Dwelling Unit, or the Common Areas. The Association shall have no obligation regarding maintenance or care which is required to be accomplished by the Owners. Each Owner, and not the Association, shall be responsible to pay for utility service (including, without limitation, both hookup and installation fees and periodic charges) which are separately charged, billed, and/or metered to his Lot by governmental or quasi-governmental authorities or by public or private utility companies.
- (b) All damage to any Building or improvements shall be repaired as promptly as is reasonably possible.
- (c) Each Owner shall be responsible for maintaining all trees and other landscaping on such Owner's Lot in a clean, safe, sanitary and attractive condition, as to not detract from the natural beauty of the Project or become unsightly to the surrounding Lots and other properties. The Owner of a vacant Lot shall maintain the Lot so that weeds and other plant life are controlled in sightly matter.
- (d) Each Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his/her/its Lot so as to minimize fire and other hazards to surrounding Lots, Dwelling Units, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to the public health, crops, livestock, land, or other property. The control of noxious weeds by the Owners shall be as set forth and

specified under the Utah Noxious Weed Control Act, §§ 4-17-1, et seq., and the rules and regulation of the County and any other governmental authority having jurisdiction over the Project as the same exist from time to time.

- (e) No improvements of any kind shall be erected, altered or permitted to remain within the Project, unless (i) such improvements conform to this Declaration, (ii) complete architectural plans and specifications for all such improvements are approved in advance in writing by the ADRC as provided in this Declaration, and (iii) are expressly permitted by this Declaration. Without limiting the generality of the foregoing, all improvements and replacements thereof on the Property shall conform to this Declaration and the ADRC Design Standards.
- (f) A Dwelling Unit which is vacant for any reason shall be kept locked and the windows glazed in order to discourage entrance by vandals. Vacant Dwelling Units and unimproved Lots shall not be exempt from the provisions of this Declaration.
- (g) All structures, facilities, equipment, objects and conditions determined by the ADRC, in its sole discretion, to be offensive, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (h) No articles, goods, machinery, materials, or similar items shall be stored, kept or maintained on a Lot in the required set back area along a public or private right-of-way or otherwise kept in the open or exposed to public view.
- (i) Any event or condition on a Lot which, in the sole discretion of the ADRC, creates an unsightly or blighting influence, shall be corrected, removed, or obstructed from public view, as the case may be, by the Owner of the Lot.
- (j) In the event that any Owner shall permit any Dwelling Unit, Building or improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any Building or structure thereon, if necessary, for

the purposes of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefore, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in **Article 8** of this Declaration.

4.9 Exterior Materials and Colors. All exterior materials and colors selected and used shall be approved by the ADRC and shall be compatible with other Buildings on the Lot and on neighboring Lots to the end that all such Buildings will present a unified and coordinated appearance. All exterior finishes and/or colors shall be approved by the ADRC and shall be in accordance with the ADRC Design Standards.

4.10 Signs. No commercial billboards or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a Dwelling Unit and Lot for rent or for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Real estate signs, signs advertising the name of the builder and/or signs advertising the name of the institution providing financing therefore may be displayed on a Lot during construction of the Buildings so long as said sign(s) is approved in writing by the ADRC prior to installation. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the ADRC prior to installation.

4.11 Construction Time Frame. All construction work on Dwelling Units shall be diligently and continuously pursued, and shall be completed within twelve (12) months from the date construction is started unless an extension is authorized in writing by the ADRC.

4.12 Outbuildings. Outbuildings, separate garages, and sheds may be constructed only simultaneously with or after a Dwelling Unit has been constructed on the Owner's Lot. All such buildings shall be constructed only after written approval thereof by the ADRC and shall comply with the ADRC Design Standards. All outbuildings shall be constructed of similar or comparable exterior materials with the Dwelling Unit so as to be aesthetically compatible therewith.

4.13 Fences. All fencing shall be approved by the ADRC and shall comply with the ADRC Design Standards.

4.14 Landscaping. The following provisions shall govern the landscaping of Lots within the Property:

- (a) The Owner shall prepare a landscape plan in conformance with the ADRC Design Standards and shall submit the same to the ADRC. The installation and/or construction of the landscaping shall not commence without the prior approval of the ADRC of the Owner's landscaping plan. Landscaping of a Lot shall be in accordance with the approved landscaping plan.
- (b) Landscape plans should focus on utilization of native plant materials including drought tolerant varieties. Lawns areas should be minimized.
- (c) The above referenced required landscaping for the entire lot shall be installed within forty-five (45) days after substantial completion of the Dwelling Unit on the Lot, with a reasonable extension allowed for weather.
- (d) An underground automatic sprinkler system shall be installed sufficient to irrigate the entire Lot.

4.15 Mailboxes. All mailboxes constructed or installed on any Lot shall be in compliance with the ADRC Design Standards.

ARTICLE 5 WATER SYSTEMS

5.1 Domestic Water. Each Lot shall have access to a domestic water system to be owned and operated by the North Village Special Services District and/or its contractors. The domestic water system will provide water for culinary and other ordinary domestic household use. Any Owner's use of water from the domestic water system shall constitute an agreement to pay the charges therefore by the North Village Special Services District.

ARTICLE 6 MEMBERSHIP AND VOTING RIGHTS; BOARD OF DIRECTORS; ASSOCIATION

6.1 Formation. It is contemplated that the Association shall be organized by the Declarant as a Utah nonprofit corporation. The Association will be incorporated and will adopt Bylaws for its governance. To the extent the Articles of Incorporation or Bylaws of the Association conflict with the provisions of this Declaration, the provisions of this Declaration shall control.

