

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR THE COVE AT OAK VISTA AT SUNCREST**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE COVE AT OAK VISTA AT SUNCREST (the "Neighborhood Declaration") is made on this 25<sup>th</sup> day of MARCH, 2003, by Alpine Homes, Inc., a Utah corporation ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property located in the City of Draper, Counties of Salt Lake and Utah, Utah, and more particularly described in Article 2 of this Neighborhood Declaration (the "Property").

B. Declarant desires to subject the Property to the provisions of this Neighborhood Declaration in order to create a residential community of Single Family housing (as Single Family is defined in Section 1.34 below) and related uses known as The Cove at Oak Vista.

C. The Cove at Oak Vista is part of a larger master planned community known as SunCrest, a Planned Community and is subject to the terms and conditions of that certain Declaration of Covenants, Conditions, Easements and Restrictions for SunCrest, a Planned Community, recorded with the Recorder of Salt Lake County, Utah on December 28, 1999, as Entry No. 7543075 at Book 8332, Page 4708, and also recorded with the Recorder of Utah County, Utah on December 22, 2000, as Entry No. 101565:2000, and supplemented by Supplemental Declaration and Amendment to Add Additional Land, recorded with the Recorder of Salt Lake County, Utah on November 5, 2002, as Entry No. 8411567 at Book 8679, Page 6739, and also recorded with the Recorder of Utah County, Utah as Entry No. 121461:2002, as the same may be amended or supplemented from time to time.

D. Declarant intends, without obligation, to annex the Additional Land into The Cove at Oak Vista planned community, which land is not presently included in The Cove at Oak Vista planned community

NOW, THEREFORE, Declarant hereby declares that the Property, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Neighborhood Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property, and shall be binding on all persons having any right, title, or interest in all or any portion of the Property now or hereafter made subject to this Neighborhood Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

## **ARTICLE 1**

### **DEFINITIONS**

The following words, when used in this Neighborhood Declaration or in any Amendment (unless the context clearly indicates otherwise), shall have the meanings provided in this Article 1.

1.1 "Additional Land" shall mean, refer to, and consist of the following described parcels or real property situated in Salt Lake County, Utah, and Utah County, Utah and described in Exhibit B to this Neighborhood Declaration which is attached hereto and incorporated herein by this reference. A description of the Additional Land is set forth in this Neighborhood Declaration solely for purposes of identification. This Neighborhood Declaration is not intended as and should not be deemed to constitute any lien, encumbrance, restriction, or limitation upon any portion of the Additional Land unless and until such portion is added to the existing The Cove at Oak Vista project in accordance with the provisions of Article 14 of this Neighborhood Declaration.

1.2 "Amendment" means an amendment or supplement to this Neighborhood Declaration that imposes, expressly or by reference, additional or modified restrictions and obligations on the land described therein.

1.3 "Articles" shall mean the Articles of Incorporation of the Sub-Association, as amended from time to time.

1.4 "Board of Directors" or "Board" shall mean the Board of Directors of the Sub-Association.

1.5 "Bylaws" shall mean the Bylaws of the Sub-Association, as amended from time to time.

1.6 "Common Elements" shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon as designated on the final plat of the Neighborhood or as otherwise conveyed to the Sub-Association for the common use and enjoyment of the Owners, including but not limited to the Common Element Lots and private roads depicted on the Plat.

1.7 "Common Element Lots" shall mean lots C through I as designated on the Plat.

1.8 "Common Expenses" shall mean those costs and expenses arising out of or connected with the maintenance and operation of the Neighborhood and the Sub-Association as described in this Declaration and which determine the assessments made to Owners.

1.9 "Community Expenses" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of SunCrest and the Master Association as described in Section 1.17 and Article VII of the Master Declaration.

1.10 "Declarant" shall mean and refer to Alpine Homes, Inc., a Utah corporation as also described in the introductory paragraph above, and its successors-in-title and assigns; provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the Property, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease.

1.11 "Development Period" shall mean that period of time beginning on the date this Neighborhood Declaration is recorded in the records of Salt Lake and Utah Counties and ending on the earliest to occur of (i) five (5) years from the date of recording of this Neighborhood Declaration; (ii) the date Declarant holds a special meeting of the Sub-Association, in accordance with the Bylaws, for the purpose of transitioning the management of the Sub-Association from the Declarant to the Owners, or (iii) the date 120 days after Declarant has conveyed 75% of the Residential Lots within the Neighborhood.

1.12 "Eligible Mortgagee" shall mean and refer to a Mortgagee that has requested notice of certain matters from the Sub-Association in accordance with Section 11.1 of this Neighborhood Declaration.

1.13 "Governing Documents" shall mean and refer to this Neighborhood Declaration, the Articles and Bylaws of the Sub-Association, rules and regulations (if any) of the Neighborhood adopted by the Board, and the SunCrest Documents, as any of the foregoing may be amended from time to time.

1.14 "Master Articles" shall mean the Articles of Incorporation of the Master Association.

1.15 "Master Assessments" shall mean all assessments levied by the Master Association pursuant to the Master Declaration.

1.16 "Master Association" shall mean the SunCrest Owners Association, Inc., a Utah nonprofit corporation, organized for the purposes set forth in the Master Declaration.

1.17 "Master Association Membership" shall mean a membership in the Master Association and the rights granted to the Owners pursuant to Article VI of the Master Declaration to participate in the Master Association.

1.18 "Master Board" shall mean the Board of Directors of the Master Association.

1.19 "Master Bylaws" shall mean the Bylaws of the Master Association as the same may be amended or supplemented from time to time.

1.20 "Master Declarant" shall mean DAE/Westbrook, L.L.C., a Delaware limited liability company, and the successors and assigns of the Master Declarant's rights and powers under the Master Declaration.

1.21 "Master Declaration" shall mean the Declaration of Covenants, Conditions, Easements and Restrictions for SunCrest, a Planned Community, as amended or supplemented from time to time.

1.22 "Mortgage" shall mean any mortgage, deed of trust, and any and all other similar instruments used for the purpose of encumbering a Residential Lot or any portion of the Property in the Neighborhood as security for the payment or satisfaction of an obligation.

1.23 "Mortgagee" shall mean the holder of a Mortgage.

1.24 "Neighborhood" shall mean The Cove at Oak Vista and more specifically shall mean and refer to the Property.

1.25 "Neighborhood Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for The Cove at Oak Vista at SunCrest, as amended or supplemented from time to time. This Neighborhood Declaration shall be considered a "Neighborhood Declaration" as such term is defined in the Section 1.57 of the Master Declaration.

1.26 "Neighborhood Design Review Board" shall mean the committee established pursuant to Section 4.5 below.

1.27 "Neighborhood-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Neighborhood. Such standard may be more specifically determined by the Board of Directors of the Sub-Association. Such determination, however, shall generally be made with reference to the standards originally established by the Declarant or the Master Declarant.

1.28 "Occupant" shall mean any Person, other than an Owner, occupying all or any portion of a Residence or the Property for any period of time, whether as a tenant or otherwise.

1.29 "Owner" shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Residential Lot located within the Neighborhood, excluding, however, any Person holding such interest merely as security for the payment or satisfaction of an obligation.

1.30 "Person" shall mean any natural person, as well as a corporation, a limited liability company, joint venture, partnership (general or limited), association, trust, or other legal entity.

1.31 "Plat" shall mean that certain subdivision plat entitled Oak Vista No. 6 at SunCrest Amended Final Plat filed in the Office of the County Recorder for Salt Lake and Utah Counties, as such may be amended from time to time.

1.32 "Residence" shall mean any building or portion of a building situated upon a Residential Lot designed and intended for use and occupancy as a residence by a Single Family.

1.33 "Residential Lot" shall mean a portion of the Neighborhood intended for independent ownership and residential use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residence, building, structure or other improvements situated thereon.

1.34 "Single Family" shall mean a group of one or more Persons, each related to the other by blood, marriage or legal adoption, or a group of Persons not all so related, who maintain a common household in a Residence.

1.35 "Special Service District" shall mean one or more special service districts which may be established to provide SunCrest and/or the Neighborhood with, among other things, waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for nonstandard street lights, culinary water and facilities including pump stations, snow plowing and school bus stop shelters.

1.36 "Sub-Association" shall mean The Cove at Oak Vista Owners Association, a Utah nonprofit corporation, its successors and assigns.

1.37 "SunCrest" shall mean that certain master planned community created pursuant to the Master Declaration. The Neighborhood is located within SunCrest and constitutes a portion thereof.

1.38 "SunCrest Design Guidelines" shall mean those design guidelines for development of all the real property subject to the Master Declaration as established by the Master Declarant and/or the SunCrest Design Review Board from time to time.

1.39 "SunCrest Design Review Board" shall mean the committee created pursuant to Article XI of the Master Declaration.

1.40 "SunCrest Development Guidelines" shall mean those development guidelines for SunCrest which relate to the development and construction of roadways, major infrastructure and other matters more particularly described in Section 1.26 of the Master Declaration.

