

WHEN RECORDED, RETURN TO:  
Perry Development, LLC  
17 E. Winchester St. Suite 200  
Murray, UT 84107

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01/24/2005 12:52 PM \$160.00  
Book - 9086 Pg - 5525-5555  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
CITY OF DRAPER  
1020 E PIONEER RD  
DRAPER UT 84020  
BY: ZJM, DEPUTY RECORDER  
Space Above for Recorder's Use Only

By: ZJM

31p

Dated January 24, 2005

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENT FOR SUNSET RIDGE AT SOUTH MOUNTAIN, A PLANNED UNIT DEVELOPMENT**

RECITALS

WHEREAS, PERRY DEVELOPMENT, LLC, a Utah limited liability company (the "Declarant") is the sole owner of that certain real property situated in Salt Lake County, State of Utah, which is more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property");

WHEREAS, the Declarant desires to subject all of the Property to all of the covenants, conditions, restrictions, reservations of easements, liens and charges hereinafter provided for, each and all of which is and are for the benefit of and shall pass with the Property, and each and every parcel or Lot thereof, and shall apply to and bind successors in interest, and any Owner thereof,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Property and any other real property which may be annexed hereto pursuant to the provisions of this Declaration, to create a corporation under the Utah Non-Profit Corporation and Co-Operative Association Act to which should be delegated and assigned the powers of owning, maintaining and administering the common areas, private roadways and certain other improvements in the Property and administering and enforcing these covenants, conditions and restrictions, and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has caused such corporation, the members of which are or shall be the respective Owners of the Lots in the Property, and Owners of the Lots of any real property annexed pursuant to this Declaration, to be formed for the purpose of exercising the functions aforesaid; and

WHEREAS, the Declarant shall develop and convey all of the Property pursuant to a general plan for all of the Property and subject to those certain protective covenants, conditions, restrictions, reservation of easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth; and

WHEREAS, the Declarant may execute, acknowledge, and record a Supplemental Declaration affecting only a "Phase" (as such term is hereinafter defined) so long as the Declarant owns all the real property to be affected by such Supplemental Declaration; and

WHEREAS, said Supplemental Declaration shall not conflict with the provisions of this Declaration, but may impose further conditions, covenants and restrictions for the operation, protection and maintenance of the Property; and

WHEREAS, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements and equitable servitudes, all of which are for the purpose of uniformly enhancing and

protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, or any portion thereof; and

WHEREAS, notwithstanding any of the foregoing recitals, no provisions of this Declaration shall be construed as to prevent or limit the Declarant's right to complete development of the Property and construction of improvements thereon, nor the Declarant's rights to maintain model homes, construction, sales or leasing offices, or similar structures on any portion of the Property owned by the Declarant or the Association, nor Declarant's right to post signs incidental to such construction, sales or leasing.

## ARTICLE I

### Definitions

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified:

**Section 1.** "Architectural Committee" shall mean the committee created pursuant to Article VIII hereof.

**Section 2.** "Articles" shall mean the Articles of Incorporation of the Association which have been or forthwith shall be filed in the Division of Corporations of the Department of Commerce of the State of Utah, as such Articles may be amended from time to time.

**Section 3.** "Common Assessment" shall mean the charge against each Owner and his lot, representing a portion of the total costs to the Association for maintaining, improving, repairing, replacing, managing and operating the Property, which charge is to be paid uniformly and equally by each Owner to the Association, as provided herein.

**Section 4.** "Special Assessments" shall mean a charge against a particular Owner and his Lot, directly attributable to the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest thereon as provided for in this Declaration.

**Section 5.** "Reconstruction Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for reconstruction of any portion or portions of the improvements on the Common Area pursuant to the provisions of this Declaration.

**Section 6.** "Capital Improvement Assessment" shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association for the installation or construction of any improvements which the Association may from time to time authorize on any portion of the Common Area or on any portion of the Lots or improvements thereon which the Association has the responsibility to maintain.

**Section 7.** "Association" shall mean the Sunset Ridge at South Mountain Property Owners Association, a corporation formed under the Utah Non-Profit Corporation and Co-operative Association Act, its successors and assigns.

**Section 8.** "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed or trust, as the case may be, and the assignees of such mortgage or beneficiary.

**Section 9.** "Board" shall mean the Governing Board of the Association, the members of which shall be elected in accordance with the By-Laws of the Association. The terms "Member of the Governing

Board" shall be synonymous with the term "Trustees" as used in the Utah Non-Profit Corporation and Co-operative Association Act.

**Section 10.** "By-Laws" shall mean the By-Laws of the Association, which have been or shall be adopted by the Board, as such By-laws may be amended from time to time.

**Section 11.** "Common Area" shall mean all the real property and improvements, including without limitation, any recreation facilities, landscaped areas, private roadways and walkways, visitor parking, and sewer, water and drainage and other utility systems which are owned by the Association for the common use and enjoyment of all the Owners. The Common Area to be so owned by the Association at the time of the conveyance of the first Lot shall include the property described on Exhibit "A" less and excepting therefrom the total of ninety (90) numbered Lots shown upon the recorded subdivision plat of the Property.

**Section 12.** "Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments), including those costs not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefiting the Common Area, and all recreational facilities thereon; the costs of fire, casualty and liability insurance covering the Property; and the cost of bonding of the Trustees of the Association; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the cost of any other item or items designed by, or incurred by, the Association for any reason whatsoever in connection with the Property, for the benefit of all the Owners.

**Section 13.** "Declarant" shall refer to Perry Development, LLC, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any such successor and assignee by an express written assignment.

**Section 14.** "Declaration" shall mean this instrument as it may be amended from time to time.

**Section 15.** "Deed of Trust" shall mean and refer to a mortgage or a deed of trust, as the case may be.

**Section 16.** "Demising Fire Wall" shall mean and refer to the one-hour fire-rated walls constructed as part of two or three attached Dwelling Units which are built parallel, and adjacent to, an adjoining property line of a Lot and which is centered over said property line of a Lot.

**Section 17.** "Dwelling Unit" shall mean and refer to a structure that is designed and intended for use and occupancy as a single family residence and that is also attached to one or two other residences by a Demising Fire Wall, together with all improvements constructed on a Lot used in conjunction with such residence.

**Section 18.** "Family" shall mean (1) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (2) a group of not more than three (3) persons not so related, inclusive or their domestic servants, who maintain a common household in a residence on a Lot.

**Section 19.** "Improvement" shall mean all structures and appurtenances thereto of every type and kind, (and any alteration or addition thereto), including but not limited to buildings, out buildings, walkways, sidewalks, sprinkler pipes and systems, garages, carports, roads, driveways, parking areas, fences,

screening walls, retaining walls, protective screens and awnings required by governmental entities, stairs, decks, landscaping, hedges, windbreaks, planting trees and shrubs, poles or signs.

**Section 20.** “Maintenance Funds” shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article VI hereof.

**Section 21.** “Limited Common Area” shall mean and refer to those Common Areas as referred to herein and designated on the plat as attached to and reserved for use of a certain Dwelling Unit to the exclusion of the other dwelling units. Limited Common Areas include the patios and decks (or both as the case may be) associated exclusively with certain Dwelling Units. Limited Common Areas are a subcategory of and are included in Common Areas.

**Section 22.** “Lot” shall mean and refer to any numbered residential Lot or parcel of land shown upon any recorded Subdivision Plat of the Property, with the exception of the Common Area. At the time of initial recordation of this instrument, the Property shall contain ninety (90) numbered Lots.

**Section 23.** “Manager” shall mean the person, firm, corporation or its agents retained or employed by the Association hereunder and delegated certain duties, powers and functions by the Association.

**Section 24.** “Member” shall mean any person or entity holding a membership in the Association as provided herein.

**Section 25.** “Mortgage” shall mean any mortgage or Deed of Trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term “Deed of Trust” or “Trust Deed” which used herein shall be synonymous with the term “Mortgage”.

**Section 26.** “Mortgagor” shall mean a person or entity who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. The term Mortgagor shall be synonymous with the term “Trustor”.

**Section 27.** “First Mortgagee” shall mean any lender which holds a Mortgage or Trust Deed which constitutes a first and prior lien vis-à-vis any other Mortgage or Trust Deed on the same real property. The term first Mortgagee will also include any beneficiary named in any such first and prior Trust Deed.

**Section 28.** “Mortgagee” shall mean a person or entity to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust.

**Section 29.** “Notice of Hearing” shall mean written notice of a hearing before a quorum of the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel at the Owner’s expense.

**Section 30.** “Owner” shall mean and refer the person or persons or other legal entity or entities, including Declarant, holding a fee simple interest or record to any Lot which is a part of the Property, including buyers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation. For purposes of Article X only, unless the context otherwise requires, Owner shall also include the family, invitees, licensees and lessees of any Owner.