6.2 Generally. The Association will serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Areas and other matters as provided in the Governing Documents, the Act, and the Nonprofit Act. The Association shall have all rights and powers granted to it under the Act, the Nonprofit Act, and in the Governing Documents.

6.3 Membership. Membership in the Association shall at all times consist exclusively of the Owners and each Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

6.4 Voting. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be all Owners (excluding the Declarant). Class A members shall be entitled to one (1) vote for each Lot owned. Fractional votes shall not be allowed. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, until the objection is resolved by the Owners of such Lot, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to five (5) votes for each Lot owned by the Declarant.

Except as otherwise provided in this Declaration or the Bylaws, the affirmative vote of a majority of the votes of the Association entitled to vote on any matter shall constitute approval of such matter. Declarant, as the Class B member, shall have the right to control the Association to the extent of having the exclusive right (either directly or through a person designated by the Declarant) to elect, appoint and remove the members of the Board, the members of the ADRC, and the officers of the Association until the Transition Date. The special control rights of the Declarant, as Class B member, shall cease and terminate upon the Transition Date. Upon the Transition Date, the process of transferring control of the Association from the Declarant to the Owners shall commence and be completed within a reasonable period of time. This process shall include the Owners' election of the Board of Directors and shall be considered completed on the date of the initial meeting of the Board of Directors elected by the Owners. The Owners' election of the initial Board of Directors may be conducted at a regular or special meeting of the Association or by a mailed balloting procedure, within thirty (30) days following the Transition Date. The Declarant may

voluntarily surrender the right to elect, appoint and remove the members of the Board and the officers prior to the Transition Date, but, in that event Declarant may require that specified actions of the Association or the Board taken prior to the Transition Date, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

6.5 Board of Directors. The governing body of the Association shall be the Board. Except as otherwise provided in this Declaration, the Board may act in all instances on behalf of the Association.

6.6 Qualification of Directors. Except for Board members elected or appointed by Declarant, each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, or trust, a Director may be an officer, partner, member, manager, trustee or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place on the Board shall be deemed vacant.

6.7 Action by Owners. Except as specifically provided herein, the Board may not act on behalf of the Association to amend or terminate this Declaration, to elect members of the Board (except in filling vacancies in its membership for the unexpired portion of any term), or to determine the qualifications, powers and duties or terms of the members of the Board of Directors.

6.8 Non-Liability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Board member or officer acted in good faith within the scope of his or their duties.

6.9 Managing Agent. The Board may contract with a professional management agent to assist the Board in the management and operation of the Common Areas and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, to impose a special Assessment and to authorize foreclosure of an Assessment lien.

6.10 Powers of Association. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, Bylaws, the Act, the Nonprofit Act, or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

- (a) Assessments. The power to determine the amount of and to levy Assessments on the Owner and/or Lots and to enforce

payment thereof in accordance with the provisions of this Declaration.

- (b) Right of Enforcement. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Governing Documents and to enforce by mandatory injunction or otherwise, all provisions thereof.
- (c) Association Rules. The power to adopt, amend and repeal such rules and regulations as the Association deems reasonable in furtherance of this Declaration, Bylaws, Articles and the Act. Among other things, such rules shall govern the use by Owners and Occupants or any other person of Common Area, Common Facilities and other property within the Project. The Association Rules may contain provisions regarding activities which may be conducted on any part of the Project. The Association Rules shall not discriminate among Owners and shall not be inconsistent with the Articles, Bylaws, the Act, or this Declaration. A copy of Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailings, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of any conflict between an Association Rule and any provision of the Articles, Bylaws or this Declaration, the conflicting provisions of the Association Rules shall be deemed superseded to the extent of any such inconsistency.
- (d) Emergency Powers. The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant.
- (e) Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under, across, or

over the Common Area for the enjoyment of and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:

- (i) Underground lines, cables, wires conduits and other devices for the transmission of any utility or other service.
- (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
- (iii) Any similar public or quasi-public improvements or facilities.

6.11 Dedication. The Association shall have the right to dedicate or transfer all or any part of the Common Area or Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by two-thirds (2/3) of the members of the Association entitled to vote.

6.12 Duties of Association. In addition to the powers delegated to it by the Articles, By-Laws, the Act and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

- (a) Operation and Maintenance of Common Area. Perform, or provide for the performance of, the operation, maintenance and management of the Common Area and Common Facilities (including Pressurized Irrigation System, Detention Areas, Ponds, and Drainage Swells leading to Detention Ponds) held or controlled by the Association, including the repair and replacement of property or improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant and/or an irrigation district for the delivery of irrigation water to the Lots, and the maintenance, management, repair or replacement of all other property owned or controlled by the Association.

- (b) Taxes and Assessments. Pay all real and personal property taxes and Assessments levied against the Common Area. Such taxes and Assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the Association in the event that the Association is denied the status of a tax exempt corporation.
- (c) Utilities. Acquire, provide and/or pay for water, sewer, refuse collection, electrical, telephone, gas and other necessary services for the Common Area owned or controlled by the Association.
- (d) Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Property, whether the same are located within or without the boundaries of the Property.
- (e) Rule Making. Make, establish, promulgate, amend and repeal Association Rules.
- (f) ADRC. Appoint and remove Members of the ADRC, all subject to the provisions of this Declaration.
- (g) Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association Rules.
- (h) Improvements. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of maintaining and improving the Common Area and Common Facilities and in support thereof to mortgage said property, provided the rights of such mortgagee shall at all times be subordinate to the rights of the Owners under this Declaration.