1.41 "SunCrest Documents" shall mean the Master Articles, Master Bylaws, the SunCrest Rules, the SunCrest Design Guidelines, the SunCrest Development Guidelines and any Master Board resolutions, as any of the foregoing may be amended from time to time.

1.42 “SunCrest Rules” shall mean the rules, if any, for the Master Association adopted by the Master Board pursuant to Section 5.3 of the Master Declaration.

1.43 “Total Sub-Association Vote” means all of the votes attributable to members of the Sub-Association (including votes of Declarant).

1.44 “Visible from Neighboring Property” shall mean, with respect to any given object, that such object is or would be visible to a Person six feet tall standing at ground level on any part of any neighboring property or any street other than the specific property in reference.

1.45 “Voting Member” shall mean the representative selected by the members within the Neighborhood to be responsible for casting votes attributable to Lots or other properties in the Neighborhood on matters requiring a vote of the Master Association Membership (except as otherwise specifically provided in the Master Declaration and in the Master Bylaws). The term “Voting Member” shall include alternate Voting Members acting in the absence of the Voting Member and any Owner authorized to personally cast the votes for their respective Lots pursuant to Section 6.6.2 of the Master Declaration. The Voting Member(s) shall be elected in accordance with the procedures set forth in Section 6.6.2 of the Master Declaration.

## ARTICLE 2

### **PROPERTY SUBJECT TO THIS NEIGHBORHOOD DECLARATION**

2.1 **Property Subject to this Neighborhood Declaration.** The real property which is, by the recording of this Neighborhood Declaration, subject to the covenants and restrictions hereafter set forth and which, by virtue of the recording of this Neighborhood Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Neighborhood Declaration is the real property described as: See Exhibit A attached hereto.

2.2 **Allowed Density and Land Use Classification.** As of the date of this Neighborhood Declaration and in compliance with the Master Declaration, the Neighborhood shall consist of forty-five (45) Residential Lots numbered 90-496 on the Plat. The “Land Use Classification” of the Neighborhood is “Single Family Residence Use” as set forth in Section 4.1 and elsewhere in the Master Declaration.

2.3 **Special Service Districts.** In connection with the development of SunCrest and/or the Neighborhood, it is contemplated that Special Service Districts will be formed in order to provide SunCrest and/or the Neighborhood with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters. Each Special Service District shall be a body politic and corporate and a quasi-municipal public corporation of the State of Utah. The Special Service Districts shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable

property within the Special Service Districts. The Special Service Districts will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. It is contemplated that all of SunCrest will be part of one or more Special Service Districts and each Owner will be subject to all charges levied by them. All Owners do hereby waive any objection to the creation of a Special Service District and affirmatively approve the creation of a Special Service District in which the Neighborhood may be included and further waive any right or claim for any impact fee reimbursement from Draper City.

**2.4 Security Gates and Security Devices.** Security gates and/or other security devices designed to limit access and to provide more privacy for Owners may be constructed, removed, modified or relocated from time to time within or adjacent to the Neighborhood. Each Owner and Occupant, and their families, guests and invitees, acknowledge that any such security gate or other security device may restrict or delay entry into, or access within, the Neighborhood by police, fire department, ambulances and other emergency vehicles or personnel. Each Owner and Occupant and their families, guests and invitees agree to assume the risk that any such security gate or other security device will restrict or delay entry into, or access within, the Neighborhood by police, fire department, ambulances or other emergency vehicles or personnel. Neither the Declarant or the Sub-Association nor any director, officer, agent or employee of the Declarant or the Sub-Association shall be liable to any Owner or Occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such security gate or other security device. All present and future Owners of any Residential Lot, and all present and future Occupants of any Residential Lot are advised that, notwithstanding anything to the contrary, any security gate or similar facility currently situated, or planned for construction, or hereafter constructed, (a) if constructed may be removed at some future date or dates, (b) if constructed may be relocated at some future date or dates to a site which does not control or limit access to the Neighborhood or portions thereof, or (c) if constructed may be modified in all such cases without any notice or liability to or consent of any Owners or Occupants of the Neighborhood. Declarant makes no representations regarding, and shall have no liability for, the adequacy or degree of security or protection provided by any security gate or other facility constructed as part of the Neighborhood.

### **ARTICLE 3** **MASTER ASSOCIATION**

**3.1 Description of Master Association and Membership.** Each Residential Lot is subject to the terms and provisions of the Master Declaration and each Owner shall be deemed to have consented to all provisions of the Master Declaration, including without limitation automatic and current membership in the Master Association. The Master Association shall be governed by the Master Board as provided in the Master Bylaws. The Master Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the SunCrest Documents. Each Owner hereby agrees and understands that the Master Association and the Master Declarant are independent entities separate from the Declarant and the Sub-Association, over which Declarant and the Sub-Association have no control. Neither

Declarant nor the Sub-Association makes any implied or express assurances, representations or warranties as to the actions and other matters within the purview of the Master Association and/or Master Declarant, and Declarant and the Sub-Association hereby specifically disclaim any duties or obligations to enforce the same. Owners shall address all inquiries regarding the Master Declaration, Master Association and/or Master Declarant directly to the Master Declarant at the address described in the Master Articles or the Master Bylaws.

3.2 **Master Association Voting.** Each Owner, including Declarant shall be entitled to one (1) Master Association Membership and vote appurtenant to each respective Residential Lot as set forth in Article VI of the Master Declaration. Pursuant to the terms and provisions of the Master Declaration, each Owner hereby agrees and understand that:

3.2.1 Except as otherwise specified in the Master Declaration or the Master Bylaws, the vote for all Class A Memberships in the Neighborhood (all Master Association Memberships except those held by Declarant as more particularly described in Section 6.4 of the Master Declaration) on all matters requiring a Master Association Membership vote shall be exercised by one (1) Voting Member representing the Neighborhood. The Voting Member may cast all such votes as it, in its sole discretion, deems appropriate. The Voting Member and alternate Voting Member from the Neighborhood shall be elected as provided in Section 6.6.2 of the Master Declaration.

3.2.2 The Owners acknowledge and agree that in all matters pertaining to the Master Association the voting rights appurtenant to the Lots shall be exercised by the Voting Member and each Owner hereby designates the Voting Member as his or her attorney-in-fact in his or her name, place and stead for purposes of exercising his or her voting rights at all Master Association meetings. As attorney-in-fact, the Voting Member shall have the full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument, with respect to the interest of any Owner in the Master Association which may be necessary or appropriate to exercise the powers herein granted.

#### ARTICLE 4

#### **THE COVE AT OAK VISTA OWNERS ASSOCIATION**

4.1 **Description of Sub-Association.** The Sub-Association is a non-profit corporation organized and existing under the laws of the State of Utah. The Sub-Association shall be charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents.

4.2 **Board of Directors.** Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Sub-Association until termination of the Development Period. Each Owner, by acceptance of a deed to or other conveyance of a Residential Lot, vests in Declarant the authority to appoint and remove directors and officers of the Sub-Association during the Development Period. The directors selected by the Declarant need not be Owners. The number of directors shall be



as set forth in the Bylaws. Following termination of the Development Period, the Board of Directors shall be elected by the Owners in accordance with the Bylaws.

**4.3 Membership.** Every Owner of a Residential Lot shall be deemed to have a membership in the Sub-Association and membership in the Sub-Association shall consist exclusively of such Owners. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to and may not be separated from ownership of any Residential Lot. There shall be one (1) Sub-Association membership for each Residential Lot which membership will be jointly held by all Owners of such Residential Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Residential Lot owned.

**4.4 Voting.** Members shall be entitled to one (1) vote for each Residential Lot owned. When more than one (1) Person holds an ownership interest in any Residential Lot, the vote for such Residential Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting. In the absence of such advice, the Residential Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

**4.5 Neighborhood Design Review Board.** No construction, alteration, addition, refurbishing, or erection of any structure of any nature whatsoever shall be commenced or placed upon any part of the Neighborhood, except that which is installed by the Declarant, or is approved in accordance with this Section 4.5, or as is otherwise expressly permitted herein. Any such construction, alteration, addition, refurbishing, or erection shall not be made unless and until plans and specifications showing the nature, kind, shape, size and height, architectural design and detail, materials, workmanship, colors, location on site, improvement and site grade elevations, and site landscaping shall have been submitted in writing to and approved by the Neighborhood Design Review Board established pursuant to this Section 4.5. The Neighborhood Design Review Board may conduct this review in addition to the review conducted by the SunCrest Design Review Board. The Board may employ architects, engineers, or other Persons as it deems necessary to enable the Neighborhood Design Review Board to perform its review. Written design guidelines and procedures ("Neighborhood Design Guidelines") may be established by the Board for the exercise of this review, which Neighborhood Design Guidelines may provide for a review fee. Copies of the Neighborhood Design Guidelines shall be available to all Owners upon request for a reasonable fee.