**Section 31.** “Person” shall mean a natural individual or any other entity with the legal right to hold title to real property.

**Section 32.** “Record, Recorded, Filed and Recordation” shall mean, with respect to any document, the recordation of such document in the Office of the Salt Lake County Recorder, State of Utah.

**Section 33.** “Phase” shall mean a parcel of real property which has been divided or separated into Lots, shown on a recorded subdivision map

**Section 34.** “Supplemental Declaration” shall mean any declaration of covenants, conditions and restrictions which may be recorded by Declarant pursuant to Article XIV of this Declaration.

**Section 35.** “Transfer Assessment” shall mean a charge against all new Owners, and their Lots, to cover the cost to the Association of effectuating a transfer of membership upon the books of the Association and to perpetuate the reserve funds of the Association, in an amount as set forth in Section 2 of Article III of this Declaration.

**Section 36.** “Time Sharing” shall mean any form of shared contractual ownership of a Dwelling Unit whereby each Owner’s right to the Dwelling Unit is limited to a certain period of time throughout any given year or series of years. Time Sharing shall include plans that employ contractual rights and those that employ estate in land, such as (a) vacation leases whereby the Owner or Declarant conveys recurring leasehold interests to time-share purchasers and retains a reversion in fee simple and (b) interval ownership whereby the Owner or Declarant conveys recurring leasehold interest to time-share purchasers and also conveys to them a co-ownership of a remainder in fee simple.

The foregoing definitions shall be applicable to this Declaration and also to any Notice of Addition of Property, Supplemental Declaration or Declaration of Amendment, unless otherwise expressly provided, recorded pursuant to the provisions of this Declaration.

## ARTICLE II

### Owner’s Property Rights

**Section 1.** Owner’s Easements of Enjoyment to Common Areas. Each Owner of a Lot shall have a right and easement of ingress and egress and of enjoyment in, to and over the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

- (a) The right of Declarant to annex additional Common Area thereto pursuant to Article XIV.
- (b) The right of the Association to reasonably limit the number of guests of Owners using the Common Area facilities and the frequency thereof.
- (c) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Area as set forth in Section 3 of this Article II.
- (d) The right of the Association to charge uniform and reasonable admission and other fees for the use of the recreational facilities, if any, situated upon a portion of the Common Area; provided, however, that none of the Common Area facilities, recreational properties, parking spaces or other amenities shall be leased to the Owners or any other parties.

- (e) The right of the Association in accordance with its Articles of Incorporation, by-laws and this Declaration, with the vote of or written assent of two-thirds (2/3) of its members (excluding therefrom the voting power of the Declarant), to borrow money for the purpose of improving the Common Area and facilities and in aid thereof, and subject to the provisions of Article XIII of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any Mortgagee shall be subordinated to the rights of the Owners.
- (f) Except for the right of ingress and egress to an Owner's Lot, the Association shall have the right to suspend the voting rights and right to use the Common Area facilities by any Owner for any period during which any assessment against his Lot remains unpaid and delinquent; and for a period not to exceed thirty (30) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or the right to use of the Common Area and Common Area facilities, shall be made only by the Board, after Notice of Hearing, and an opportunity for a hearing before a quorum of the Board.
- (g) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless pursuant to an instrument signed by two-thirds (2/3) of the Class A Members of the Association.
- (h) The rights of the Declarant (and its sales agents, customers, representatives any other authorized persons) to the nonexclusive use of the Common Area and the facilities thereof, without charge, for sales, display, access, ingress, egress and exhibit purposes, which right the Declarant hereby reserves; provided, however, that such use shall not be for a period of more than ten (10) years after the date of the recording of this Declaration. Upon the request of the Declarant and upon the vote of fifty-one percent (51%) of the Class A Members of the Association, this term may be extended for any additional period of time.
- (i) The right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof of the Common Area, in accordance with the original design, finish or standard of construction of such Improvement, or of the general improvements within the Property, as the case may be; and not in accordance with such original design, finish or standard of construction only with the vote or written consent of seventy-five (75%) of the Class A Members of the Association.
- (j) The right of the Association to replace destroyed trees, shrubs and ground cover upon any portion of the Property.

**Section 2. Assignment and Delegation of Use.** Any Owner may assign, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, guests, or contract purchasers who reside in his Dwelling Unit, subject to reasonable regulation of the Board. All such use by his family, his tenants, contract purchasers or guests shall be subject to this Declaration, including all supplements and amendments thereto, the By-Laws and the Rules and Regulations promulgated by the Board. Any damage caused by such users to the Common Area and facilities, including personal property owned by

the Association shall create a debt to the Association by the assigning Owner and shall be assessed by the Association as provided herein.

**Section 3. Owners' Easements of Enjoyment to Limited Common Areas.** Each Lot Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas appurtenant to certain lots as identified on the official Plats filed for the Property. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to every Lot with which it is associated. A Lot Owner's exclusive right of use and occupancy of Limited Common Areas reserved for their Lot shall be subject to and in accordance with the Declaration and By-Laws.

**Section 4. Easements for Parking.** Temporary guest parking shall be permitted within the Common Area only within paved spaces and areas clearly suitable for parking purposes. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the Common Area, as well as to enforce such parking limitations by all means lawful for such enforcement, including the removal of any violating vehicle by those empowered. Provided however, no curbside parking shall be allowed within ten (10) feet of a fire hydrant and the portion of the curb within such restricted area shall be marked as a no-parking zone.

**Section 5. Easements for Vehicular Traffic.** In addition to the general easements or use of the Common Area reserved herein, there shall be and the Declarant hereby reserves and covenants for itself and all future Owners within the Property, that each and every Owner shall have a non-exclusive easement appurtenant for vehicular traffic over all private roads within the Property, subject to the parking provisions set forth in Section 3 of this Article II. The Declarant reserves the right to grant similar easements to the Owners of property in subdivisions annexed hereto pursuant to Article XIV.

**Section 6. Easements for City and County Public Service Use, Etc.** In addition to the foregoing easements over and across the property reserved herein, the Declarant reserves and covenants for itself and all future Owners within the Property, easements for the city, county and federal public services, including, but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the law. Also the Declarant reserves and covenants for itself and all future Owners within the Property, easements for public utilities and easements for storm drain connections, sewer line connections for adjoining landowners, water lines, and easements for use in connection with County-owned golf courses.

**Section 7. Waiver of Use.** No owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him, from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon, or by abandonment of his Lot or any other property in the Property.

**Section 8. Taxes.** Each Owner shall execute such instrument and take such action as may reasonably be specified by the Association to obtain a separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on more than one Lot not under common ownership, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association for, as the case may be, the taxes and assessments assessed by the County Assessor or other taxing authority against his own Lot and interest, if any, in the Common Area.

### ARTICLE III

#### Membership in Association

**Section 1. Membership.** Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall not be assignable, except to the successor-in-interest of the

Owner, and every Membership in the Association shall be appurtenant to and may not be separated from the fee simple title of such Lot. Ownership of such Lot shall be the sole qualification for Membership in the Association.

**Section 2. Transfer.** The Association Membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser or Mortgagee of such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Lot to a contract purchaser under an agreement to purchase such Membership, shall be entitled to assign to such contract purchaser his right of enjoyment of the Common Area and facilities as provided in Article II, Section 2, and such Members' voting proxy rights in the Association, but as between the Association and such Member, the Member may not delegate his Membership obligations. Such assignment and /or proxy shall be in writing and shall be delivered to the Board before such contract purchaser may use the Common Area and facilities or vote, as the case may be. The contract seller shall remain liable for all charges and assessments attributable in his Lot until fee simple title to the Lot sold is conveyed. In the event the Owner of any Lot shall fail or refuse to transfer the Membership registered in his name to the purchaser of such Lot upon transfer of fee simple title thereto, the Board shall have the right to record the transfer upon the books of the Association. Upon any transfer, pledge, or alienation of a Lot, the Board shall have the right to charge a Transfer Assessment against all new Owners, and their Lots, equal in amount to two (2) times the current monthly Common Assessment, to cover the cost to the Association of effectuating any such transfer of Membership upon the books of the Association and to perpetuate the reserve funds of the Association.

#### ARTICLE IV

##### Voting Rights

**Section 1. Classes of Voting Membership.** The Association shall have two (2) classes of voting Membership as follows:

**Class A.** Class A Members shall originally be all Owners with the exception of the Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. The Declarant shall become a Class A Member with regard to Lots owned by the Declarant upon conversion of Declarant's Class B Memberships as provided below. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised in accordance with Article IV, Section 2 of this Declaration, and in no event shall more than one (1) vote be cast with respect to any Lot owned by Class A Members.