6.13 Enforcement of Common Area Maintenance. In the event the Association fails to perform its obligations to maintain, operate, repair and replace the Common Areas and Common Facilities in accordance with this Declaration, the County may upon prior written notice to the Association elect to assume all or any portion of such obligations. Prior to assuming such obligations,

the County shall notify the Association in writing of the Association's failure to perform its obligations with respect to the Common Areas and require the Association to cure such failure within thirty (30) days of such notice. In the event that the Association fails to cure such failure within such thirty (30) day period, the County shall have the right, but not the obligation, to assume the Association's obligations with respect to the maintenance, operation, repairs and replacement of the Common Areas and in that regard, the County is hereby granted an irrevocable license and easement to enter upon any portion of the Common Areas to perform such obligations; provided, however, if the failure stated in the County's notice cannot be corrected within the thirty (30)-day period, it shall not give rise to the County's right to assume the Association's obligation if corrective action is instituted within the thirty (30)-day period and diligently pursued until such failure is corrected. In the event the County assumes all or any portion of the obligations of the Association with respect to the Common Areas, the Association shall, within thirty (30) days after being invoiced therefor, reimburse the County for all of the expenses incurred by the County in performing such assumed obligations, including all expenses incurred for labor (including the reasonable cost of salaries and other costs or fringe benefits of persons actually employed by the County, services, equipment, supplies and materials used in performing such obligations). In the event the Association does not reimburse the County for such expenses within said thirty (30) days, the County shall have the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration. The Association shall not be dissolved or relieved of its responsibility to maintain the Common Areas without the prior written approval from the County. This **Section 6.13** shall not be amended without prior written approval from the County.

6.14 Maintenance Obligations. Without limiting the generality of the Association's duties under **Section 6.12** above, the maintenance of the Common Areas by the Association shall include, without limitation, where applicable, the following:

- (a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
- (b) Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Maintaining all landscaped areas; maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; maintaining the Fence; and
- (d) Keeping paved surfaces reasonably free from ice and snow.

- (e) Maintaining and inspecting all detention areas and drainage swales leading to detention ponds. The Association is prohibited from making any alteration or changes to said basin without written permission from Wasatch County.
1. Regular inspection shall include but may not be limited to inspecting detention ponds for erosion and any changes after every major storm event but at least monthly. Embankments must be inspected at least monthly for visible signs of erosion, seepage, sloughing, sliding, or other instability. Outlet structures must be inspected for flow obstructions, cracks, vandalism or erosion.
 2. Regular maintenance shall include but may not be limited to:
 - a. Instigating corrective measures for observed problems immediately or as soon as weather conditions permit
 - b. Mow grass as required. Remove undesirable vegetation such as trees, bushes, and vines from embankments and pond areas.
 - c. Fill all eroded gullies and vehicle ruts and compact soil. Backfill any hollow spots under concrete spillways or outlet structures and compact soil. Replace and riprap areas washed away from spillways and pipe outlets. Determine the cause of any slides or sloughs and repair. Take corrective action to prevent future slides and sloughs.
 - d. Remove all trash, debris, and other flow obstructions from detention pond, outlet structures, and pipes. Fill all animal burrows and compact soil. Repair vandalism, and maintain all pond and outlet structures.
 - e. Pesticides, herbicides, or fertilizers shall not be used in or around detention areas unless approved by Wasatch County. These products may leach from pond and pollute streams and rivers.
 - f. Detention ponds must drain properly. Ponds are designed to release storm water slowly and not hold water permanently. Improperly maintained ponds can harbor

- breeding areas for mosquitoes and reduce the storage volume of the pond.
- g. Yard waste (leaves, grass clippings, brush, etc...) shall never be placed in ponds.
3. Annual maintenance shall include but may not be limited to:
- a. Removal of vegetation from any cracks in concrete spillways or outlet structures and seal with mastic joint filler.
 - b. Lubricate and test moving parts on gates, valves, etc...
 - c. Repaint metal parts to prevent rust. Replace badly rusted parts.
 - d. Remove any accumulated sediment to restore pond to design volume.
 - e. Reseed with County approved seed mix as necessary to maintain good vegetative cover on exterior of embankments.

6.15 Insurance.

- (a) Liability Insurance. The Association shall maintain in force and pay the premium for a policy providing comprehensive general liability insurance covering all of the Common Areas and Common Facilities, and public ways in the Project, if any. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Common Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. Such policy shall, by its terms provide for "severability of interest" or shall contain a

specific endorsement to preclude the insurer's denial of an Owner's claim because of the negligent acts of the Association or any Member thereof, and shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association.

- (b) General Requirements Concerning Insurance. Each insurance policy maintained pursuant to this **Section 6.15** hereof shall be in accordance with and consistent with local and State of Utah insurance law and shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Key Rating Guide of Class VI or better. The provisions of this **Section 6.15** shall not be construed to limit the power or authority of the Association or any Owner to obtain and maintain insurance coverage required hereunder, in such amounts and in such forms as the Association or such Owner may deem appropriate from time to time.

ARTICLE 7 RIGHTS RESERVED BY DECLARANT

7.1 Improvements. Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct: (i) any improvements shown on the Plat, as amended or supplemented from time to time; and (ii) any other improvements that Declarant desires to construct on the Property.