**4.5.1** The Neighborhood Design Review Board shall consist of not less than one (1) nor more than three (3) members, who need not be Owners. So long as the Declarant owns any property for development and/or sale in the Neighborhood, the Declarant shall have the right to appoint or remove any or all members of the Neighborhood Design Review Board. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Neighborhood Design Review Board. Initially, the Declarant has named Scott Hawker, whose address is 111 E. 5600 S., Suite 100, Murray, Utah 84107 as the sole member of the Neighborhood Design Review Board.

4.5.2 Members of the Neighborhood Design Review Board shall not be entitled to compensation for services performed pursuant to this Section 4.5. The Sub-Association shall defend, indemnify, and hold each member of the Neighborhood Design Review Board harmless for any liability incurred while serving as a member of the Neighborhood Design Review Board.

4.5.3 Except for the SunCrest Design Review Board, the Neighborhood Design Review Board shall be the sole arbiter of plans submitted to it and may withhold approval for any reason, including aesthetic considerations, and it shall be entitled to stop any construction in violation of approved plans or the Governing Documents. Notwithstanding the foregoing, the Neighborhood Design Review Board shall always be subject to and shall not do anything inconsistent with this Neighborhood Declaration or the Master Declaration.

4.5.4 APPROVAL BY THE NEIGHBORHOOD DESIGN REVIEW BOARD DOES NOT NECESSARILY ASSUME APPROVAL BY THE APPROPRIATE MUNICIPAL AUTHORITY OR THE SUNCREST DESIGN REVIEW BOARD. PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE NEIGHBORHOOD DESIGN REVIEW BOARD, THE MEMBERS THEREOF, NOR THE SUB-ASSOCIATION ASSUMES LIABILITY OR RESPONSIBILITY THEREFORE, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DECLARANT, THE SUB-ASSOCIATION, THE NEIGHBORHOOD DESIGN REVIEW BOARD, THE BOARD OF DIRECTORS, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR MALFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, THE SUB-ASSOCIATION, THE NEIGHBORHOOD DESIGN REVIEW BOARD, THE BOARD OF DIRECTORS, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND THE CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

4.5.5 The approval of the Neighborhood Design Review Board required pursuant to this Section shall be in addition to, and not in lieu of, the approval of the SunCrest Design Review Board required under the SunCrest Documents. The Neighborhood Design Review Board shall cooperate reasonably with the SunCrest Design Review Board; provided however, that with respect to more restrictive Neighborhood Design Guidelines the approval of the SunCrest Design Review Board shall not bind the Neighborhood Design Review Board.

4.6 **Bylaws, Rules and Regulations.** The Board on behalf of the Sub-Association shall have the power to adopt, modify, and amend Bylaws, rules and regulations governing the Neighborhood, provided that such Bylaws, rules and regulations shall not be inconsistent with this Neighborhood Declaration and shall apply uniformly to all Owners, except as specifically provided herein. The Board shall have the power to enforce the rules and regulations on behalf of the Sub-Association and may prescribe penalties or fines for their violation. Any such Bylaws, rules and regulations shall become effective thirty (30) days after promulgation. A copy of the Bylaws, rules and regulations then in force shall be retained by the secretary of the Sub-Association. The Declarant on behalf of the Board may adopt the initial Bylaws, rules and regulations.

## **ARTICLE 5**

### **MASTER ASSOCIATION ASSESSMENTS**

The making and collection of assessments from Owners for their share of Community Expenses shall be pursuant to the Master Declaration and Master Bylaws and each Owner shall be liable for a proportionate share of the Community Expenses assessed by the Master Association against the Lots pursuant to the terms thereof.

## **ARTICLE 6**

### **ASSESSMENTS BY THE SUB-ASSOCIATION**

6.1 **Purpose of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

6.2 **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Residential Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Sub-Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments established pursuant to the terms of this Neighborhood Declaration, including, but not limited to, reasonable fines imposed in accordance with the terms of this Neighborhood Declaration.

6.2.1 All such assessments, together with (i) late charges, (ii) interest set by the Board, not to exceed the maximum rate permitted by law (but not to exceed

eighteen percent (18%) per annum), and (iii) costs, including, without limitation, reasonable attorneys' fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Residential Lot against which each assessment is made.

6.2.2 Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorneys' fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Residential Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Residential Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

6.2.3 The Sub-Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, furnish a certificate signed by an officer of the Sub-Association setting forth whether the assessments on a specified Residential Lot have been paid. Such certificate shall be binding upon the Sub-Association as of the date of issuance.

6.2.4 Annual assessments shall be levied equally on all Lots. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

6.3 **Adoption of Budget.** It shall be the duty of the Board to prepare and adopt a budget covering the estimated costs of operating the Sub-Association during the coming year and the assessments to be levied against each Residential Lot, which may include an amount for capital reserves in accordance with a capital budget separately prepared. The Board shall cause a summary of the proposed operating and capital budgets and the proposed assessments against each Residential Lot for the following year to be mailed to each Owner. The Board shall set a date for a special meeting of the Owners to consider ratification of the budget within thirty (30) days after adoption by the Board and not less than fourteen (14) nor more than sixty (60) days after the mailing of the proposed budgets and assessments. Unless at such meeting the budget is rejected by at least seventy-five percent (75%) of the Total Sub-Association Vote, in person or by proxy, the budget shall be ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the budget in effect for the then current year shall continue in effect until the Owners ratify a subsequent budget.

6.4 **Revised Budget.** If the financial circumstances or needs of the Sub-Association materially change during any year, the Board may prepare and adopt a revised budget and assessments for the balance of the year. The Board shall cause a summary of the proposed revised budget and assessments to be mailed to each Owner and shall set a date for a meeting of the Owners to consider ratification of the revised budget and assessments in the same manner as the regular annual budget as set forth in Section 6.3 above.

6.5 **Special Assessments.** In addition to the other assessments authorized herein, the Sub-Association may levy special assessments for expenses such as, but not limited to, capital improvements from time to time if approved at a meeting by two-thirds (2/3) of the Total Sub-Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

6.6 **Lien for Assessments.** All sums assessed against a Residential Lot pursuant to this Neighborhood Declaration, together with late charges, interest, costs, including, without limitation, reasonable attorneys' fees actually incurred, as provided herein, shall be secured by a lien on such Residential Lot in favor of the Sub-Association. Such lien shall be superior to all other liens and encumbrances on such Residential Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the records of Salt Lake or Utah County, as applicable, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument. All other Persons acquiring liens or encumbrances on any Residential Lot after the recording of this Neighborhood Declaration shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

6.7 **Effect of Nonpayment of Assessments; Remedies of the Sub-Association.** Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Sub-Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date.

6.7.1 If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest set by the Board from time to time, on the principal amount due, late charges, costs of collection, including, without limitation, reasonable attorneys' fees actually incurred, and any other amounts provided or permitted by law.

6.7.2 In the event that the assessment remains unpaid after sixty (60) days, the Sub-Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Foreclosure of such lien shall be in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien, or any other means permitted by law, and the Residential Lot may be redeemed after foreclosure sale if provided by law. In order to facilitate the foreclosure of any such lien in the manner provided at law for the foreclosure of deeds of trust, Declarant, prior to the expiration of the Development Period, and thereafter the Board, shall have the right to designate and appoint as the trustee to exercise said power of sale, any person or entity qualified to act as a trustee under § 57-1-21, Utah Code Ann., as amended. Such trustee, and any successors, shall not have any other right, title or interest in the Neighborhood beyond

those rights and interests necessary and appropriate to foreclose any liens against Lots arising pursuant hereto. In any such foreclosure, the Owner of the Residential Lot being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed.

6.7.3 The lien provided for in this Article shall be in favor of the Sub-Association and shall be for the benefit of all other Owners. The Sub-Association, acting on behalf of the Owners, shall have the power to bid on the Residential Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

6.7.4 No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Residential Lot.

6.7.5 All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

6.8 **Suspension for Nonpayment of Assessment.** If an Owner shall be in arrears in the payment of any assessment due, or shall otherwise be in default of the performance of any terms of the Governing Documents of the Sub-Association for a period of thirty (30) days, said Owner's voting rights shall, without the necessity of any further action by the Sub-Association, be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Owner is relieved of liability for assessments by non-use of the Common Elements or by abandonment of a Residential Lot.

6.9 **Date of Commencement of Assessments.** The assessments provided for herein shall commence as to a Residential Lot subject to this Neighborhood Declaration on the first day of the month following conveyance of such Residential Lot to a Person other than Declarant. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

6.10 **Specific Assessments.** In addition to the assessments outlined above, the Board shall have the power to levy such specific assessments pursuant to this Section 6.10 as, in its discretion, it shall deem appropriate. All other terms and conditions of this Article 6 relating to general and special assessments shall apply to the levy and collection of the specific assessments covered hereby and the Sub-Association shall have all powers and remedies for collection and enforcement of such assessments as are applicable to the general and special assessments set forth above. Fines levied pursuant to Section 13.1 of this Neighborhood Declaration and the costs of maintenance performed by the Sub-Association for which the Owner is responsible under Sections 7.3 and 7.4 of this Neighborhood Declaration shall be specific assessments.