**Class B.** The Class B Member shall be the Declarant and it shall be entitled to a total of eight (8) votes for each Lot (whether improved or not) owned or controlled by the Declarant or its' affiliated companies. The Class B membership shall cease and be converted to a Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership (inclusive of all votes attributable to any property annexed into the Property) equals the total votes outstanding in the Class B membership, or,
- (b) Ten (10) years from the date of recording this Declaration; or
- (c) On voluntary cancellation of Class B Membership by the Declarant.

**Section 2. Vote Distribution.** Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for Membership. The Class B Member shall be entitled to eight (8) votes for each Lot in which it holds an interest required for that Membership. When more than one person holds



such interest or interests in any Lot (a "co-owner"), all such co-owners shall be Members and may attend any meetings of the Association, but only one such co-owner shall be entitled to exercise the vote (or votes in the case of the Class B Member) to which the Lot is entitled. Such co-owners may from time to time designate in writing one of their number to vote. Fractional votes shall not be allowed, and the Class A Member's and Class B Member's vote (or votes in the case of the Class B Member) for each Lot shall be exercised, if at all, as a unit. When no voting co-owner is designated or if such designation has been revoked, the vote for such Lot shall be exercised as the majority of the co-owners of the Lot mutually agree. Unless the Board receives a written objection from a co-owner, it shall be presumed that the corresponding voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for any Lot where the majority of the co-owners present in person or by proxy and representing such Lot cannot agree to said vote or other action. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the By-laws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and By-laws of the Association.

## ARTICLE V

### Duties and Powers of Association

The Association, acting through the Board, shall have the power and duty to:

- (a) Maintain, repair and otherwise manage the Common Area and all facilities and improvements, and replace those elements of the Common Area that must be replaced on a periodic basis, including but not limited to the improvements and landscaping thereon, in accordance with the provisions of Article VI of this Declaration. This duty and power shall be limited by Article IX, Section 1 as applies to the Limited Common Areas.
- (b) Maintain all private roads within the Common Area, all sidewalks and driveways within the Common Area, all parking areas within the Common Area, and all public roads, streets, and landscaping which are located within the Property and which are not maintained by any governmental entity, and all roads and greenscape areas located on easements, including cleaning, snow removal, sign maintenance, landscaping maintenance and periodic resurfacing. This duty and power shall be limited by Article IX, Section 1 as applies to the Limited Common Areas.
- (c) Grant easements, rights of way, or strips of land, where necessary, for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots.
- (d) Maintain such policy or policies of insurance as may be permitted or allowed in this Declaration and the By-laws.
- (e) Employ or contract with a professional manager or management company to perform all or any part of the duties and responsibilities of the Association, and to delegate its powers to committees, officers and employees as permitted by law. Any such agreement shall be for a term not in excess of three (3) years, subject to cancellation by either party without cause or payment of a termination fee, upon ninety (90) days written notice. A non-professional manager may be designated only upon the affirmative vote of seventy-five percent (75%) of the total outstanding votes of the Members.

- (f) After fifteen (15) days written notice, without being liable to any Owner, enter upon any Lot, for the purpose of enforcing by peaceful means, the provisions of this declaration, or for the purpose of maintaining or repairing any such area as required by this Declaration.
- (g) Maintain all sidewalks located upon the Common Area, including cleaning, snow removal, and periodic repairs.
- (h) Maintain and repair all fences within the Common Area
- (i) Maintain and repair all landscaping installed by Declarant and/or the Association within the Common Areas.
- (j) Maintain and repair all sprinkling systems installed by Declarant and/or the Association within the Common Areas.
- (k) Exercise any and all additional powers required to accomplish the duties and functions provided for in this Declaration.
- (l) Provide snow removal for driveways and sidewalks on all Lots up to the front entrance of any Dwelling Unit located on the Lot.
- (m) Maintain and repair the area drain system on the Property to a point prior to its connection and outfall into the public storm drain system such as shall be maintained by Draper City. The area storm drain system consists of the plastic piping, inlets and other appurtenances thereto designed to convey storm water away from the Common Areas and Dwelling Units to the point that such water outfalls into the public system.
- (n) Install, repair and maintain a culinary water system on the Property to a point prior to its connection into a public culinary water system.
- (o) Maintain and repair all erosion-control measures such as retaining walls, etc.
- (p) Maintain and repair the exterior surface of the roofs of all Dwelling Units.
- (q) Abide by all of the terms and conditions of all contracts entered into by Declarant for the benefit of future Owners.
- (r) Maintain, own and operate all sewer laterals from Dwelling Structures to the point that the sewer lateral connects with the sewer main.
- (s) Pay all relevant monthly sewer bills to the appropriate sewer district.
- (t) Maintain the landscaping in the park strip fronting the Property along Mike Weir Drive and remove snow from the sidewalk fronting the Property along Mike Weir Drive.

## ARTICLE VI

### Covenant to Pay Maintenance Assessments

**Section 1. Creation of Lien and Personal Obligation to Pay Assessments.** Declarant, for each Lot owned by it upon which is constructed a Dwelling Unit occupied as a residence, hereby covenants, and

each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and hereby agrees to pay the Association (1) annual Common Assessments for Common Expenses, (2) Capital Improvement Assessments, (3) Special Assessments, (4) Reconstruction Assessments, and (5) Transfer Assessments, such assessments to be established and collected as hereinafter provided. Such Assessments, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declaration protecting first mortgagees, the personal obligation for delinquent assessments shall pass to the successors in interest of such Owner. The Board shall establish at least two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association. At least one of the accounts (the "Operating Fund") shall include funds for replacement, painting, repairs and operations which would reasonably be expected to occur on an annual or more frequent basis. At least one of the accounts (the "Reserve Fund") shall include such funds as the Board determines shall constitute an adequate and reasonable reserve for replacement and repairs which would reasonably be expected to occur less frequently than on an annual basis. The Board shall not co-mingle any amounts deposited into any of the separate accounts.

**Section 2. Purpose of the Common Assessments.** The Assessments levied by the Association shall be used to promote the maintenance, health, safety and welfare of the Owners and for the improvement and maintenance of the Common Area as provided herein. The Assessments shall also be for an adequate replacement of those elements of the Common Area that must be replaced on a periodic basis. However, disbursements from the Reserve Fund shall be made by the Board only for the specific purposes specified in this Article VI. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Nothing in this Declaration shall be construed in such a way as to permit the Association to use any assessments to abate any nuisance or annoyance emanating from outside the boundaries of the Property. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts deposited into such Funds are allocated for specific purposes authorized by this Declaration.

**Section 3. Damage to Common Area by Owners.** Any maintenance, repairs or replacements completed by the Association arising out of or caused by the willful or negligent act of the Owner, his family, guests, invitees or lessees shall be done at said Owner's expense, or a Special Assessment thereof shall be made against his Lot.

**Section 4. Basis of and Maximum of Annual Common Assessments.** Until January 1<sup>st</sup> of the year immediately following the conveyance by Declarant of the first Lot in the Property to any Owner, the maximum Common Assessment under Article VI shall be one hundred eighty Dollars (\$180) per Lot per month.

- (a) From and after January 1<sup>st</sup> of the year immediately following the conveyance by Declarant of the first Lot to an Owner, the maximum annual Common Assessment may be increased by the Board above the annual Common Assessment for the previous year, not more than the greater of: (1) fifteen percent (15%); or (2) the percentage by which the area Consumer Price Index for All Items, of the U.S. Bureau of Labor, has increased as of the date of the increase over the level of said index as of the date the Common Assessment was last established.
- (b) From and after January 1<sup>st</sup> of the year immediately following the conveyance by Declarant of the first Lot to an Owner, the annual Common Assessment may be increased by the Members above the greater of fifteen percent (15%) the percentage determined with respect to the area Consumer Price Index referred to above, by the vote or written assent

of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessment.

- (c) The Board may fix an annual Common Assessment at any amount not in excess of the maximum.

**Section 5. Capital Improvements and Reconstruction Assessments.** In addition to any Common Assessments, the Board may levy, in any assessment year, a Capital Improvement Assessment or Reconstruction Assessment applicable to the year only and payable by any Owner with a duty to pay Common Assessments as set forth in Section 4 above, for the purpose of defraying, in whole or in part, the cost of any improvement or other such addition upon the Property, including fixtures and personal property relating thereto; provided that the total of any such assessment which is in excess of ten thousand Dollars (\$10,000.00) shall require the vote or written assent of fifty-one percent (51%) of each class of Members of the Association who are in attendance at a meeting at which there is a quorum present and which meeting was called for the purpose of dealing with such assessments.

**Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5.** Written notice of any meeting called for the purpose of taking any action by the Members authorized under Sections 4 and 5 above shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of all votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same voting requirement, and the required quorum at the subsequent meeting shall be twenty-five (25%) of the voting power of the Association. No such meeting shall be held more than thirty (30) days following the preceding meeting.