7.2 Development Rights. Declarant hereby reserves for itself, its successors and assigns the right to (i) create easements as described in **Section 3.2** and this **Article 7**, (ii) add real estate to the Property as provided in **Article 10** of this Declaration; and (iii) complete all of its obligations under the Development Agreement.

7.3 Marketing. Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Lots owned or to be owned by Declarant:

- (a) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or signs, banners, or similar devices at any place or places on the Property.
- (b) Declarant shall have the right from time to time to locate or relocate any signs, banners, or similar devices. Within a reasonable period after the date of the sale of the last Lot owned by the Declarant, Declarant shall remove from the

Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Property for the purpose of aiding Declarant's sales efforts.

7.4 Exercising Special Declarant Rights. Declarant may exercise its Special Declarant Rights at any time prior to the Transition Date. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this **Article 7** and any other right reserved to Declarant in this Declaration, without the consent of the Association, the County, or any of the Owners.

7.5 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any rule or regulation that interferes with or diminishes any Special Declarant Right, without Declarant's prior written consent. Any action taken in violation of this **Section 7.5** shall be void and have no force or effect.

7.6 Development Easements for Declarant and Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection, construction or maintenance by the Declarant, or its duly authorized agents, or by developers on portions of the Property designated and approved by the Declarant, of structures, improvements, sales offices, model units or signs necessary or convenient to the development or sale of property within the Property. Until the Transition Date, there are hereby reserved to the Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Property for construction, display, maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of the Lots or Dwelling Units within the Project; provided, however, that no such use by Declarant or its agents shall otherwise restrict Owners in the reasonable use and enjoyment of their Lots. The Declarant may designate certain Lots or Dwelling Units as sales or administrative offices, and the Declarant shall have the right to transfer the designation of a sales and administrative office from one Lot or Dwelling Unit to another within the Property. The Declarant may also designate and use certain Lots as a parking area or parking lot, and Declarant may allow developers to enjoy similar rights by so providing in writing.

7.7 Easements. In addition to other rights reserved to the Declarant under this Declaration, Declarant expressly reserves unto:

- (a) Itself, its successors and representatives, contractors and their subcontractors easements and rights-of-way on, over and across all or any part of the streets for vehicular and pedestrian ingress and egress to and from any part of the Property, or any adjacent real property owned by the Declarant, or its successors or assigns;
- (b) Itself, its successors and representatives, contractors and their subcontractors (including any district, company, unit of local government, Association or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services) easements, access and rights-of-way on, over, under and across all or part of the Common Area and utility easements on, over and under all Lots and Common Areas as provided on any recorded subdivision plat of the Property for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area shall be restored to the level and condition that existed prior to the doing of work: and
- (c) Itself, its agents and successors, all water and water rights over, upon or under or appurtenant to the Property, or any portion thereof, and a nonexclusive easement on, over, under and across any utility easements as provided or created on any recorded subdivision plat for the construction.

ARTICLE 8 ASSESSMENTS

8.1 Agreement to Pay Assessments. Each Owner, by acceptance of the deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay when due all Assessments, including, without limitation, Regular, Special and Limited Assessments, made by the Association or the Declarant, as provided in this Declaration.

8.2 Regular Assessments. An annual Regular Assessment shall be made by the Association in such amounts deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting

fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

8.3 Limited Assessments. Limited Assessments shall be levied by the Board against a Lot and its Owner to reimburse the Association for: (i) costs incurred in bringing an Owner into compliance with the provisions of the Governing Documents; (ii) any other charge designated as a Limited Assessment in any of the Governing Documents; and (iii) attorneys' fees, interest and other charges relating thereto as provided in this Declaration. No Limited Assessment shall be levied until (a) the Board or ADRC has given written notice to the Owner of the violation of the Governing Documents and requiring the Owner to correct the violation within specified time; and (b) the Owner has refused to correct the violation within the time specified in the notice.

8.4 Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of a Common Area or Facility, unexpected repair or replacement of a Common Area or any Facility located thereon or an easement area controlled by the Association, the furnishings of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration.
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar year or fiscal year are or will be inadequate to pay, as determined by the Board.

8.5 Purpose of Assessments. The Assessments levied by the Association or the Declarant shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of Property and to carry out the objectives and responsibilities of the Association, and for improvements and maintenance of any Common Area, Common Facilities, and all improvements constructed thereon, the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and Common Facilities, and including without being limited thereto, the payment of taxes and insurance on all or any part of the Property.

8.6 Collection and Enforcement. The Assessments, together with interest thereon and costs of collection and attorneys' fees, shall be a charge on the Lot and shall be secured by a continuing lien upon the Lot against which such Assessment is made in favor of the Association. Each such Assessment, together with interest, costs of collection and attorneys' fees shall also be the personal obligation of the Owner at the time when the Assessment becomes due. The

personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor. The right to collect and enforce payment of the Assessment is vested in the Association. If any Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the amount remaining unpaid, the name of the recorded Owner of the Lot, and a legal description of the Lot. Such notice shall be signed by the President and Secretary of the Association, whose signatures shall be acknowledged by a notary public, and such notice shall be recorded in the office of the Wasatch County Recorder. Thereupon, and upon the failure of the Owner to pay an Assessment, the lien for Assessment herein created may be foreclosed upon as provided by law for foreclosure of a mortgage or a deed of trust on real property and other real property liens in the State of Utah. The Association, upon approval by a majority of the votes of the Association entitled to vote, may through its duly authorized agents have and exercise the power to bid on the Lot at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Lot. Notwithstanding anything to the contrary contained in the Declaration and any amendment thereof, no action may be brought to foreclose the lien of any Assessment until the expiration of thirty (30) days after written notice of default has been given to the Owner at the last known address of the Owner, or otherwise as shown on the books and records of the Association. Such notice shall specify the amount and due date of the unpaid Assessments and the legal description of the Lot.