6.11 **Common Elements Exempt.** The Common Element Lots, the private roads, and any other Common Elements shall be exempt from assessments by the Sub-Association.

6.12 **Declarant's Obligations.** Notwithstanding any other provision of this Neighborhood Declaration to the contrary, no annual assessment shall be levied against Lots owned by the Declarant during the Development Period. During the Development Period, the Declarant shall subsidize the Sub-Association for the amount by which the cost of operating and administering the Sub-Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies exceeds the total amount of assessments levied against Lots owned by Owners other than the Declarant. The subsidy required of Declarant under this Subsection may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or contributions in respect of its subsidy obligations under this Subsection at such times as the Board may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly); at the end of each fiscal year of the Sub-Association, either: (a) Declarant shall pay or contribute to the Sub-Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this Subsection for such fiscal year; or (b) the Sub-Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this Subsection.

## ARTICLE 7

### **MAINTENANCE; CONVEYANCE OF COMMON AREAS TO SUB-ASSOCIATION**

7.1 **Sub-Association's Responsibility.** The Sub-Association shall maintain and keep in good repair the Common Elements described in Article 2 herein and any Common Elements acquired by the Sub-Association in the future. This maintenance shall include, without limitation, maintenance of any native growth protection areas, maintenance of streets including snow removal, maintenance of the security gate or other security devices, maintenance, repair, and replacement of all drainage easements and any improvements located thereon that benefit the Neighborhood, in the event such streets, easements and improvements are not maintained by Draper City or the Master Association. If streetlights are installed and there is no procedure for billing individual Owners then the Sub-Association shall pay the bills for the streetlights. The Sub-Association shall also maintain all other facilities serving the Neighborhood not dedicated to or maintained by a public entity. The foregoing maintenance shall be performed consistent with the Neighborhood-Wide Standard. The Sub-Association may employ a manager or other independent contractors to perform all or any part of the duties and responsibilities of the Sub-Association, including but not limited to the responsibility to maintain the private streets, the gate, upkeep the pavement and remove snow.

7.2 **Property Not Owned by Sub-Association.** The Sub-Association shall have the right, but not the obligation, to maintain other property, whether or not owned by the Sub-Association and whether within or without the Neighborhood, where the Board has

determined that such maintenance would benefit all Owners. Without limiting the foregoing, the Sub-Association may enter into joint maintenance agreements with adjoining property owners or associations for the repair, maintenance and replacement of any shared facilities or other property.

**7.3 Damage Caused by Owner.** In the event that the Sub-Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Sub-Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, the Sub-Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Residential Lot of such Owner.

**7.4 Owner's Responsibility.** Except as provided in Sections 7.1, 7.2 and 7.3 above, all maintenance of any Residential Lot and all structures, parking areas, landscaping, and other improvements thereon together with the landscaping and trees on any parking strip fronting any such Residential Lot, shall be the sole responsibility of the Owner thereof, who shall provide maintenance consistent with the Neighborhood-Wide Standard and the Governing Documents. The perimeter fencing, if any, shall be maintained and repaired, in uniform appearance, by the abutting Owners. In the event that the Board of Directors of the Sub-Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Sub-Association shall, except in an emergency situation, give the Owner written notice of the Sub-Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Sub-Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Residential Lot.

**7.5 Conveyance of Common Elements by Declarant to Sub-Association.** The Common Elements have been conveyed to the Association by Special Warranty Deed. The Sub-Association has accepted the conveyance and the tracts are now Common Elements to be maintained by the Sub-Association. The Common Elements shall be subject to an easement of common use and enjoyment in favor of the Sub-Association and every Owner, their heirs, successors and assigns in accordance with the terms and conditions of the Governing Documents. Such rights to use the Common Elements shall be appurtenant to and shall not be separated from ownership of any Residential Lot and shall not be assigned or conveyed by any Owner in any way except upon the transfer of title to such Residential Lot, and then only to the transferee of such title and shall be deemed so conveyed whether or not it shall be so expressed in the deed or other instrument conveying title. Certain rights of use, ingress,



egress, occupation, and management authority in the Common Elements set forth elsewhere in this Neighborhood Declaration shall be reserved to Declarant for the duration of the Development Period. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section 7.5.

**7.6 Sensitive Areas.** If any portion of the Common Elements is currently owned or is acquired in the future which is designated as a steep slope, as a wetland, as a buffer, as a native growth protection area or as any other type of sensitive area, then use of such portion of the Common Elements shall be limited to activities approved by the municipality which designated such portion of the Common Elements as sensitive. Notwithstanding the provisions in this Article 7, or in Section 12.1 below, or in any other provision of this Neighborhood Declaration, there shall be no right or easement of ingress and egress, use and enjoyment in or to such Common Elements designated by Draper City as a Sensitive Area. Access shall be limited to maintenance activities approved by such municipality.

## **ARTICLE 8**

### **USE RESTRICTIONS AND RULES**

**8.1 General/Rules and Regulations.** In addition to the restrictions on use applicable to Lots that are specifically described in Article IV of the Master Declaration, all Owners and Occupants shall comply with the use restrictions provided in this Article 8. These use restrictions may only be amended in the manner provided in Section 13.3 hereof regarding amendment of this Neighborhood Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Neighborhood. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Sub-Association Vote and with the consent of Declarant during the Development Period. Notwithstanding the foregoing, all Owners shall continue to be subject to all restrictions described in the Master Declaration and this Neighborhood Declaration unless such restrictions are amended or modified pursuant to the respective provisions of the Master Declaration or this Neighborhood Declaration.

**8.2 Residential Use.** All Residential Lots shall be used for Single Family residential purposes exclusively with the exception that certain home occupations may be permitted, subject to the guidelines and rules established by the Board, if any, and subject to approval by the Board. Such home occupations (1) shall be limited to certain business uses, (2) shall not create any disturbance, noise, or unsightliness, (3) shall not unduly increase traffic flow or parking congestion, and (4) shall not be in violation of any of the provisions of the Governing Documents. Use of the Residential Lots shall in all cases be in compliance with all applicable laws, ordinances, rules and regulations. The designation of all Residential Lots for Single Family residential use shall not be changed except as specifically permitted by the Master Declaration.

**8.3 Building and Landscaping Requirements and Restrictions.** All Residences constructed within the Neighborhood by any Person shall be subject to design review and approval by the Neighborhood Design Review Board which may cover the minimum size, architectural style, height, scope of improvements, quality of design, materials, workmanship, and siting standards. Such approval may be in addition to the approval by the SunCrest Design Review Board required pursuant to Section 4.2.1 of the Master Declaration. Without restricting or limiting the authority of the Neighborhood Design Review Board pursuant to Section 4.5 in approving or disapproving of any specific proposal, the following restrictions shall apply to the Neighborhood in general:

8.3.1 Only one Single Family Residence shall be permitted on each Residential Lot. Residences shall include no less than 1,700 square feet and not more than 3,100 square feet, exclusive of open porches, garages, and basements.

8.3.2 After Declarant has completed construction of all Residences in the Neighborhood, any remodeling or exterior addition to any Residence or other structure erected or placed on any Residential Lot shall be completed as to external appearance, including finished painting, within six (6) months after the date of commencement of construction. All front, side and rear yard landscaping must be completed within twelve (12) months from the date of closing of the purchase of the Residence by the Owner from the Declarant. In the event that strict enforcement of this provision would cause undue hardship due to weather conditions, this provision may be extended for a reasonable length of time as approved in writing by the Neighborhood Design Review Board.

8.3.3 All Residences within the Neighborhood shall contain a two car garage; carports shall not be permitted. Unless otherwise approved by the Neighborhood Design Review Board, all garages must be attached to, or incorporated in and made a part of, the Residence constructed upon a Residential Lot. In granting waivers to this requirement, the Neighborhood Design Review Board will consider functional necessity and architectural desirability.

8.3.4 All driveways and parking areas shall be paved with material approved by the Neighborhood Design Review Board.

8.3.5 No fence, fencing-type barrier, or hedge of any kind shall be erected, allowed or maintained upon any Residential Lot, without the prior written consent of the Neighborhood Design Review Board and the SunCrest Design Review Board. All fences shall be constructed of wood or vinyl material unless approved by the Neighborhood Design Review Board. Any such fence, barrier, row of trees, or hedge shall be strictly in compliance with Neighborhood Design Guidelines, if any, established by the Neighborhood Design Review Board, which standards may provide for limited acceptable styles and/or specifications.

8.3.6 Each Residence constructed on a Residential Lot shall be built of new materials except, with approval of the Neighborhood Design Review Board, decorative

items such as used brick, weathered planking, and similar items. All visible masonry shall be stone, brick or stucco. Types and colors of exterior paint and stain must be submitted to the Neighborhood Design Review Board for approval. Any change to the exterior color of any improvement located on a Residential Lot, including, without limitation, the Residence, must be approved by the Neighborhood Design Review Board.

8.3.7 All roofs on Residences and garages shall be of composite, tile or cedar shake and shall have a minimum pitch of four/twelve.