**Section 7. Equal Rate of Assessment.** Common Assessments, Capital Improvement Assessments and Reconstruction Assessments provided for in this Article VI must be fixed at an equal rate for all Lots. Provided however, if the Association elects to insure individual Dwelling Units, the Association may make such equitable adjustments to the Common Assessments to reflect the size and value differentials between the different Dwelling Units. Provided further, that the Association may, subject to the provisions of Section 3 of this Article, levy Special Assessments against particular Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents. All Common Assessments shall be collected on a regular monthly basis by the Board.

**Section 8. Date of Commencement of Common Assessments; Due Date.** All assessments provided for herein shall be paid in regular installments after the assessment is made. The annual Common Assessment shall commence as to particular Lots as provided for herein, on the day of the closing of the sale or conveyance of any particular Lot by the Declarant to any contract purchaser or Owner with a proper proration on any month assessment if the closing takes place on a day other than the first day of any given month. All annual Common Assessments shall be adjusted according the number of months remaining in any fiscal year, such fiscal year as shall be set forth in the By-Laws. At least thirty (30) days in advance of the beginning of each annual Common Assessment period the Board shall fix the amount of the Common Assessment for the year against each Lot. Written notice of any change in the annual Common Assessment amount shall be sent to each Owner at least thirty (30) days prior to the effective date of the change. All due dates relating to Assessments shall be established by the Board. The Association on demand and for a reasonable charge shall furnish a duly executed certificate detailing whether or not the assessments for a specific Lot have been paid in full. Such certificate as relating to the status of payment shall be binding against the Association on the date of issuance.

Annual balance sheets and operating statements shall be prepared by the Board setting forth all income and expenditures of the Association for the fiscal year, including information detailing all deposits and

withdrawals from the Reserve and Operating Funds. These shall be distributed to each Member and to any First Mortgagee who has filed a written request for copies of the same with the Board. At least sixty (60) days prior to the beginning of each fiscal year, the Board shall prepare and distribute to the Members a written, itemized estimate of the expenses to be incurred by the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Reserve Fund, less any expected income and accounting for any surplus from the prior year's Maintenance Funds).

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Funds established by the Association. If the estimated sums prove inadequate for any reason, including nonpayment of any Owner's annual Common Assessment, the Board may, at any time, levy supplemental Common Assessments, subject to the provisions of Section 4 of this Article, for any of the Maintenance Funds which shall be assessed against the Owner of each Lot.

Each Annual Common Assessment may be paid by the Owner to the Association in one check or payment, or in separate checks, as payments attributable to deposits into specified Maintenance Funds. In the event that any installments of a Common Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt of the Association from the Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Reserve Fund.

At the end of any fiscal year of the Association, the Owners may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for operation of the Association, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments or may be deposited in the Association's reserve fund. Notwithstanding anything contained in the Articles or By-Laws to the contrary, if prior to dissolution of the Association, the Association has not obtained tax exempt status from both the Federal and State Governments, then upon such dissolution of the Association, any amounts remaining in the Reserve Fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual, respective contributions.

**Section 9. Exempt Property.** All property dedicated to and accepted by local public authority and all property contained in the Common Area shall be exempt from any liens resulting from all assessments contained herein.

**Section 10. Declarant Subsidy.** Declarant or its affiliates or assigns shall have the option, but not the obligation, in its sole discretion, of subsidizing the Association until Declarant's rights as a Class B Member terminate. Subsidization shall be defined as the payment of the reasonable cost needs of the Association for ordinary and necessary maintenance expenses of the Common Areas of uncompleted sections of the overall Property; excluding construction, reconstruction, repair or replacement of any Capital Improvement upon the Common Area, including fixtures and personal property related thereto.

## ARTICLE VII

### **Effect of Non-Payment of Assessments, Remedies of the Association.**

**Section 1. Non-Payment.** Any Assessments that are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the Association shall have the remedies provided for in Section 2.

**Section 2. Remedies.** For any delinquent payment as provided in Section 1, the Association shall be entitled to all or any combination of the following remedies against a Member whose assessment is delinquent:

- (a) File a notice of lien on the Lot
- (b) Bring an action at law against the Owner personally obligated to pay to pay, (1) the principal amount of the unpaid assessment; (2) interest from the date of delinquency at a rate of eighteen percent (18%) per annum, or such other rate as the Board of Trustees may establish from time to time; and (3) all court costs and attorney fees.
- (c) Foreclose the lien against the Lot to satisfy judgment rendered for the full amount of the delinquent Assessment, including interest, costs and attorney's fees.
- (d) Levy as an additional sum to such delinquent Assessment, all expenses for preparation of the notice of lien (whether or not prepared by an attorney), court costs, interest and a reasonable attorney's fee.
- (e) Withhold and interrupt the service of utilities provided by the Association to any such Dwelling Unit on the Lot upon which the Assessment is delinquent.

**Section 3. Right to Bring an Action.** Each Owner, by acceptance of a deed to any Lot, expressly grants to the Association, its successors, assigns or agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

**Section 4. Non-Use and Abandonment.** No Owner of a Lot may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by such Owner from the liens and charges hereof, by non-use of any Common Area or Limited Common Area or by the abandonment of such Owner's Lot and/or Dwelling Unit.

**Section 5. Subordination of the Lien to Mortgages.** The liens created by this Declaration imposed upon any Lot shall be subject and subordinate to and shall not affect the right of the holder of the indebtedness secured by any First Mortgagee or equivalent security interest in any Lot, made in good faith and for value, recorded prior to the date any such Assessment becomes due. Any First Mortgagee or equivalent security interest holder that comes into possession by virtue of foreclosure of a Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charges resulting from a reallocation of such Assessment or charges to all lots including the mortgaged Lot. However, no such sale or transfer shall relieve the Owner from personal liability for such Assessment, nor such Lot from liability for any installments or Assessments thereafter becoming due from the lien thereof.

## ARTICLE VIII

### Architectural Control

**Section 1. Members of Committee.** The Architectural Committee shall consist of three (3) members. The initial members of the Architectural Committee shall consist of representatives of the Declarant. Each of said persons shall hold office until the election of the first Board by the Membership of the Association. Thereafter, new members of the Architectural Committee shall be appointed by the Board and shall hold office until such time as they have resigned or have been removed or their successor has been appointed, as provided herein. Members of the Architectural Committee may be removed at any time with cause. The Board shall have the right to appoint and remove all members of the Architectural Committee.

**Section 2. Submission to Committee.** Subject to Article X, Section 5, of this Declaration, no accessory, attachment or addition to a Dwelling Unit, landscaping, patio enclosure, or other improvement of a Lot, specifically including the Limited Common Areas; shall be constructed, maintained, or accomplished, and no additions, alterations, repainting or refurbishing, addition or relocation of lighting of or to the exterior of any Dwelling Unit shall be performed, unless complete plans and specifications thereof have first been submitted to and approved in writing by the Architectural Committee. The Architectural Committee may condition its approval of proposals or plans and specifications on such changes therein as it deems appropriate, or upon the agreement by the Owner submitting the same to grant appropriate easements to the Association for the purpose of maintenance, and may require submission of additional plans and specifications or other information and agreements prior to approving or disapproving material submitted. The Architectural Committee may also charge a uniform fee to be payable to the Association to accompany each submission by an Owner for approval. Such uniform fee shall be an amount set so as to reasonably cover the costs incurred by the Architectural Committee for conducting its review of submissions, including covering any reasonable compensation due the members of the Architectural Committee for their work as set forth below.

**Section 3. Standard of Review.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Architectural Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The Board may further formulate general guidelines and procedures for the Architectural Committees' review process. If such guidelines are formulated, they shall be incorporated into a set of rules and regulations adopted by the Board and the Architectural Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.

**Section 4. Meeting of the Architectural Committee.** The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Architectural Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Architectural Committee, except the granting of a variance pursuant to Section 8 of this Article VIII. In the absence of such designation, the vote of any two (2) Members of the Committee taken without a meeting, shall constitute an act of the Committee.

**Section 5. Approval Procedures.** Any plans and specifications initially presented to the Architectural Committee shall be either approved, approved pending appropriate revision or disapproved by it in writing within thirty (30) days after submission. In the event the Architectural Committee fails to take any action as permitted hereunder within such period, it shall be deemed to have approved the material submitted. Any submitted plans requiring revision shall be approved or disapproved within thirty (3) days following the submission of the revisions. In the event the Architectural Committee fails to take any action with respect to the revised plans submitted within such period, it shall be deemed to have approved the revised material as submitted.