8.7 Set up and Initial Regular Assessment. Assessments shall commence as to each Lot upon the closing of the first sale of such Lot from the Declarant to an Owner other than the Declarant, or as to the remaining Lots owned by Declarant ("**Declarant Lots**"), commencing on the date that is two (2) years following the Transition Date (the "**Trigger Date**"). At each such closing, the Owner thereof shall pay the sum of three-hundred dollars (\$300) ("**Initial Assessment**") and all such portion of the existing Regular Assessment pro rated for the remainder of the calendar year. The Initial Assessments shall be paid to the Declarant to reimburse the Declarant for the set up cost and the maintenance of the Common Area and Common Facilities and other Association costs incurred or to be incurred by the Declarant prior to the Transition Date. The pro rata portion of the Regular Assessment will be paid to the Declarant for each Closing that occurs prior to the Transition Date and will be paid to the Association after the Transition Date only if the Association has conducted its first annual meeting, elected the Board and assumed the obligations and expenses of the Association. Until the process of transferring control of the Association from the Declarant to the Owners as provided in **Article 6** of this Declaration has been completed, the Declarant shall have full power and authority to exercise all of the rights, duties and functions of the Association and the Declarant shall have the exclusive use of Assessments for the purpose of discharging the duties and obligations of the Association in accordance with this **Article 8**, without regard to or an accounting of the initial deposits or other Assessments previously paid to the Declarant.

8.8 Assessment Due Date. The due date for Regular Assessments shall be March 1, unless some other due date is established by the Board. Each Assessment shall be delinquent if not paid within fifteen (15) days after the due date set forth in any notice of Assessment.

8.9 Interest and Penalties. Any Regular, Special, or Limited Assessments levied on Lots if not paid when due, shall bear interest at an annual rate as shall be set by the board from time to time, or if none is so set, at an annual rate of fifteen percent (15%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charged, the board may, in accordance with Association Rules promulgated by it, impose additional fines or charges for the failure of an Owner to pay any Assessment when due. The right of the board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non payment of an Assessment.

8.10 Billing for Annual Assessment. The Regular Assessment may be billed on a monthly basis, 1/12 per month on a quarterly basis, ¼ per quarter, or annually, in advance, all as determined by the Board.

8.11 Notice and Quorum for Special Assessment. Written notice of any meeting called for the purpose of making a Special Assessment shall be sent to all Association members not less than twenty (20) days in advance of such meeting. Such notice shall specifically indicate that a Special Assessment is to be considered at such meeting. A quorum of not less than a one-third majority of the members in the Association entitled to vote shall be required at such meeting whether in person or by proxy.

8.12 Uniform Rate of Assessment. All Assessments (other than Limited Assessments) shall be fixed at a uniform rate for all Lots in the Project, whether or not construction of a Dwelling Unit has commenced, except that any Declarant Lots shall not be subject to any Assessments prior to the Trigger Date. All Assessments (other than Limited Assessments) shall be fixed based on the amount of the Common Expenses divided by the number of Lots in the Project, except that any Declarant Lots shall not be subject to any Assessments prior to the Trigger Date.

8.13 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

8.14 Homestead Waiver. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah or any other applicable law now in effect, or in effect from time to time hereafter.

8.15 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay same or foreclose the Assessment lien; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise the other. The Association may also proceed as authorized in the Act to enforce the lien securing the Assessments. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and his Lot and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or collection charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its assigns the right and power to bring actions at law and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

8.16 Suspension of Certain Rights. If an Owner fails or refuses to pay an Assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with Section 57-8a-204 of the Act, terminate the Owner's right: (a) to receive utility services paid as a Common Expense (to the extent applicable); and (b) of access and use of recreational facilities within the Common Areas.

ARTICLE 9
ARCHITECTURAL DESIGN REVIEW COMMITTEE

9.1 Members of the Committee. The ADRC shall be comprised of at least three (3) persons, all of whom shall be appointed as herein provided. A member of the ADRC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ADRC may be removed at any time, with or without cause.

9.2 Appointment. At all times prior to the Transition Date, the Declarant shall have the sole right to appoint and remove all members of the ADRC. Thereafter, all members of the ADRC shall be appointed or removed by the Board. The ADRC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ADRC. In the absence of such designation, the vote of any two (2) members of the ADRC shall constitute an act of the ADRC.

9.3 Adoption of ADRC Design Standards. Initially the Declarant and ultimately the ADRC shall have the power to promulgate ADRC Design Standards relating to the planning, construction, alteration, modification, removal or destruction of Buildings and other improvements within the Property deemed necessary or desirable by the Declarant or the ADRC, as the case may be, to carry out the purposes of this Declaration. The ADRC Design Standards may contain provisions not limited to design standards, exterior finishes and colors, fences, landscaping, exterior lighting, mailboxes and the like. They may also include policies, procedures and rules, which in the discretion of the ADRC are reasonable to maintain a quality subdivision and to protect property and home

values. The Lot Owner shall review and be familiar with the current ADRC Design Standards, copies of which are available from the Declarant, the Declarant's marketing representative and at various title and escrow companies, including Founder's Title.