8.4 **Signs.** Except in an emergency, to warn of danger or if required by legal proceedings, no sign of any kind shall be erected by an Owner or Occupant within the Neighborhood without the prior written consent of the Neighborhood Design Review Board. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs including, without limitation, signs related to Declarant's development and marketing of residences within the Neighborhood. An Owner may erect only those certain signs (including "for sale", "for lease" and "open house" signs) the nature, size, number and location of which have been approved in advance and in writing by the Neighborhood Design Review Board or which comply with the Neighborhood-Wide Standard.

8.5 **Vehicles.** The term "vehicles" as used herein shall include, without limitation, automobiles, vans, campers, trucks, buses, motor homes, mobile homes, boats, jet skis, trailers, portable aircraft, motorcycles, snowmobiles, mini-bikes, scooters, go-carts, dune buggies and any other towed or self propelled transportation type vehicle. The term "passenger vehicles" as used herein shall include passenger automobiles, vans, small trucks, motorcycles, and similar type vehicles used regularly and primarily as transportation for the Owners and Occupants of a Residential Lot. Vehicles used for commercial and recreational purposes are not considered passenger vehicles. "Parking areas" shall refer to the number of garage parking spaces and driveway areas in front of garages. However, driveway areas shall be considered "parking areas" for passenger vehicles only.

8.5.1 No vehicles other than passenger vehicles in regular use may be parked on any Residential Lot, Common Element Lot or any other portion of the Neighborhood, except in parking areas on Residential Lots, or in a screened area on a Residential Lot, if such screened area is approved by the Neighborhood Design Review Board and such vehicle is not Visible From Neighboring Property, or visible from the Common Elements or streets. Any vehicle regularly parked in an unapproved area or for longer than twenty-four (24) consecutive hours shall be considered a nuisance and may be removed from the Neighborhood.

8.5.2 No passenger vehicles may be parked on any Residential Lot, Common Element Lot or other portion of the Neighborhood except in "parking areas" as defined in this Section 8.5.

8.5.3 Any passenger vehicle which is inoperable or unlicensed and not capable of use on the public highways and which is parked on any parking area for a period of more than forty-eight (48) hours shall be treated the same as a non-passenger vehicle and shall be considered a nuisance and may be removed from the Neighborhood.

8.5.4 The Board may adopt and maintain current rules and regulations concerning the parking and storage of vehicles on any Residential Lot, Common Element Lot or any portion of the Neighborhood. Said rules are to protect the Neighborhood from the potentially adverse impacts of vehicles on the Neighborhood environment and to accommodate the evolving nature and use of such vehicles. Such rules and regulations may provide for exceptions and/or modifications to the conditions of this Section 8.5 as determined in the sole discretion of the Board. The Board shall rule on any dispute as to the interpretation or application of this Section 8.5 and all rules and regulations established by the Board with respect to vehicles.

8.5.5 Off-street parking for at least four (4) passenger vehicles shall be provided on each Residential Lot. Covered enclosed parking shall be provided for two (2) or more passenger vehicles, plus a driveway for at least two (2) additional passenger vehicles, unless approved by the Neighborhood Design Review Board.

**8.6 Vehicles on Common Elements.** No motorized vehicles shall be permitted on pathways or unpaved Common Elements except vehicles being used for the limited purpose of operating and maintaining utilities.

**8.7 Leasing.** The entire Residence on a Residential Lot may be let to a Single Family tenant or lessee from time to time by the Owner, subject to the provisions of the Governing Documents. Except as otherwise permitted by the Master Declarant, all leases shall be in writing and shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Governing Documents. All leases shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board or Master Board, as applicable, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's Residential Lot.

**8.8 Occupants Bound.** All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

**8.9 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept in the Neighborhood; provided, however, that a reasonable number of conventional household pets, as determined solely by the Master Board, may be kept on a Residential Lot subject to the following restrictions:

8.9.1 Pets shall not be kept, bred or maintained for any commercial purposes.

8.9.2 Owners shall be responsible for the immediate clean up and removal of all fecal matter deposited by pets on any property other than the Residential Lot of the Owner of the pet.

8.9.3 Pets shall be confined in a fenced yard (including electric) unless on a leash and accompanied by a responsible Person.

8.9.4 No domestic pet may be kept if it is a source of annoyance or a nuisance.

8.9.5 No structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property, unless otherwise approved by the Neighborhood Design Review Board.

If an Owner or Occupant fails to abide by the rules and regulations and/or covenants applicable to pets contained in the Governing Documents, the Master Board or the Board of Directors, as applicable, may bar such pet from use of or travel upon the Common Elements and the Community Areas (as such term is defined in the Master Declaration). The Master Board and the Board of Directors may subject ingress, egress, use or travel upon the Community Areas by a Person with a pet to a use fee, which may be a general fee for all similarly-situated persons or a specific fee imposed for failure of an Owner or Occupant to abide by the rules regulations, and or covenants applicable to pets. In addition, any pet which endangers the health of any Owner or Occupant of a Residential Lot, which creates a nuisance or an unreasonable disturbance or which is not a conventional household pet, as may be determined in the sole discretion of the Board of Directors or the Master Board, must be permanently removed from SunCrest and/or the Neighborhood upon seven (7) days written notice by the Master Board or the Board of Directors, as applicable. Upon the written request of any Owner or Occupant, the Master Board or the Board of Directors, as applicable, shall conclusively determine, in its respective sole and absolute subjective discretion, whether for the purposes of this Section, a particular animal, fish or bird is a generally recognized house or yard pet, whether such a pet is a nuisance or whether the number of animals, fish or birds on any such property is reasonable. In the event that the Master Board determines that a particular pet is a generally recognized house or yard pet or that a particular pet is not a nuisance, such decision shall not be binding on the Board and the Board shall have the authority to make its own determination regarding the foregoing. Pets shall be attended at all times and shall be registered, licensed and inoculated from time to time as required by law.

8.10 **Mining Prohibited.** No portion of the Neighborhood shall be used for the purpose of boring, mining, quarrying, or exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

8.11 **Nuisance.** Each Owner and Occupant shall prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Residential Lot. No Residential Lot shall be used, in whole or in part, for the storage of any property or thing that

will cause such Residential Lot to appear to be in an unclean or untidy condition; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the Owners and Occupants of surrounding property. No illegal, illicit, noxious or offensive activity shall be carried on within the Neighborhood, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Neighborhood. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Residential Lot unless required by law or unless specifically approved by the Neighborhood Design Review Board.

8.12 **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly of and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be undertaken outside of homes or garages. Garage doors shall be kept closed at all times unless they are in use. In addition, the storage of equipment, machinery, construction supplies or any similar material on a Residential Lot outside of the Residence and garage constructed thereon is strictly prohibited except as required during the remodeling or refurbishing of improvements on such Residential Lot and then only in such areas as may be approved by the Neighborhood Design Review Board and for not more than sixty (60) days.

8.13 **Antennas.** Antennas, satellite dishes, and such other similar broadcast devices shall be prohibited on any Residential Lot, except (a) devices designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) devices designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement or (c) devices designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is:

8.13.1 located in the attic, crawl space, garage, or other interior spaces of the Residence or another approved structure on the Residential Lot so as not to be visible from outside the Residence or other structure;

8.13.2 located in the rear yard of the Residence (i.e. the area between the plane formed by the front façade of the Residence and the rear lot line) and setback from all lot lines at least eight (8) feet;

8.13.3 attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Residence directly in front of such antenna; or

8.13.4 attached to or mounted on the rear wall of the Residence so as to extend no higher than the eaves of the Residence at a point directly above the position where attached or mounted to the wall. Notwithstanding anything to the contrary herein, no

satellite dish, exterior antenna, or other similar broadcast devices of any kind shall be placed, allowed, or maintained upon any Residential Lot or any portion of the Neighborhood unless screened from view from the street, as described in this Section 8.13, without the prior written consent of the Neighborhood Design Review Board. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor satellite dish, antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received.

**8.14 No Obstruction of Easements.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. Declarant hereby reserves for the benefit of Declarant and the Sub-Association and their respective successors and assigns a perpetual easement across all Common Elements and Residential Lots for the purpose of maintaining or altering drainage and water flow. No structure, planting, or other material shall be placed or permitted to remain upon any easement which may damage or interfere with the installation and maintenance of any utilities, unless approved by the Board prior to installation.

**8.15 Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem as determined by the Neighborhood Design Review Board in its sole discretion.

**8.16 Garbage Cans, Woodpiles, Etc.** All woodpiles, air-conditioning compressors, machinery, equipment and other similar items related to the operation of the Residence shall be located or screened so as to be concealed from view from the street abutting the Residential Lot on which such items are located. No garbage or trash shall be placed or kept on any Residential Lot, except in covered containers of a type, size, and style which are approved by the SunCrest Design Review Board or required by the applicable Municipal Authority (as such term is defined in Section 1.54 of the Master Declaration). In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Neighborhood. No outdoor incinerators shall be kept or maintained on any Residential Lot.