**Section 6. Construction and Inspection.** Once construction of any Improvements, alterations or changes to landscaping as approved by the Architectural Committee have commenced, the same shall be diligently pursued to completion. Upon completion of any Improvement for which approved plans are required under this Article VIII, the Owner shall give notice of completion to the Architectural Committee. Within sixty days

thereafter, the Architectural Committee shall inspect such Improvement. If the Improvements are found to be non-compliant according to the approved plans, the Architectural Committee shall require the Owner to remedy the same within thirty (30) days notice of non-compliance from the Architectural Committee. Failure to do so shall allow the Board to remedy the non-compliance at the cost of the Association and to seek reimbursement of such costs from the non-compliant Owner. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner for reimbursement.

**Section 7. Non-Waiver and Disclaimer of Liability.** Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of the approval or rejection of, or the failure to approve or reject any, plans, drawings or specifications or for the development or manner of development of any of the property or for any engineering or other defect in any approved plans and specifications. The approval of the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

**Section 8. Exception for Declarant.** The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping or alteration which is carried out by the Declarant, its affiliates, agents, successor or assigns on any Lot or on any part of the Common Areas and which occurs at any time during the ten (10) year period (unless extended as a result of the expansion of the project in accordance with this Agreement) following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah. In no event will the Architectural Committee have any authority over any Dwelling Units under development and/or construction by the Declarant, its affiliates, agents, successors or assigns. Only proposed modifications to those Dwelling Units which have been completed and conveyed to the new Owner will be reviewed and acted upon by the Architectural Committee. Declarant shall further have the right to designate the location and design of any Common Area amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this Section.

**Section 9. Declarant's Obligation.** Declarant hereby covenants in favor of each owner that all dwelling units erected by it, or caused to be erected by it, in any one phase of the Project and all improvements of the Common Area accomplished by it in any one phase of the Project shall be architecturally compatible, as determined at the sole discretion of the Declarant, with respect to one another and, that on or before ten (10) years (unless extended as a result of the expansion of the Project in accordance with this Declaration) from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, there shall be substantially completed and usable as part of the Common Areas, all open spaces in the location shown on the plat.

## ARTICLE IX

### Maintenance and Repair Obligation

**Section 1. Maintenance Obligations of Owners.** Subject to the duty of the Association to provide for maintenance as provided in Section 2, of this Article IX, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration regarding Architectural Committee approval, to maintain, repair, replace and restore areas of the Property subject to his exclusive control, including any improvement thereon, in a neat, sanitary and attractive condition. Areas subject to the exclusive control of any Owner shall be deemed to include, but not be limited to, the structure of the Owner's Dwelling Unit, and all exterior and interior portions of the Owner's Dwelling Unit, including any cement patio and deck attached to the rear of a Dwelling Unit, but excluding the exterior surface of the roof of such Dwelling Unit. In the event that any Owner shall permit any Improvement, which is the responsibility of an Owner to maintain, to fall into disrepair or fail to so maintain such Improvement so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise



violate this Declaration, the Architectural Committee shall have the right, but not the duty, upon fifteen (15) days prior notice to the Owner of such Lot, to correct such condition and to enter upon such Owner's Lot to make such repairs or to perform such maintenance and the costs thereof shall be charged to the Owner. Said costs shall constitute a Special Assessment and shall create a lien enforceable in the same manner as other assessments as set forth in this Declaration. The Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board, to the amounts payable by each Owner as Common Assessments.

**Section 2. Maintenance Obligations of Association.** In addition to the provisions of Section 1 of this Article IX, the Association shall maintain in good order and repair all of the Common Area and any Improvement thereon, and any perimeter fencing around the Property. In addition to the maintenance and repairs set forth above, the Association shall provide all necessary landscaping and gardening and properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Area. The Association shall further maintain, reconstruct, replace and refinish any paved surface in the Common Area, except as limited by the provisions of Section 1 of this Article IX. All of the foregoing obligations of the Association shall be discharged when and in such a manner as the Board shall determine in its judgment to be appropriate.

**Section 3. Damage and Destruction Affecting Dwelling Unit, Duty to Rebuild.** If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of said Lot or Dwelling Unit to rebuild, repair or reconstruct said Dwelling Unit in a manner which will restore it substantially to its appearance and condition immediately prior to the casualty.

**Section 4. Time Limitation.** The Owner or Owners of any damaged Dwelling Unit, the Association and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

**Section 5. Damage to Common Area Facilities, Etc.** No Owner shall take any action which interferes with or damages Common Area Facilities, including but not limited to retaining walls and other erosion control facilities located on the Common Area or any other portion of the Property.

## ARTICLE X

### Use Restrictions

All real property within the Property shall be held, used and enjoyed pursuant to the following limitations and restrictions, subject to the exemption of the Declarant as provided in Section 5 of this Article X.

**Section 1. Single Family Residences, Business or Commercial Activity.** Each Lot shall be used as a residence for a single family. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, other than a home office permitted under applicable zoning ordinances, without the vote of seventy-five percent (75%) of the votes eligible to be cast by Members of the Association and the approval of the Architectural Committee. Provided further, however, the Association shall never be permitted to allow more than twenty-five percent (25%) of the Lots to be used as a non-owner occupied residence, nor shall any Dwelling Unit be permitted to be used in a timesharing type of an arrangement. Notwithstanding any provisions herein to the contrary, nothing herein shall be construed as prohibiting the Declarant, its successors and assigns, from using any portion of the Property for a model home site, and display and sales office during the construction and sales period and for a period of three (3) years thereafter in accordance with Article II Section 1 (h), of this Declaration.

**Section 2. Nuisances.** No noxious or offensive activity (including but not limited to the major repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance or nuisance to any other Owner. No loud noises or noxious odors shall be permitted on the Property, and the Board shall have the right to determine in accordance with the By-Laws if any noise, odor or activity producing such noises, odor or interference constitutes a nuisance. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than a security device used solely for security purposes), noisy or smoky vehicles, large power equipment or large power tools, satellite reception devices, radio or television antennas, evaporative coolers, permanent flag poles, or items which may unreasonably interfere with television or radio reception of any Owner in the Property, shall be located, used or placed on any portion of the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee.

**Section 3. Signs.** No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or any Lot, without the prior written consent of the Architectural Committee, except signs used by Declarant, their successors and assigns, to advertise the Property during the construction and sale period. All signs or billboards and the regulations promulgated for the regulation thereof shall conform to the requirements of applicable zoning law.

**Section 4. Common Area Facilities.** Nothing shall be altered or constructed on or removed from the Common Area except upon the written consent of the Association.

**Section 5. Declarant's Exemption.** The Declarant or its successor or assigns may undertake the work of constructing Dwelling Units and developing all of the Lots included within the Property and any annexation thereto. The completion of that work and sale, rental and other disposal of Dwelling Units is essential to the establishment and welfare of the Property as a residential community. As used in the Section and its subparagraphs, the words "its successors and assigns" specifically do not include purchasers of Lots improved with completed Dwelling Units. In order that said work may be completed and the Property be established as a fully occupied residential community as rapidly as desired and as is possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

- (a) Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any Lot owned by the Declarant, whatever it determines to be necessary or advisable in connection with the completion of said work, including without limitation the alteration of its construction plans and designs as the Declarant deems advisable in the course of development; or
- (b) Prevent the Declarant, its successors or assigns, or its or their representatives, from erecting, constructing, or maintaining on any Lot, or portion thereof, owned or controlled by the Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be necessary or desirable for the conduct of its or their business of completing said work and establishing the Property as a residential community and disposing of the same in Lots by sale, lease or otherwise; or
- (c) Prevent the Declarant, its successor or assigns, or its contractors or subcontractors, from conducting on any Lot, or any portion thereof, owned or controlled by the Declarant, or its successors or assigns, its business of developing, subdividing, grading and constructing Dwelling Units and other improvements in the Property as a residential community and of disposing of Dwelling Units thereon by sale, lease or otherwise; or

- (d) Prevent the Declarant, its successors or assigns, or its contractors or subcontractors, from maintaining such sign or signs on any Lot owned by or controlled by it as may be necessary in connection with the sale, lease or other marketing of Lots and Dwelling Units; or
- (e) Prevent the Declarant, at any time prior to the acquisition of title to a Lot by a purchaser from the Declarant, to establish on that Lot additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The Declarant shall repair at its own cost or expense any damage caused by the Declarant to any portion of the improved Common Area as well as such damages caused to Lots or property still under Declarant's control.
- (f) Prevent the Declarant from having unrestricted access to the Property until all Dwelling Units have been constructed and sold. The Declarant shall have the right to control all access gates until all Dwelling Units have been constructed and sold.

**Section 6. Pets and Other Animals.** No exterior bar, coop, shed, sty or building of any type shall be constructed, kept, maintained or permitted for the purpose of housing dogs, cats, pigs, cows, sheep, goats, horses, poultry, or other livestock at any place within the limits of the Property. Each Lot Owner may keep and maintain three (3) common household pets, other than fish in an aquarium to which such limit shall not count or apply, unless otherwise permitted by the affirmative vote of seventy-five percent (75%) of the Members.