9.4 Interpretation and Enforcement. The ADRC shall have the authority to interpret and enforce any or all restrictions and covenants of this Declaration as they pertain to the Lot improvements. The ADRC shall have the authority to pursue whatever action or litigation may be required to cause any Owner to remove and replace any element that the ADRC interprets as deficient or outside of this Declaration of the ADRC Design Standards. This right of enforcement can include the ADRC hiring any or all of such work to be done and encumbering the Lot on which said work takes place with a lien for the full amount of the cost of said work plus any other costs the ADRC may incur in such enforcement.

9.5 Certification by Secretary. The ADRC shall, upon written request, certify that improvements upon any Lot comply with this Declaration and have been duly approved by the ADRC, or in the event said building or other improvements do not so comply, specifically the extent of noncompliance.

9.6 Variance. The ADRC may authorize variances from compliance with requirements of any conditions and restrictions contained in this Declaration, the ADRC Design Standards or any prior approval when, in the sole discretion of the ADRC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in writing signed by at least two (2) members of the ADRC. If a variance is granted as provided herein, no violation of this Declaration, ADRC Design Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration of the ADRC Design Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ADRC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing thereon. The granting of a variance by the ADRC pursuant to this Section shall not relieve the Owner from any obligation to fully comply with applicable ordinances of the County.

9.7 Application. To request ADRC approval for the construction, alteration, modification, removal or demolition of any improvements within the Property, the Owner shall submit a written application in a form required by the ADRC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided. All applications must contain, or have submitted therewith, such plans and specifications as required in accordance with the ADRC Design Standards prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ADRC.

9.8 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the ADRC shall use its best efforts and judgment to assure that all improvements within the Project shall produce and contribute to an orderly and aesthetically complementary design and appearance and be a quality residential development. The ADRC may, in its discretion, require the Owner to furnish additional materials beyond those required herein.

The ADRC shall render its decision with respect to an application in accordance with the procedures set forth in the ADRC Design Standards.

9.9 Inspection and Complaints. The ADRC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration of the ADRC Design Standards or the approved plans and specifications. Should the ADRC determine that there has been a deviation or a violation, it shall promptly issue a notice in writing thereof to the Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation and/or
- (b) The Owner shall adhere to the correct measures set forth in the written notice.

Should the ADRC determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner.

9.10 ADRC Not Liable. The ADRC shall not be liable for any damages to any person submitting any plans for approval, or to any Owner or Owners of Lots, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans. Neither the ADRC nor any member thereof, nor any of their duly authorized representatives, shall be liable to any Owner for any loss, damage, or injury arising out of, or in any way connected with, the performance of the ADRC's duties hereunder, unless due to the willful misconduct or bad faith of the ADRC. Any person acquiring title to any Lot, or any person submitting plans to the ADRC for approval, by doing so shall be deemed to have agreed and covenanted that no such person or Owner will bring any action or suit to recover damages against the ADRC, or its members, advisers, employees or agents.

9.11 Written Records. The ADRC shall keep and safeguard complete records of all applications for approval submitted to them (including one set of all preliminary sketches and all architectural plans so submitted) and all actions of approval or disapproval, and all other actions taken by and under the provisions

of this Declaration. Such records shall be maintained for a minimum of three (3) years after approval or disapproval.

9.12 Limited Extent of Review. The ADRC shall not be responsible for reviewing or for approval of any plan or design from the standpoint of structural safety or conformance to building or other applicable codes.

9.13 Enforcement. The ADRC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ADRC Design Standards or the approved plans and specifications. The ADRC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ADRC shall have the sole discretion to commence such proceedings. The authority of the ADRC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposit costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association. In the event the ADRC and/or Association shall prevail in any such legal or equitable proceedings, all costs and expenses incurred in connection therewith including, but not limited to, attorney's fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefore is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by said Owner, which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Such Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion. The failure of the Owner to pay said Assessments, or any installment thereof when due, shall be enforceable in the manner provided in **Article 8** above.

9.14 Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, which Limited Assessment shall be due and payable at such time or such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in **Article 8** above.

9.15 Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in **Section 9.13 and 9.14** above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue

enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

ARTICLE 10 ANNEXATION

10.1 Procedure. Additional land contiguous to the Property ("**Annexed Property**") may be added to the Property by Declarant without the consent of the Owners, the Board or the Association at any time so long as Declarant owns the Annexed Property. The additions authorized under this **Section 10.1** shall be made by recording a Plat amendment and a Supplemental Declaration. Any such Supplemental Declaration shall constitute an amendment to this Declaration. The Supplemental Declaration for any addition under Article 10 of this Declaration shall be signed by the Declarant. Upon the recordation of the Supplemental Declaration, the Annexed Property described therein, shall be subject to the terms and provisions of this Declaration as though included originally in this Declaration, and the definitions of Property, Common Area and Common Facilities shall automatically be amended to conform to such supplement or supplements, as shall all of the other definitions herein, including the definitions of Lot and Owner. All Owners of Lots located within the Annexed Property shall be subject to all easements, restrictions and reservations set forth in this Declaration and shall have the privileges of use of Common Area and Common Facilities except as otherwise provided herein and in the Supplemental Declaration and subject to the Restrictions set forth in the Declaration as amended and supplemented from time to time. Upon such annexation, the Owners of the Lots within the Annexed Property shall become members of the Association with the same or equivalent rights, privileges, and obligations as all other Members.