**8.17 Subdivision of Residential Lot.** No Residential Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Neighborhood Design Review Board and the Master Declarant (or the Master Association as provided in Section 4.2.15 of the Master Declaration). Declarant, however, hereby expressly reserves the right to re-plat any Residential Lot or Lots owned by Declarant. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations.

8.18 **Firearms.** The use of firearms in the Neighborhood is prohibited. The term "firearms" includes without limitation BB guns, pellet guns, and firearms of all types.

8.19 **Utilities.** Except as may be permitted by the Neighborhood Design Review Board, no overhead utility lines, including lines for cable television, shall be permitted within the Neighborhood, except for temporary lines as required during construction and except as such lines exist upon recording of the Plat or as required by utilities serving the Neighborhood. Notwithstanding anything to the contrary herein, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Residential Lot except as initially programmed and approved by the Master Declarant or the SunCrest Design Review Board, or, if installed after this Neighborhood Declaration is recorded, as approved by the Declarant and the Neighborhood Design Review Board.

8.20 **Lighting.** All exterior lights except for seasonal Christmas decorative lights, which may be displayed between November 15 and January 15 only, must be approved in accordance with the Master Declaration and this Neighborhood Declaration and are subject to the following restrictions:

8.20.1 No colored lights (except for seasonal decorative lights and yellow insect lights) shall be permitted at any location within the Neighborhood.

8.20.2 All exterior fixtures that are attached to the Residence shall be of compatible design and materials of the Residence. Any post mounted exterior fixtures shall be of compatible design and materials as the fixtures attached to the Residence.

8.20.3 No fixtures which illuminate and excessively glare onto any other Residential Lot shall be permitted, and all exterior lights shall be screened to minimize impacts of light and glare.

8.21 **Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation, exterior sculpture, fountains, and similar items shall be permitted in the front yard of any Residential Lot unless approved by the Neighborhood Design Review Board.

8.22 **Mailboxes.** All mailboxes located on Residential Lots shall be of a style approved by the Neighborhood Design Review Board. Mailboxes shall be attached only to stands provided and maintained by the Sub-Association in designated locations.

8.23 **Clotheslines.** No exterior clotheslines of any type shall be permitted upon any Residential Lot unless entirely screened from view from other Residential Lots.

8.24 **Exterior Security Devices.** No exterior security devices, including, without limitation, window bars, shall be permitted on any Residence or Residential Lot. Notwithstanding anything to the contrary in this Article 8, signs placed on the Residential Lot or the exterior of the Residence stating that such Residence is protected by a security system are permissible if such signs are consistent with the Neighborhood-Wide Standard and such signs comply Section 4.2.14 of the Master Declaration.



**8.25 Construction and Sale Period.** So long as Declarant owns any portion of the Property for development and/or sale, the restrictions set forth in this Article 8 shall not be applied or interpreted so as to prevent, hinder or interfere with development, construction and sales activities of Declarant or any builder or developer approved by Declarant. Any provisions of this Neighborhood Declaration which prohibit non-residential use of Lots and regulate the parking of vehicles shall not prohibit the construction and maintenance of model homes by Declarant, or parking incidental to the visiting of such model homes, so long as the construction, operation and maintenance of such model homes and parking otherwise comply with all of the provisions of this Neighborhood Declaration and the Master Declaration. The Neighborhood Design Review Board may also permit Residential Lots and other Common Elements to be used for parking in connection with the showing of model homes. Any structures constructed as model homes shall cease to be used as model homes at any time the Declarant is not actively engaged in the construction and sale of Residences in the Neighborhood, and thereafter, no Residence or other structure shall be used as a model home for the sale of Residences or other structures within the Neighborhood.

## **ARTICLE 9**

### **INSURANCE AND CASUALTY LOSSES**

**9.1 Insurance Coverage.** The Board of Directors or the duly authorized agent of the Sub-Association shall have the authority to and shall obtain or cause to be obtained insurance as follows:

9.1.1 The Board shall obtain insurance on all insurable buildings and, where the Board deems there to be a reasonable risk, other substantial structures which the Sub-Association is obligated to maintain, whether or not such buildings or structures are located on the Common Elements. Insurance on buildings shall provide, at minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Insurance on other substantial structures shall cover those risks and shall be in such amounts deemed advisable by the Board. The Board may insure other types of improvements, including entry monuments, landscaping, and the like, as it deems advisable. With respect to such other improvements, the Board shall determine the risks to be insured and the amounts of insurance to be carried.

9.1.2 The Board shall obtain a public liability policy applicable to the Common Elements covering the Sub-Association and its members for all damage or injury caused by the negligence of the Sub-Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00) unless otherwise determined by the Board.

9.1.3 The Board is hereby authorized to contract with or otherwise arrange to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof, and Declarant shall be authorized, but not

obligated, to purchase such insurance coverage for the benefit of the Sub-Association and the Owners upon Declarant and the Sub-Association agreeing upon the terms and conditions applicable to reimbursement by the Sub-Association for costs incurred by Declarant in obtaining such coverage. Notwithstanding anything contained in this Neighborhood Declaration to the contrary, the Board shall not be required to comply with the provisions of this Article if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

9.1.4 Premiums for all insurance shall be Common Expenses of the Sub-Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

9.1.5 In the event insurance premiums in connection with the insurance required by this Article 9 become prohibitively expensive, in the judgment of the Board, the Board may with approval of seventy-five percent (75%) of the Total Sub-Association Vote reduce the amount of the required insurance, self-insure itself, or discontinue the insurance all together.

To the extent reasonably possible, the Sub-Association shall seek to obtain insurance policies and shall coordinate coverage with the Master Association where and as needed to avoid overlap and duplicative coverage.

9.2 **Policy Requirements.** All such insurance coverage obtained by the Board of Directors shall be written in the name of the Sub-Association, as trustee for the respective benefited parties. Such insurance shall be governed by the provisions hereinafter set forth:

9.2.1 All policies shall be written with a company authorized to do business in Utah.

9.2.2 Exclusive authority to adjust losses under policies obtained by the Sub-Association shall be vested in the Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

9.2.3 In no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Sub-Association shall be primary.

9.2.4 All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in Draper City.

9.2.5 Each insurance policy purchased by the Sub-Association shall, to the extent reasonably available, also contain the following provisions:

9.2.5.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Sub-Association or its agents, servants or employees, or with respect to claims against Owners or Occupants.

9.2.5.2 No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Sub-Association, will void the policy or adversely affect recovery on the policy;

9.2.5.3 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Sub-Association or other Owners or Occupants.

9.3 **Other Insurance**. In addition to the other insurance required by this Article 9, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws. The Board may, in its discretion, obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Sub-Association's funds, if reasonably available. The Sub-Association shall obtain additional insurance coverage, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

9.4 **Individual Insurance**. By virtue of taking title to a Residential Lot subject to the terms of this Neighborhood Declaration, each Owner acknowledges that the Sub-Association has no obligation to provide any insurance for any portion of individual Residential Lots and Residences, and each Owner covenants and agrees with all other Owners and with the Sub-Association that each Owner shall at a minimum, carry fire and extended coverage casualty insurance on the Residential Lot, Residence and all other structures constructed on such Residential Lot in an amount sufficient to cover the full replacement costs of any repair or reconstruction in the event of damage or destruction from any such hazard.

9.5 **Damage and Destruction — Insured by Sub-Association**.

9.5.1 Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Sub-Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board of Directors shall

have the enforcement powers specified in this Neighborhood Declaration necessary to enforce this provision.

9.5.2 Any damage or destruction to property covered by insurance written in the name of the Sub-Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five percent (75%) of the Total Sub-Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Sub-Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

9.5.3 If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Sub-Association's members, levy a special assessment against all Residential Lots. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Sub-Association.

9.5.4 In the event that it should be determined by the Sub-Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Neighborhood by the Sub-Association in a neat and attractive condition.

9.6 **Damage and Destruction — Insured by Owners.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Residential Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Residential Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board of Directors shall have all enforcement powers specified herein.

9.7 **Insurance Deductible.** The deductible for any casualty insurance policy carried by the Sub-Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or be a Common Expense of the Sub-Association.

## **ARTICLE 10**

### **CONDEMNATION**

In the event of a taking by eminent domain of any portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Sub-Association Vote shall otherwise agree, the Sub-Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor. The provisions of Section 9.5, above, applicable to Common Elements improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

## **ARTICLE 11**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Residential Lots in the Neighborhood. The provisions of this Article apply to both this Neighborhood Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

11.1 **Notices of Action.** The Board shall maintain a roster containing the name and address of each Eligible Mortgagee of a Residence as such term is defined herein and in Section 1.12 above. To be considered an Eligible Mortgagee, an institutional holder, insurer, or guarantor of a first Mortgage shall provide the Board with a copy of its recorded first Mortgage and the name and address of the first Mortgagee and a statement that the Mortgage is a first Mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike the Eligible Mortgagee from the roster upon such Eligible Mortgagee's request or upon the Board's receipt of a copy of a recorded full release or satisfaction of the Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee unless the Eligible Mortgagee requested the removal. Upon the Sub-Association's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

11.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Common Areas or which affects the Residential Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgagee;

11.1.2 Any delinquency in the payment of assessments or charges owed by an Owner of a Residential Lot subject to the Mortgage of such Eligible Mortgagee;

11.1.3 Any lapse, cancellation or material modification of any insurance policy maintained by the Sub-Association.

11.2 **No Priority.** No provision of this Neighborhood Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the

first Mortgagee of any Residential Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

11.3 **Notice to Sub-Association.** Upon request, each Owner shall be obligated to furnish to the Sub-Association the name and address of the holder of any Mortgage encumbering such Owner's Residential Lot.