**Section 7. Parking.** No long-term parking (over 96 hours) of any vehicle, or recreation vehicle (including Boats, RV's, ATV's, etc.) shall be permitted on the driveway of any Dwelling Unit, except in a Dwelling Unit garage. No long-term parking (over 48 hours) of any vehicle or recreational vehicle (including Boats, RV's, ATV's, etc.) shall be permitted upon any of the Common Areas. The Board is specifically empowered to enforce this provision by having vehicles in violation towed and stored at Owner's expense. All such fees and expenses associated with the enforcement of this provision shall become an assessment against the Owner's Lot against whom the same is enforced. Owners shall be assessed the costs of removal and storage for a violation of this provision by any lessees, guest or invitee of such Owner.

**Section 8. Rubbish.** No rubbish shall be stored or allowed to accumulate anywhere on the Property, except in sanitary containers and at such locations as the Board shall determine from time to time.

**Section 9. Insurance Rates.** Nothing shall be done or kept on the Property which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on the Property which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

**Section 10. Front Window Treatment.** No blinds, draperies, or other window coverings or treatments shall be permitted with respect to Dwelling Unit windows which face any road, whether public or private, except those which are conservative in style and neutral in color or otherwise approved by the Architectural Committee.

**Section 11. Demising Fire Walls.** The following obligations, rules and restrictions shall apply to all demising fire walls which are constructed as a part of a Dwelling Unit to separate such Dwelling Unit from an adjacent unit:

- (a) No Owner, his family, guests or invitees shall through willful or negligent action, breach or in any way compromise the demising fire wall of the Owners' Dwelling Unit, and / or the demising fire wall of the adjoining Dwelling Unit in such a way as to void the fire rating of the demising fire wall or walls. The demising fire wall(s) shall be deemed breached if any act or

combination of actions would result in the failure of the fire wall to meet the standards of a one-hour fire rated wall assembly as defined by the pertinent code and as interpreted by local building officials of the municipality or municipalities having jurisdiction. In the event of any such breach or breaches of the demising fire wall(s), the party causing such breach shall immediately act to repair, and/or replace all or a portion of the demising fire wall(s) in such a manner as to restore their one-hour fire rating.

- (b) In the case of a common concrete foundation wall between any two Dwelling Units if any, and upon which the demising fire walls are constructed, the cost of reasonable repair and maintenance of this demising fire wall shall be shared equally by the Owners who's Dwelling Unit's make use of the wall.
- (c) If a demising fire wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of the same, the Owner(s) of the Dwelling Unit(s) to which the destroyed or damaged demising fire wall is or was attached shall be obligated to restore the demising fire wall to compliance with the requirements for one-hour fire rated wall assembly.
- (d) If any portion of a demising fire wall or other part of a building or structure now or hereafter constructed upon the Property encroaches upon any part of the Common Area, Limited Common Area, or upon the Lot or Lots designated for use by another Owner, an easement for the encroachment and for the maintenance of the same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and future Owners of any part of the Property for the benefit of the present and future Owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one Dwelling Unit becomes partially or totally damaged or destroyed and is in need of repair or replacement, mutual reciprocal easements are granted and reserved upon the Common Area, Limited Common Area and in and upon each Dwelling Unit and Lot for the benefit of the Association and the adjacent Owner or Owners to the extend reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs or replacements or both, and the maintenance thereof are hereby granted and reserved for the benefit of the present and future owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

## **ARTICLE XI**

### **Damage or Destruction to Common Area**

Damage to or destruction of all or any portion of the Common Area shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

- (a) In the event of damage or destruction to the Common Area, the Association shall cause such Common Area to be repaired and any Improvement thereon to be reconstructed substantially as it previously existed.
- (b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such repair and reconstruction to be substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Reconstruction Assessment equally against each Lot Owner in accordance with the provisions of Article VI, Section 5 of this Declaration.

- (c) Each Owner shall be liable to the Association for any damage to the Common Area not fully covered by insurance which may be sustained by reason of the negligent or willful misconduct of said Owner or of his family and guests, including minors and adults. Notwithstanding the foregoing, the Association reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall also be a Special Assessment against the Lot owned by the Owner.

## ARTICLE XII

### Insurance

**Section 1. Common Area.** The Association shall keep any Improvement and all other insurable property on the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof and including extended coverage for not less than 100% of the replacement costs of insurable property, and shall obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association or by members of the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association, for the benefit of the Owners. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association shall be expenses payable by including such expenses in the Common Assessments made by the Association.

**Section 2. Insurance Obligations of Owners.** Each Owner shall insure his entire Dwelling Unit, including the structural portions of the Dwelling Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a Mortgagee of a Dwelling Unit. All such insurance shall be for the full replacement value of the Dwelling Unit with automatic inflation coverage. All such policies shall contain a provision that the same shall not be canceled or terminated except upon at least thirty (30) days written notice to the Association.

**Section 3. Replacement or Repair of Property.** In the event of damage to or destruction of any part of the Common Area, or any Improvement thereon or any other portion of the Property insured by the Association, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Article XI of this Declaration. If such insurance proceeds are insufficient to cover the costs of such repair or replacement of the Improvements damaged or destroyed, the Association may make a Reconstruction Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other Common Assessment made against such Owners, in accordance with the provisions of Article VI, Section 5, of this Declaration. In the event of total destruction of all of the Improvements on the Property, the proceeds of the insurance carried by the Association shall be divided equally among the Owners, provided that the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Lot is so encumbered.

**Section 4. Waiver of Subrogation.** As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Manager, the Declarant, and the agents and employees of each of the foregoing with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**Section 5. Liability Insurance.** The Association shall obtain comprehensive public liability insurance in the minimum amount of \$1,000,000 per occurrence for personal injury and/or property damage arising from the activities of the Association or with respect to the Common Area including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall contain a "Severability of Interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners. Such insurance must include other coverage in kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use.

**Section 6. Miscellaneous.**

- (a) **Minimum Financial Rating of Carrier.** Each hazard-insurance policy must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. Hazard insurance policies are also acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the State of Utah.
- (b) **No Assessments.** Policies are unacceptable where: (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the Association or any Owner or any First Mortgagee or its successors and assigns; or (ii) by the terms of the carriers' charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association or any Owner of any First Mortgagee, or its successors and assigns, from collecting insurance proceeds.
- (c) **Other Requirements.** All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional Mortgage investors in the area in which the Property is located. The Mortgagee clause must provide that the insurance carrier shall notify the First Mortgagee named in such policies at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.
- (d) **Other Insurance and General.** The Association may also obtain, through the Board, Worker's Compensation Insurance and other liability insurance as it may deem desirable, insuring each Owner, the Association, the Board, members of the Architectural Committee, and the Manager from liability in connection with the Common Area, the premiums for which shall be expenses payable by the Common Assessments made against the Owners. Such insurance policies shall have severability of interest clauses or endorsements which shall preclude the insurer from denying the claim of an Owner because of the negligent act of the Association or other Owners. All policies shall be reviewed at least annually by the Board and limits increased at its discretion.

**ARTICLE XIII**

**Mortgage Protection Clause**

Notwithstanding any and all provision hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHMLC), the Government National Mortgage Association (GNMA), and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Lots and Dwelling Units within

the Property, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

**Section 1. Written Notification of Default.** Each First Mortgagee of a Mortgage encumbering any Lot, at his written request, is entitled to written notification from the Association of any default by the Mortgagor of such Lot in the performance of such Mortgagor's obligations under this Declaration, the Articles, or the By-laws, which default is not cured within sixty (60) days after the Association learns of such default.

**Section 2. Right of First Refusal.** Each First Mortgagee of a Mortgage encumbering any Lot which obtains title to such Lot pursuant to the remedies provided for in such Mortgage, or by foreclosure of such Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal". Any right of first refusal contained in the constituent documents of the Property, or hereinafter added shall not impair the rights of a First Mortgagee to (i) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or (ii) accept a deed or an assignment in lieu of foreclosure in the event of default of a Mortgagor, or (iii) interfere with the subsequent sale or lease of a Lot so acquired by the First Mortgagee.

**Section 3. Non-Liability for Prior Unpaid Dues or Charges.** Any First Mortgagee, or a purchaser who purchases a Lot from any First Mortgagee who obtains title to a Lot pursuant to a deed (or assignment) in lieu of foreclosure, or pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, will not be liable for such Lot's unpaid dues or charges which accrue prior to the acquisition of title to such Lot by the First Mortgagee.