10.2 Designation of Common Areas. Any Common Area and Common Facilities designated by Declarant as such on the plat of the Annexed Property or in the Supplemental Declaration or conveyed to the Association by Declarant shall be subject to the same easements and other rights for the use and enjoyment of the Owners as for the other Owners of Lots subject to this Declaration.

10.3 No Assurances. The Declarant makes no assurances regarding the order in which any real property will be added to the Property or whether such real estate will be added to the Property at all.

ARTICLE 11 GENERAL PROVISIONS

11.1 Enforcement. The Declarant, the Association, the ADRC, or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration,

or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Declarant, the Association, the ADRC, or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and Association Rules and any respective amendments thereto.

11.2 No Waiver. Failure by the Association, the Declarant, the ADRC, or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

11.3 Cumulative Remedies. All rights, options and remedies of Declarant, the Association, the ADRC, or the Owners under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the ADRC, and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.

11.4 First Mortgagees' Rights.

- (a) Priority of First Mortgagees. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgagee made in good faith and for value encumbering any Lot, but all of said Restrictions shall be binding upon and effective against any Owner whose title to a Lot is derived through foreclosure or trustee's sale, or otherwise.
- (b) Relationship with Assessment Liens.
 - (i) The lien provided for in **Article 8** for the payment of Assessments shall be subordinate to the lien of any First Mortgagee which was recorded prior to the date any such Assessment becomes due.
 - (ii) If any Lot which is subject to a monetary lien created by this Declaration is also subject to the lien of a First Mortgagee, then: (A) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such First Mortgagee; and (B) the foreclosure of the lien of a First Mortgagee or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became

due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

- (iii) Without limiting the provisions of subsection (ii) of this Section, any First Mortgagee who obtains title to a Lot by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any person who obtains title at a private or judicial foreclosure sale, shall take title to such Lot free of any lien or claim for unpaid Assessments against such Lot which accrued prior to the time such First Mortgagee or purchaser takes title to such Lot, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Lots within the Project.
- (iv) Nothing in this Section shall be construed as releasing any person from his personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such person is an Owner.

11.5 Conveyance of Common Area. The Common Area and Common Facilities in each phase of development of the Property may be conveyed to the Association by the Declarant, free and clear of all encumbrances. Until conveyed, Declarant shall be solely responsible for the maintenance and management of Common Area and Common Facilities, and for all costs and expenses associated therewith not covered by the Assessments provided herein.

11.6 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or Association Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein which shall remain in full force and effect.

11.7 Covenants to Run with the Land; Term. The Restrictions and other provisions of this Declaration shall run with and bind the Property as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association, the Declarant, the ADRC, the County (with respect to **Section 6.13** only) or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the Restrictions and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of not less than two-thirds (2/3) of the votes of the Association entitled to vote and their First Mortgagees, has been recorded prior to the end of any such period agreeing to

change or revoke the Restrictions and other provisions of this Declaration in whole or in part.

11.8 Construction. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

11.9 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

11.10 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws or Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment reasonable attorneys' fees and costs of suit.

11.11 Notices. Any notice to be given to an Owner, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:

- (a) Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners to the address or addresses for the giving of notice pursuant to this Section, shall be deemed conclusive proof of such mailing.
- (b) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the statutory agent of the Association or as follows:

Wentworth Development, LLC
Attn: Gentry Jensen
10714 South Jordan Gateway
Suite 100
South Jordan, UT 84095

After the Transition Date, the notice address of the Association may be changed by recording of a notice of new address by the president of the Association.

Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

11.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.

11.13 Personal Covenant. To the extent the acceptance of a conveyance of a Lot creates a personal covenant between the Owner of such Lot and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a person is an Owner.

11.14 Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Lot, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Association Rules, to cover Association documentation and processing. The Board may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly assessment. The written notice shall set forth the name of the transferee and his transferor, the street address of the Lot purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's First Mortgagee, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in **Article 8** hereof. Notwithstanding the other provisions hereof, this Section shall not apply to a

First Mortgagee who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.

11.15 Conflicting Provisions. In the case of any conflict between this Declaration, the Bylaws, and the Association Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow the Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified and amended only to the extent necessary to come into compliance with the Act.

11.16 Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Lot to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution by Declarant of an instrument amending or revoking the same.

11.17 Amendments by Declarant after First Sale. Except as provided elsewhere in this Declaration, Declarant (without obtaining the approval of Owners, the Association, or existing First Mortgagees) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association, or existing First Mortgagees) to amend this Declaration until the Transition Date, if such amendment is required solely to comply with applicable law or to correct any error or inconsistency of the Declaration and if such amendment does not adversely affect the rights of any Owner or First Mortgagee.

11.18 General Amendment Requirements. Except as otherwise provided in this Declaration, this Declaration may be amended only by a vote of two-thirds (2/3) of the votes of the Association. Prior to the Transition Date, this Declaration shall not be amended without Declarant's prior written consent. An amendment shall not terminate or decrease any unexpired right, or period of Declarant control unless Declarant approves or consents in writing. After the Transition Date, no amendment to this Declaration may modify in any way Declarant's rights with respect to the commencement of Assessments as to the Declarant Lots under Sections 8.7 and 8.12 of this Declaration unless Declarant approves or consents in writing.

11.19 Fines. In accordance with Section 57-8a-208 of the Act, as amended, the Board may assess a fine against an Owner for violation of the Governing Documents. The Board shall have the power to make and adopt the Association Rules regarding fines for any violation of the Governing Documents; such rules shall identify specific violations, include fine amounts and include such other information as required under Section 57-8a-208 of the Act, as amended.