11.4 **VA/HUD Approval.** During the Development Period and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD") for insuring or the U.S. Department of Veterans Affairs ("VA") for guaranteeing any Mortgage in the Neighborhood, the following actions shall require the prior approval of the VA and/or HUD as applicable: dedication of Common Elements to any public entity; mergers and consolidations; dissolution of the Sub-Association, and material amendments to the Neighborhood Declaration, Bylaws or Articles. Amendments to make clerical or technical corrections shall not be considered "material amendments."

11.5 **Applicability of Article 11.** Nothing contained in this Article 11 shall be construed to reduce the percentage vote that must otherwise be obtained under the Neighborhood Declaration, Bylaws, or Utah law for any of the acts set out in this Article.

11.6 **Amendments by Board.** Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an Amendment to this Article to be recorded to reflect such changes.

## **ARTICLE 12** **EASEMENTS**

### **12.1 Easements for Use and Enjoyment.**

12.1.1 Every Owner of a Residential Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to each Residential Lot, subject to the following provisions:

12.1.1.1 the right of the Sub-Association to charge reasonable fees for the use of any portion of the Common Elements, to limit the number of guests of Owners and Occupants who may use the Common Elements, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, Occupant or his or her family, tenants, guests, and invitees;

12.1.1.2 the right of the Sub-Association to suspend the voting rights of an Owner and the right of an Owner to use certain Common Elements (a) for any period during which any assessment against such Owner's Residential Lot remains unpaid; (b) for a period not to exceed sixty (60) days

for any infraction of the Governing Documents; or (c) for successive sixty (60) day periods if any such infraction is not corrected during any preceding suspension period.

12.1.1.3 the right of the Sub-Association to borrow money for the purpose of improving the Common Elements, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan an assignment of the assessments described in Article 6 above and a Mortgage conveying all or any portion of the Common Elements; provided, however, the lien and encumbrance of any such assignment or Mortgage given by the Sub-Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Residential Lot or Owner, or any Mortgagee, irrespective of when executed, given by Declarant or any Owner encumbering any Residential Lot or other property located within the Neighborhood; and

12.1.1.4 the right of the Sub-Association to dedicate or transfer all or any portion of the Common Elements subject to such conditions as may be agreed to by the members of the Sub-Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of at least sixty-seven (67%) of the Total Sub-Association Vote. Notwithstanding the foregoing, the Sub-Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any portion of the Property), to dedicate portions of the Common Elements to the public, or grant easements over, under or through portions of the Common Elements to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by Salt Lake or Utah Counties or any municipal or other governmental agency or entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of development of portions of the Neighborhood.

12.1.1.5 the right of the Declarant and the Sub-Association to convey certain portions of the Common Elements to Owners of adjoining Residential Lots in connection with the correction or adjustment of any boundary between Common Elements and any one or more adjoining Residential Lots, pursuant to §10-9-808, Utah Code Ann.; provided, however, that neither the Sub-Association nor the Declarant shall have the right to transfer or convey any portion of the Common Elements upon which is situated any recreational facility unless approved by a vote of the members of the Sub-Association pursuant to Subsection 12.1.1.4.

12.1.2 Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Elements and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests and shall be deemed to have made a delegation of all such rights to the Occupants of such Owner's Residential Lot, if leased.

12.2 **Easements for Utilities.** There is hereby reserved to the Declarant, the Sub-Association and any utility providers designated by either the Declarant or the Sub-Association blanket easements upon, across, above and under all property within the Neighborhood for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Neighborhood or any portion thereof, including, but not limited to, gas, water, sanitary sewer, storm sewer, cable television, telephone and electricity. It shall be expressly permissible for the Declarant, the Sub-Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. This easement shall be utilized so as to not unreasonably interfere with improvements constructed upon any Residential Lot and the building envelope for any unimproved Residential Lot. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Sub-Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

12.3 **Easement for Maintenance.** Declarant hereby expressly reserves a perpetual easement for the benefit of the Sub-Association across such portions of the Neighborhood, determined in the sole discretion of the Sub-Association, as are necessary to allow for the maintenance required under Article 7. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of Owner's property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

12.4 **Easement for Entry Features.** If Declarant installs an entry feature, there is hereby reserved to the Declarant and the Sub-Association an easement for ingress, egress, installation, construction, landscaping and maintenance of entry features and similar street-scapes for the Neighborhood, as more fully described on the Plat or any other recorded instrument, easement or conveyance. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

12.5 **Construction and Sale Period Easement.** Notwithstanding any provisions contained in the Governing Documents, and any amendments thereto, so long as Declarant owns any portion of the Property for development and/or sale, Declarant reserves an easement across all portions of the Neighborhood for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Neighborhood as Declarant may reasonably deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or



developer's development, construction, and sales activities related to the Property, including, but without limitation: The right of access, ingress and egress for vehicular and pedestrian traffic and construction activities over, under, on or in the Neighborhood, including, without limitation, any Residential Lot; the right to tie into any portion of the Neighborhood with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Neighborhood; the right to carry on sales and promotional activities in the Neighborhood; and the right to construct and operate business offices, signs, construction trailers, model homes, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model homes and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. During the Development Period, this Section shall not be amended without the Declarant's express written consent.

### **ARTICLE 13**

#### **GENERAL PROVISIONS**

13.1 **Enforcement.** Each Owner and Occupant shall comply strictly with the Governing Documents lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in the deed to such Owner's Residential Lot, if any. After notice and an opportunity to be heard by the Board of Directors or by a representative designated by the Board, and in accordance with rules and regulations adopted by the Board, the Board may levy reasonable fines for violations of the above (in addition to any late charges that may be assessed in connection with the late payment of assessments or other Sub-Association charges) in accordance with a previously established schedule adopted by the Board and furnished to the Owners, which fines shall be collected as provided herein for the collection of assessments. Failure to comply with this Neighborhood Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Sub-Association, or, in a proper case, by an aggrieved Owner. Failure by the Sub-Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

13.2 **Duration.** This Neighborhood Declaration shall run with and bind the Neighborhood, and shall inure to the benefit of and shall be enforceable by the Sub-Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, so long as and to the extent that Utah law limits the period during which covenants restricting land to certain uses may run, any provisions of this Neighborhood Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision shall be (a) automatically extended (to the extent allowed by applicable law) for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of

at least seventy-five percent (75%) of the Residential Lots and the Declarant (so long as the Declarant owns any portion of the Property for development and/or sale in the Neighborhood) has been recorded within the year immediately preceding the beginning of a ten (10) year renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Neighborhood Declaration shall be modified or terminated to the extent specified therein; or (b) extended as otherwise provided by law. Every purchaser or grantee of any interest (including, without limitation, a security interest) in the Property, by acceptance of a deed or other conveyance therefor, thereby agrees that such provisions of this Neighborhood Declaration may be extended and renewed as provided in this Section.

### 13.3 Amendments.

13.3.1 This Neighborhood Declaration may be amended unilaterally at any time and from time to time by Declarant (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Residential Lots subject to this Neighborhood Declaration; if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Residential Lots subject to this Neighborhood Declaration; or (iii) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Residential Lots subject to this Neighborhood Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Residential Lot unless any such Owner shall consent thereto in writing. Further, so long as Declarant owns any portion of the Property for development and/or sale in the Neighborhood, Declarant may unilaterally amend this Neighborhood Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owners hereunder, nor shall it adversely affect title to any Residential Lot without the consent of the affected Owner.

13.3.2 This Neighborhood Declaration may also be amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least sixty-seven percent (67%) of the Total Sub-Association Vote and the consent of Declarant (so long as the Declarant owns any portion of the Property for development and/or sale in the Neighborhood). Amendments to this Neighborhood Declaration shall become effective upon recordation, unless a later effective date is specified therein. Notwithstanding anything to the contrary herein, Amendments to this Neighborhood Declaration shall not become effective until any consent required under the Master Declaration is obtained from the appropriate party.

13.4 Partition. The Common Elements shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within

the Neighborhood and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Neighborhood.

13.5 **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

13.6 **Severability.** Whenever possible, each provision of this Neighborhood Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Neighborhood Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Neighborhood Declaration are declared to be severable.

13.7 **Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

13.8 **Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Neighborhood Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now-living descendants of the individuals signing this Neighborhood Declaration.