**Section 4. First Mortgagee Approval.** Unless at least one hundred percent (100%) of the First Mortgagees (based upon one (1) vote for each Mortgage owned) of the Lots have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly, by the Association for the benefit of the Lots (the granting of an easement of public utilities or for other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause);
- (b) Change the method of determining the obligation, assessments, dues or other charges which may be levied against an Owner;
- (c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural control of the Lots or Dwelling Units, the maintenance of the Lots or Dwelling Units, or the maintenance of the Common Areas;
- (d) Fail to maintain fire and extended coverage on any insurable Improvement or property on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and
- (e) Use hazard insurance proceeds for losses to any Improvement or property on the Common Area for other than repair, replacement or reconstruction of such Improvement or property.

**Section 5. Taxes and Charges in Default.** First Mortgagees may, jointly and severally, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such portion of the Common Area, and First Mortgagees making such payments shall be owed immediate reimbursement from the Association.

**Section 6. First Mortgagee Priority.** No provision of the Declaration, Articles or By-laws shall give an Owner, or any other party, priority over any rights of any First Mortgagee pursuant to its Mortgage in the case of a distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of any of the Common Areas.

**Section 7. Examination of Books and Records.** First Mortgagees shall have the right to examine the books and records of the Association during normal business hours.

**Section 8. First Mortgagees Written Notice of Amendments and Damage.** Upon written request, all First Mortgagees shall be given thirty (30) days written notice prior to the effective date of any proposed material amendment to the Declaration, the Articles or By-laws, and prior to the effective date of any termination of an agreement for professional management of the Property following a decision by the Owners to assume self-management of the Property; and (ii) immediate notice following any damage to the Common Area whenever the cost of reconstruction exceeds twenty thousand (\$20,000.00) and as soon as the Board learns of any threatened condemnation proceedings or proposed acquisition of any portion of the Property.

**Section 9. Reserve Fund for Common Area.** Association dues or charges shall include an adequate reserve fund for maintenance, repairs, replacement of those elements of the Common Area that must be replaced on a periodic basis and are payable in regular installments rather than by Special Assessments.

**Section 10. First Mortgagee Written Notice of Default by Owner.** A First Mortgagee, upon request, is entitled to written notification from the Association of any default by an Owner with respect to any obligation under the constituent documents of the Property which is not cured within sixty (60) days.

**Section 11. Agreement for Professional Management.** Any agreement for professional management of the Association, or any other contract providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause, and without payment of a termination fee, on ninety (90) days written notice.

**Section 12. Satisfaction of Guidelines.** In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, FNMA or the GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of the First Mortgages encumbering Lots and/ or Dwelling Units. Each Owner hereby agrees that it will benefit the Association and the Members of the Association, as a class of potential Mortgage borrowers and potential sellers of their Dwelling Units if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

**Section 13. Non-Owner Occupied Dwelling Units.** No Owner may sell any Dwelling Unit constructed upon a Lot to a third party on a non-owner occupied basis without the prior written approval of the Board, which approval shall not be unreasonably withheld (provided that such approval shall not be granted if granting such approval would result in more than twenty-five percent of the Dwelling Units being classified as non-owner occupied).

**Section 14. Amendment to Article.** Neither this Article XIII nor Section 6 of Article VII of this Declaration shall be amended without the approval of one hundred percent (100%) of the First Mortgagees.

#### ARTICLE XIV

##### Annexation of Additional Properties



**Section 1. Reservation of Option to Expand.** Declarant hereby explicitly reserves an option until the tenth (10) anniversary of the recording of this Declaration to expand the Property by adding additional land to the Property (the "Additional Land") to be covered by this Declaration from time to time, without the consent of an Owner or Mortgagee. The option to expand may be terminated prior to such anniversary only upon the filing by the Declarant of an amendment to this Declaration. Declarant expressly reserves for itself, its successors and assigns, to add any or all portions of the Additional Land at any time, at different times, in any order, without limitation; provided however that the Additional Land shall be contiguous with the Property or located within one thousand (1000) feet from any boundary of the Property.

**Section 2. Assurances.** Declarant makes no assurances as the location of buildings or other improvements upon the Additional Land. At such time as the Property is expanded, the maximum number of Dwelling Units on the Additional Land shall be no more than ninety (90). Declarant makes no assurances as to whether any building to be constructed on the Additional Land will be compatible with the quality, materials, or style of the buildings contained within the initial Plat of the Property. No assurances are made by the Declarant whether any Dwelling Units will be substantially identical or similar to those within the prior Plat or Plats. Declarant expressly reserves the right to create and designate Limited Common Areas and Common Areas on the Additional Land. Declarant makes no assurances as to the type, size, or maximum number of such Common Areas or Limited Common Areas. In the event the Declarant decides not to add any Additional Land, Declarant shall nevertheless have the right to own, operate and develop the same without restriction. The maximum dwelling units per acre that may be created on any portion of the Additional Land added to the Property shall be thirty (30) units per acre. No Dwelling Unit constructed on the Additional Land shall be used for anything other than residential purposes.

**Section 3. No Obligation to Expand.** Notwithstanding anything to the contrary herein, this Declaration is not intended, and shall not be construed so as, to impose upon the Declarant in any way with regard to: (i) the submission of any portion of the Additional Land, (ii) the creation, construction, or addition to the Property of any Plats; (iii) the carrying out in any particular way or within any particular time, any development which may be undertaken; or (iv) the taking of any particular action with respect to any Additional Land, the Property, or any Plat. Declarant may create on any additional land not made subject to this Declaration, any development which would be entirely independent and unrelated to the development created by this Declaration.

**Section 4. Annexation by Declarant.** The annexation of Additional Land into the Property covered by this Declaration shall be effective upon the recordation in the office of the County Recorder of Salt Lake County, Utah, of a Supplementary Declaration which (a) describes the Additional Land being annexed, (b) declares that the Additional Land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to this Declaration, and (c) sets forth such additional limitations, restrictions, covenants and conditions that Declarant desires to apply to the Additional Land. When such annexation becomes effective, the Additional Land shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration and any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or plats without limitation as to the size of the Additional Land.

**Section 5. Limitations on Annexation.** Declarant's right to annex the Additional Land to the Property shall be subject to the following limitations:

- (a) Declarant's right to annex the Additional Land shall expire ten (10) years from the date of the recordation of this Declaration.
- (b) Owners of Dwelling Unit's constructed on Additional Land shall be Members of the Association and shall have the same rights to the use and enjoyment of the Property and facilities of the Association as any other Member. The Common Areas in the Additional Land shall be deeded by the Declarant to the Association, free and clear of all encumbrances and

liens prior to the conveyance of the first Lot contained in the Additional Land and the Association must accept the deed to such Common Areas.

- (c) Declarant shall not effectuate any annexation of land which would cause the total number of Dwelling Units existing or planned for the Property to exceed three-hundred (300) total Dwelling Units.
- (d) Declarant reserves unto itself and its assigns the right to create or not to create Common Areas and facilities within any Additional Land.

**Section 6. Supplemental Declaration.** The annexation of the Additional Land pursuant to this Chapter shall be made by filing and recording a Supplementary Declaration of Covenants, Conditions and Restrictions or similar instrument together with an Official Plat with respect to such Additional Land which shall extend the plan of this Declaration to such Additional Land. Such Supplementary Declaration may contain any complementary additions or modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Additional Land and as are not inconsistent with the plan of this Declaration. The recordation of such Supplementary Declaration and Plat shall constitute and effectuate the annexation of said real property described herein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of Lots in said Additional Land shall automatically be Members of the Association.

**Section 7. Declarant's Right to Amend.** Until all portions of the Additional Land are included in the Property, or until the right to annex Additional Land to the Property expires, whichever occurs first, Declarant shall have, and is hereby vested with the right to unilaterally amend the Declaration or the Plat, or both as may be necessary, reasonable or desirable: (a) to adjust the boundaries of the Lots, including adding or deleting Common Area so as to accommodate design changes or changes in the type of Dwelling Units to be constructed or to reconfigure the Lot configuration on the Plat; (b) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (c) to facilitate the practical, technical, administrative or functional integration of any Additional Land into the Property.

**Section 8. Expansion of Definitions.** In the event the Property is expanded through the annexation of Additional Land, the Definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded by the Additional Land.

## ARTICLE XV

### General Provisions

**Section 1. Enforcement.** This Declaration, the Articles, and the By-laws may be enforced by the Association as follows:

- (a) Breach of any covenants contained in this Declaration, the Articles or the By-laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by an Owner, by the Association, or the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in an amount as the court may deem reasonable in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

- (b) The result of every act or omission whereby any of the covenants contained in the Declaration, the Articles or By-laws are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.
- (c) The remedies herein provided for breach of the covenants contained in this Declaration, the Articles or the By-laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.
- (d) The failure of the Association to enforce any of the covenants contained in this Declaration, the Articles or in the By-laws shall not constitute a waiver of the right to enforce the same thereafter.
- (e) A breach of the covenants, conditions or restrictions contained in this Declaration, the Articles or in the By-laws shall not affect or impair the lien or charge of any bona fide first Mortgage made in good faith and for value on any Lot or Dwelling Unit, provided, however, that any subsequent Owner of such Lot or Dwelling Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure in a trustee's sale, or otherwise.