IN WITNESS WHEREOF, the Declarant has set his hand and seal as of the date and year first above written.

DECLARANT:

WENTWORTH DEVELOPMENT, LLC,
a Utah limited liability company

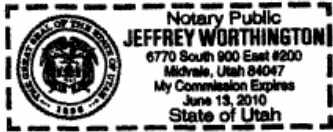
By: *Gentry W. Jensen*
Gentry W. Jensen, Manager

By: *Spencer H. Hess*
Spencer H. Hess, Manager

ACKNOWLEDGMENT

State of Utah)
County of Salt Lake) : ss

On this 16 day of Nov, in the year of 2007, before me, a notary public, personally appeared Gentry W. Jensen and Spencer H. Hess personally known by me, or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same as Managers.



Notary Public Signature *[Handwritten Signature]*
My Commission Expires _____

Exhibit A
Legal Description of Property

BEGINNING AT A POINT NORTH 123.98 FEET AND WEST 71.90 FEET FROM A WASATCH COUNTY SURVEY MONUMENT SET IN 1976 AS THE SOUTHEAST CORNER OF SECTION 13, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING CALLED "THE FORMER SECTION CORNER" PER RECORD OF SURVEY PREPARED BY LORD ENGINEERING, DATED JULY 3, 1989, AND ON FILE WITH THE OFFICE OF THE WASATCH COUNTY SURVEYOR AS OWC-034-013-4-0035, AND POINT ALSO BEING MONUMENTED WITH A WASATCH COUNTY SURVEYOR ALUMINUM CAP AND PIPE, AND STAMPED AS THE SOUTHEAST CORNER OF SAID SECTION 13, AND RUNNING THENCE SOUTH 00°00'33" WEST 190.17 FEET; THENCE SOUTH 65°29'51" WEST 507.92 FEET; THENCE SOUTH 41°28'14" WEST 398.40 FEET; THENCE SOUTH 27°50'10" WEST 1264.23 FEET TO AN OLD WIRE FENCE LINE; THENCE NORTHWESTERLY ALONG SAID OLD WIRE FENCE LINE THE FOLLOWING (8) COURSES: (1) NORTH 00°24'00" WEST 163.54 FEET, (2) NORTH 00°25'25" EAST 198.22 FEET, (3) NORTH 00°33'10" WEST 92.12 FEET, (4) NORTH 00°15'47" EAST 280.21 FEET, (5) NORTH 00°40'15" WEST 151.63 FEET, (6) NORTH 00°00'27" WEST 109.35 FEET, (7) NORTH 00°10'22" WEST 123.09 FEET, (8) NORTH 03°15'49" WEST 41.74 FEET; THENCE NORTH 397.89 FEET; THENCE NORTH 22°40'46" EAST 60.99 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 693.61 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 08°40'36" A DISTANCE OF 105.04 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 81°19'05" A DISTANCE OF 35.48 FEET TO A POINT OF REVERSE CURVATURE; THENCE NORTHWESTERLY ALONG THE ARC OF A 125.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 89°50'33" A DISTANCE OF 196.00 FEET; THENCE NORTH 39°52'49" EAST 137.21 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 125.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 04°53'40" A DISTANCE OF 10.68 FEET; THENCE NORTH 44°46'29" EAST 85.13 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 75.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 44°46'27" A DISTANCE OF 58.61 FEET; THENCE NORTH 00°00'02" EAST 186.94 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ARC OF A 125.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 60°11'34" A DISTANCE OF 131.32 FEET; THENCE NORTH 452.48 FEET; THENCE WEST 295.09 FEET; THENCE NORTH 00°15'36" WEST 1567.90 FEET; THENCE EAST 924.00 FEET; THENCE SOUTH 16°21'00" WEST 487.70 FEET; THENCE SOUTH 11°03'00" EAST 727.50 FEET; THENCE SOUTH 35°19'30" EAST 417.91 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A 125.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 73°19'34" A DISTANCE OF 159.97 FEET TO A POINT OF COMPOUND CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A 190.00 RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 25°14'18" A DISTANCE OF 83.69 FEET; THENCE SOUTH 63°14'10" WEST 167.74 FEET TO A POINT OF CURVATURE; THENCE SOUTHWESTERLY ALONG THE ARC OF A 75.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 14°21'54" A DISTANCE 18.80 FEET; THENCE SOUTH 40°20'30" WEST 31.07 FEET; THENCE SOUTH 12°50'30" WEST 97.05 FEET; THENCE SOUTH 25°55' 00" WEST 230.41 FEET; THENCE SOUTH 22°07'00" EAST 68.48 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF RIVER ROAD ; THENCE NORTHEASTERLY ALONG SAID NORTHERLY LINE THE FOLLOWING (3) COURSES: (1) NORTH 57°39'00" EAST 356.79 FEET TO A POINT ON THE ARC OF 533.73 FOOT NON-TANGENT CURVE TO THE LEFT (CENTER BEARS NORTH 32°20'59" WEST), (2) NORTHEASTERLY ALONG THE ARC OF SAID 533.73 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 22°17'27" A DISTANCE OF 207.64 FEET, (3) NORTH 35°21'30" EAST 108.99 FEET TO THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 13, THENCE SOUTH 00°00'33" WEST ALONG SAID EASTERLY LINE 862.35 FEET TO THE POINT OF BEGINNING.

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