13.9 **Indemnification.** To the fullest extent allowed by applicable Utah law, the Sub-Association shall indemnify every officer and director, each and every member of the Neighborhood Design Review Board, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Sub-Association, former members of the Neighborhood Design Review Board, and former members of committees appointed by the Board) (collectively, "Sub-Association Officials" and individually, a "Sub-Association Official") against any and all expenses, including, without limitation, attorneys' fees, imposed upon or reasonably incurred by a Sub-Association Official in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such Sub-Association Official may be a party by reason of being or having been a Sub-Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. Sub-Association Officials shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Sub-Association Officials shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Sub-Association (except to the extent that such Sub-Association Officials may also be members of the Sub-Association), and the Sub-Association shall indemnify and forever hold each such Sub-Association Official free and harmless against any and all liability

to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Sub-Association Official, may be entitled. The Sub-Association may, at the discretion of the Board, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

13.10 **Books and Records.** The Governing Documents, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available pursuant to reasonable procedures established by the Board for inspection and copying by any member of the Sub-Association or by the duly appointed representative of any member and by Eligible Mortgagees at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a Mortgage at the office of the Sub-Association or at such other reasonable place as the Board shall prescribe. The Board reserves the right to charge a reasonable fee for copying costs.

13.11 **Notice of Sale, Lease or Acquisition.** In the event an Owner sells or leases such Owner's Residential Lot, the Owner shall give to the Sub-Association, in writing, prior to the effective date of such sale or lease, the name of the purchaser or lessee of the Residential Lot and such other information as the Board may reasonably require. Upon acquisition of a Residential Lot each new Owner shall give the Sub-Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

13.12 **Agreements.** Subject to the prior approval of Declarant (so long as Declarant owns any portion of the Property for development and/or sale in the Neighborhood) all agreements and determinations, including settlement agreements regarding litigation involving the Sub-Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Neighborhood or the privilege of possession and enjoyment of any part of the Neighborhood.

13.13 **Implied Rights.** The Sub-Association may exercise any right or privilege given to it expressly by the Governing Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

13.14 **Variances.** Notwithstanding anything to the contrary contained herein, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Neighborhood Declaration, the Bylaws and any Neighborhood Design Guidelines rule, regulation or use restriction established pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Neighborhood; provided, however, that any such variance granted shall not be in violation of any of the provisions of the SunCrest Documents.

13.15 **Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Sub-Association unless approved by at least seventy-five percent (75%) of the Total Sub-Association Vote. This Section shall not apply, however, to (i) actions brought by the Sub-Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens), (ii) the imposition and collection of assessments as provided in Article 6 hereof, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Sub-Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant pursuant to Section 13.3, hereof, or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

## **ARTICLE 14**

### **ADDITIONAL LAND**

#### **14.1 Right to Expand and State of Title.**

There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand The Cove at Oak Vista at any time (within the limits herein prescribed) and from time to time by addition to The Cove at Oak Vista the Additional Land or a portion or portions thereof. Notwithstanding any provision of this Neighborhood Declaration which might be construed to the contrary, such right and option may be exercised only with the consent of the Owner of such Additional Land and shall be limited only as specifically provided in this Neighborhood Declaration. Any given portion of the Additional Land shall be deemed added to The Cove at Oak Vista at such time as a duly approved Supplemental Neighborhood Declaration containing the information required in Section 14.3 below has been recorded with respect to the portion of the Additional Land concerned. After the date such Supplemental Neighborhood Declaration is recorded, the definition of Property herein shall include such annexed Additional Land.

14.2 **Rights and Statement Respecting Additional Land.** Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of The Cove at Oak Vista by the addition thereto of the Additional Land or a portion or portions thereof:

14.2.1 All of the Additional Land need not be added to The Cove at Oak Vista if any of such Additional Land is added. Rather, a portion or portions of the Additional Land may be added to The Cove at Oak Vista at any time (within the limits herein prescribed) and from time to time.

14.2.2 There are no limitations or requirements relative to the size, location, or configuration of any given portion of the Additional Land which can be added to The Cove at Oak Vista or relative to the order in which particular portions of the Additional Land can be added to The Cove at Oak Vista. Provided, however, future improvements shall be consistent with the initial improvements in structure type and quality of construction and subject to the Neighborhood Design Guidelines.

### 14.3 **Procedure for Expansion.**

Each Neighborhood Supplemental Declaration by which an addition to The Cove at Oak Vista of any portion of the Additional Land is accomplished shall be executed by Declarant (and also the Owner in the event the Declarant is not the Owner), shall be in recordable form, must be recorded in the office of the County Recorder of Salt Lake County, Utah, and/or Utah County, Utah, as applicable, on or before the date which is twenty-five (25) years from the date that this Neighborhood Declaration is recorded and shall contain the following information for that portion of the Additional Land which is being added:

14.3.1 Data sufficient to identify this Neighborhood Declaration with respect to that portion of the Additional Land being added.

14.3.2 The legal description of the portion of the Additional Land being added.

14.3.3 A statement that such portion of the Additional Land shall thereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth in this Neighborhood Declaration.

14.3.4 Such other matters as may be necessary, desirable, or appropriate and as are not inconsistent with any limitation imposed by this Neighborhood Declaration.

14.3.5 Upon the date any supplement contemplated above is recorded, it shall automatically supplement this Declaration and any supplements previously recorded. At any point in time, this Neighborhood Declaration for The Cove at Oak Vista shall consist of this Declaration as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

### 14.4 **Allocation of Assessments and Voting Rights Following Expansion.**

Each Lot created shall be apportioned a share of the Common Expenses attributable to The Cove at Oak Vista, as provided in Article 6. Each Owner of a Lot shall be entitled to votes in the Sub-Association as provided for in Section 4.4. Assessments and voting rights shall commence as of the date the Neighborhood Supplemental Declaration is recorded.

### 14.5 **No Obligation to Expand.**

Except to the extent specifically indicated herein, this Neighborhood Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) The addition to The Cove at Oak Vista of any or all of the Additional Land; (ii) The creation or construction of any Lot or other improvement; (iii) The carrying out in any particular way or within any particular time of any development or addition which may be undertaken; or iv) The taking of any particular action with respect to any portion of the Additional Land. Except to the extent specifically indicated herein, no covenant, restriction, limitation, representation or commitment in this Neighborhood Declaration concerning anything that is or is not to occur, apply or be done on

or relative to the Additional Land or any portion thereof shall be binding as to such of the Additional Land as is never added to the Cove at Oak Vista.

14.6 Withdrawal of Property.

AT any time on or before the date which is twenty-five (25) years from the date that this Declaration is recorded, the Declarant shall have the right to withdraw property from The Cove at Oak Vista without the consent of any other Owner or Person (other than the Owner of such property, if other than the Declarant), except as otherwise expressly provided in any Supplemental Neighborhood Declaration with respect to such property. The withdrawal of all or any portion of The Cove at Oak Vista shall be effected by the Declarant recording a written instrument setting forth the legal description of the property being withdrawn. Upon the withdrawal of any property from The Cove at Oak Vista pursuant to this Section, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Neighborhood Declaration.

EXECUTED the day and year first above written.

DECLARANT:

ALPINE HOMES, INC.  
a Utah corporation

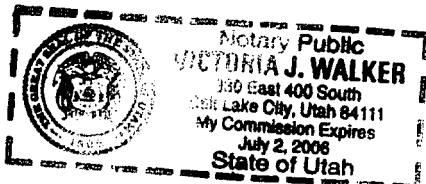
By: Scott Hawker  
Scott Hawker  
Regional Vice President/General Manager

State of Utah            )  
  )        ss.  
County of Salt Lake    )

I certify that I know or have satisfactory evidence that Scott Hawker is the person who appeared before me, and said person acknowledged that he signed this Neighborhood Declaration, on oath stated that he was authorized to execute the Neighborhood Declaration and acknowledged it as the Regional Vice President/General Manager of Alpine Homes, Inc., a Utah corporation, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

(Seal Or Stamp)

Dated: 3/25/03  
Victoria J. Walker  
Notary Public in and for the State of Utah  
Residing at: SLL, UT  
Printed Name: Victoria J Walker  
My Appointment Expires 7/2/06



DECLARATION  
OF  
COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
THE COVE AT OAK VISTA  
AT  
SUNCREST



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**Exhibit A**  
**Property Subject to this Neighborhood Declaration**

LOTS 468 THROUGH 484, LOTS 490-496, LOTS C THROUGH I, AND PRIVATE ROADS INCLUSIVE, OF OAK VISTA NO. 6 AT SUNCREST AMENDED FINAL PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN SALT LAKE COUNTY AND UTAH COUNTY RECORDER'S OFFICES.

Lots C through I, inclusive, shall constitute Common Element Lots as described in Section 1.6 hereof and shall be owned and maintained by the Sub-Association. The private roads depicted on the Plat, shall constitute Common Elements and shall be owned and maintained by the Sub-Association.

Lots A, B and 497 as shown on the Plat shall not be subject to this Neighborhood Declaration.

**Exhibit B**  
**Additional Land**

LOTS 452 THROUGH 467, LOTS 485 THROUGH 489 OF OAK VISTA NO. 6 AT SUNCREST AMENDED FINAL PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN SALT LAKE COUNTY AND UTAH COUNTY RECORDER'S OFFICES.