**Section 2. Severability.** In the case that any provision of this Declaration shall be invalidated by a court of competent jurisdiction all other provisions not so invalidated shall remain in full force and effect.

**Section 3. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance thereof. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and vice versa; and the masculine shall include the feminine and vice versa.

**Section 4. Amendments.** This Declaration may be amended only by the affirmative vote or written consent of the Owners holding not less than fifty-one (51%) of the total number of outstanding votes of the Members, except with respect to matters dealt with herein that require a higher percentage for approval thereof.

**Section 5. No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or part of the Property to the public, or for any public use.

**Section 6. Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Property does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

**Section 7. Reservation of Easements.** Reciprocal easements are hereby reserved for the benefit of adjoining Lot Owners, Draper City, Public Utility providers and Salt Lake County for the control, maintenance and repair of the utilities and storm drains of adjoining Lot Owners. The Declarant hereby expressly reserves for the benefit of all of the real property in the Property, and Owners, reciprocal easements of access, ingress and egress over all Lots, and over the Common Areas, for the use and enjoyment of the Lots in accordance with this Declaration, including without limitation, for installation and repair of utility services, for drainage over, across and upon adjacent Lots for water resulting from the normal use of adjoining Lots, and for maintenance and

repair of any Dwelling Unit or landscaping located on any Lot. Such easements may be used by the Declarant, its successors, purchasers and all Owners, their guests, tenants, lessees and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Lot and the Common Area. No Owner of a Lot shall interfere with established drainage patterns over his Lot from adjoining or other Lots. Each Owner of a Lot shall make adequate provision for drainage with the approval of Draper City or Salt Lake County in the event he changes the established drainage over his Lot. For purposes of this Declaration, "Established Drainage" on any Lot is defined as the drainage conveyed to a purchaser from the Declarant. The Declarant further expressly reserves for the benefit of the Association, its agents and employees, easements of access, ingress, and egress, over the Lots and the Common Area for the purpose of maintaining, repairing and installing sewer pipelines and laterals, cable television facilities, and telephone lines, in accordance with the provisions of this Declaration and as otherwise provided by law. The Declarant as well as Owners of Lots, and all others who shall come in contact with the Property, shall use reasonable restraints with regard to the Property when exercising any rights granted under this paragraph, and due regard shall be given to the aesthetic value, beautification, upkeep and maintenance of all of the Property, and the use and enjoyment by an Owner of his Lot.

**Section 8. Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been stamped as deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

**Section 9. No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by the Declarant or its agents or employees in connection with the Property or any portion of the Property, or any improvement thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, costs of maintenance, taxes or regulation thereof as a planned unit development, except as specifically and expressly set forth in this Declaration and except as may be hereafter filed by the Declarant from time to time.

**Section 10. Conflicts.** In the case of any conflict between this Declaration and the South Mountain Master Planned Community Standards and/or Amended Development Agreement for the South Mountain Planned Unit Development, the South Mountain Master Planned Community Development Standards and/or the Amended Development Agreement for the South Mountain Planned Unit Development shall control.

**Section 11. Requirement of Arbitration.** Any contract which the Association enters into shall provide for arbitration. In the event of a dispute between the Association and Declarant that cannot be resolved by the parties, then upon ten (10) business days advance written notice from the Association to the Declarant or vice versa, as the case may be, setting forth the issues in dispute, the dispute shall be submitted to binding arbitration by a member of the American Arbitration Association, such arbitrator as shall be selected pursuant to the rules of the American Arbitration Association. All costs of the arbitration proceedings shall be equally shared by the parties, excluding all attorney's fees which shall be the sole responsibility of the party incurring such fees.

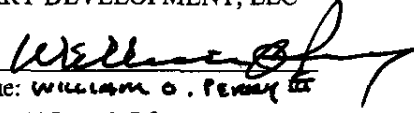
**Section 12. Inherent Risks of Golf.** The Property abuts a golf course and some of the Lots and Dwelling Units are immediately adjacent to fairways and tee boxes. By taking title to a Lot and Dwelling Unit at the Property, each Owner:

- (a) Acknowledges that there are certain inherent risks associated with living next to a golf course, including the risk of damage or loss to property or personal injury and death resulting from golf balls exiting the golf course (such risks are referred to as "Inherent Risks of Golf") and,
- (b) Accepts such inherent risks, and agrees that neither such Owner nor any entity owned or controlled by such Owner, shall make any claim against, or recover from, Salt Lake County or other owner or manager of the golf course, the developer of the Property, the Declarant, any homebuilder, architect, or other person or entity associated with the development of the Property, the Common Areas, the Dwelling Units or any other improvement thereon or thereto, or any of their respective officers, directors, employees or agents, for damage, injury or death resulting from the Inherent Risks of Golf.

IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions and Reservation of Easement for Sunset Ridge at South Mountain, a planned unit development, has been executed as of the day and year first written above.

DECLARANT:

PERRY DEVELOPMENT, LLC

By:   
Name: WILLIAM O. PERRY  
Title: MANAGER

STATE OF UTAH

)

)SS:

COUNTY OF SALT LAKE

)

On this 24 day of January, 2005, personally appeared before me William O. Perry III, being duly sworn and the said individual did say that he is the manager of Perry Development, LLC, a Utah limited liability company, and that the within and foregoing Declaration was signed on behalf of the said limited liability company as the Declarant.

Sandra Bodrero  
NOTARY PUBLIC  
Residing at: Willard Utah

My Commission Expires:

1-20-07

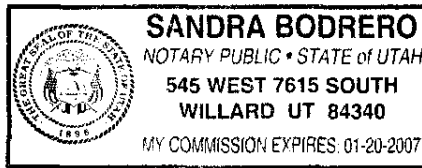


Exhibit "A"

Parcel 1:

Beginning at a point on the North right of way line of Rambling Road, said point being South 89 degrees 16'04" East 3,042.04 feet and South 16.51 feet from the West Quarter Corner of Section 8, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and leaving said right of way line running thence North 84 degrees 51'15" West a distance of 209.541 feet; thence North 40 degrees 12'22" West a distance 186.546 feet; thence North 19 degrees 54'41" East a distance of 330.173 feet; thence North 56 degrees 26'16" East a distance of 85.003 feet to a point on the South Mountain Golf Course Property line and running along said property line the following 3 courses; (1) thence North 56 degrees 26'16" East a distance of 227.008 feet; (2) thence North 75 degrees 19'17" East a distance of 496.002 feet; (3) thence North 62 degrees 14'06" East a distance of 913.516 feet; thence leaving said Golf Course property line, South 80 degrees 06'21" East a distance of 218.953 feet to a point on the North right of way line of Rambling Road and running along said right of way the following 6 courses; (1) thence South 44 degrees 30'39" West a distance of 221.939 feet; (2) thence 106.031 feet along a curve with a 564.000 foot radius to the right (long chord of which bears South 49 degrees 53'47" West a distance of 105.875 feet) with a tangent of 53.172 feet and a delta of 10 degrees 46'17"; (3) thence South 55 degrees 16'56" West a distance of 799.647 feet; (4) thence 176.469 feet along a curve with a 3964.000 foot radius to the right (long chord of which bears South 56 degrees 33'27" West a distance of 176.454 feet) with a tangent of 88.249 feet and a delta of 2 degrees 33'02"; (5) thence South 57 degrees 49'59" West a distance of 445.365 feet; (6) thence 193.924 feet along a curve with a 359.000 foot radius to the left (long chord of which bears South 42 degrees 21'29" West a distance of 191.575 feet) with a tangent of 99.391 feet and a delta of 30 degrees 57'00"; to the point of beginning.

Parcel 2:

Beginning at a point South 89 degrees 16'04" East 2381.479 feet from the West Quarter Corner of Section 8, Township 4 South, Range 1 East, Salt Lake Base and Meridian and running thence North 45 degrees 02'42" East a distance of 108.862 feet; thence South 52 degrees 45'08" East a distance of 457.958 feet to a point on the Traverse Ridge Road condemned property line and running along said condemnation line the following 5 courses; (1) thence South 50 degrees 33'42" West a distance of 61.078 feet; (2) thence South 63 degrees 19'59" West a distance of 63.210 feet; (3) thence North 87 degrees 15'44" West a distance of 181.520 feet; (4) thence North 52 degrees 57'24" West a distance of 85.490 feet; (5) thence North 61 degrees 09'37" West a distance of 9.128 feet; thence leaving said condemnation line North 26 degrees 45'08" East a distance of 95.796 feet; thence North 46 degrees 28'12" West a distance of 170.343 feet; to the point of beginning.