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 GARY W. OTT
 ORDER, SALT LAKE COUNTY, UTAH
 LES FERRIN
 BY: SBM, DEPUTY - WI 35 P. 37p.

**DECLARATION OF COVENANTS, CONDITIONS,
 RESTRICTIONS AND EASEMENTS
 FOR
 CREEKSIDE COVE SUBDIVISION
 A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR the **CREEKSIDE COVE SUBDIVISION, A PLANNED RESIDENTIAL UNIT DEVELOPMENT** ("Declaration") is made this 28th day of March, 2006 by Les Ferrin and Nancy Ferrin (hereinafter collectively "Declarant").

RECITALS

A. Declarant is the owner and developer of certain real property in the City of South Salt Lake, County of Salt Lake, State of Utah, which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference ("Property"), on which Declarant intends to construct a planned residential unit development to be known as **CREEKSIDE COVE SUBDIVISION**.

B. Declarant desires that a Utah non-profit corporation, **CREEKSIDE COVE HOMEOWNERS ASSOCIATION, INC.** be formed for the purpose of the efficient preservation of the values and amenities of the Project and to which will be delegated certain powers of administering and maintaining certain elements of the Project, enforcing this Declaration, and collecting and disbursing the assessments provided for herein.

C. Declarant, by this Declaration, hereby establishes a plan for the ownership of the Property whereby the Owner of each Lot will receive title to his individual Lot and the right of use and enjoyment in the Common Areas contained in the Project, as the same are defined below. Each Lot shall have appurtenant to it a membership in the Association (defined below) which shall administer and control the Common Areas.

D. Declarant desires and intends that the Property shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and shall be binding on and for the benefit of all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, representatives, successors or assigns, and shall inure to the benefit of each owner thereof and their heirs, representatives, successors and assigns.

NOW, THEREFORE, DECLARANT hereby declares, covenants and agrees as follows:

**ARTICLE I
DEFINITIONS**

In addition to the terms defined elsewhere in this Declaration, the following terms shall have the meanings described herein.

1.1 **"Articles"** shall mean the Articles of Incorporation of the Association, as such may be amended from time to time.

1.2 **"Association"** shall mean and refer to **CREEKSIDE COVE HOMEOWNERS ASSOCIATION, INC.**, a Utah non-profit corporation, incorporated pursuant to the Utah Revised Nonprofit Corporation Act, Utah Code Ann. §§ 16-6a-101 et seq., and its successors and assigns.

1.3 **"Board"** shall mean the Board of Directors of the Association.

1.4 **"Building"** means any building containing Dwellings or permitted outbuildings appurtenant to such Dwellings constructed on Lots in the Property.

1.5 **"Bylaws"** shall mean the Bylaws of the Association, as such may be amended from time to time.

1.6 **"City"** shall mean the city of South Salt Lake a body corporate and political subdivision of the State of Utah.

1.7 **"Common Areas"** shall mean those portions of the Project labeled and identified on the Plat as Common Areas including, without limiting the generality of the foregoing, all streets, together with all equipment, facilities, fixtures, and other personal property and real property improvements located thereon and/or owned by the Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, all streets, curb and gutter improvements, trees, bushes and other landscaping, sewer, water, gas, electrical and electronic, fiberoptic or other lines and all equipment, fixtures, facilities, and other personal property and real property improvements hereafter purchased in accordance with this Declaration with monies from the Association except such streets and facilities dedicated to the City on the Plat. The Common Areas shall be owned by the Association, and all Common Areas shall be maintained, managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Declaration.

1.8 **"Declarant"** shall mean the Declarant designated above or any person or entity who has succeeded to Declarant's rights and powers hereunder as to all or a portion of the Property and to whom Declarant's rights hereunder have been assigned by a recorded instrument.

1.9 **"Declaration"** shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for the **CREEKSIDE COVE SUBDIVISION**, a planned residential unit development, as such may be amended from time to time.

1.10 **"Dwelling"** shall mean that Building situated upon a Lot designed and intended for use and occupancy as a single family residence. Each Dwelling shall be owned by the Owner or Owners of the Lot on which the Dwelling is situated subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration.

1.11 **"Governing Documents"** shall mean this Declaration the Plat and the Articles, Bylaws, Rules, and Board's resolutions of the Association.

1.12 **"Lot(s)"** shall mean any numbered parcel of real property shown upon the recorded Plat of the Property intended for any type of independent ownership and use, together with any improvements constructed thereon. Each Lot shall be owned by the Owner or Owners of such Lot, subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration.

1.13 **"Manager"** shall mean such Person retained by the Board to perform certain functions of the Board pursuant to this Declaration or the Bylaws. The Manager for the Association shall carry out certain responsibilities of the Association as required herein.

1.14 **"Member(s)"** shall mean any Person that is a member of the Association.

1.15 **"Membership"** shall mean a membership in the Association and the rights granted to the Owners and Declarant pursuant to Article 6 to participate in the Association.

1.16 **"Occupant"** shall mean a natural Person lawfully residing in a Dwelling who has actual use, possession or control of the Dwelling, regardless of whether that Person is an Owner.

1.17 **"Owner(s)"** shall mean the record owner, whether one or more Persons or entities, of equitable or beneficial title in fee simple (or legal title if same have merged) of any Lot. "Owner(s)" shall include the purchaser under a recorded agreement for sale of any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation. Except as stated otherwise herein, "Owner(s)" shall not include a lessee or tenant of a Dwelling. "Owner(s)" shall include Declarant so long as Declarant owns any Lot.

1.18 **"Person(s)"** shall mean an individual, corporation, partnership, limited liability company, trustee or other entity capable of holding title to real property under Utah law.

1.19 **"Plat"** shall mean the **CREEKSIDE COVE SUBDIVISION** plat, as recorded in the office of the County Recorder for Salt Lake County, State of Utah, on _____ as

Entry No. _____, in Book _____, at Page _____, that creates the **CREEKSIDE COVE SUBDIVISION**, a planned residential unit development.

1.20 **"Project"** shall mean all Lots, Buildings and all Common Areas, collectively. The Project consists of 8 Lots as shown on the Plat as Lots 2 through 8 inclusive upon which Declarant or the owners of each respective Lot intends to build one Dwelling and Lot 1, which has an existing Dwelling and other Buildings located thereon. Declarant also intends to pave the L shaped Commons Area as depicted on the Plat, designate a refuse dumpster area/easement thereon, and to paint 6 parking stall areas thereon for the use by the Owners, Occupants and their guests.

1.21 **"Property"** shall mean the real property described on Exhibit A attached hereto and incorporated herein by this reference that is subject to this Declaration.

1.22 **"Rules" or "Rules and Regulations"** shall mean the rules and regulations adopted by the Board, if any, adopted and amended from time to time by the Board.

1.23 **"Visible from Neighboring Property"** shall mean, with respect to any given object, visible to a person six feet tall, standing on any part of neighboring property at an elevation no greater than ground level where the object is located (assuming the ground level where the person is standing is at the same height as the ground level where the object is located).

ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION

2.1 **General Declaration.** Because it is intended that the Property as presently subdivided shall be sold and conveyed to purchasers subject to this Declaration, Declarant hereby declares that the Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property. This Declaration shall run with all of the Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners, Members and their respective successors in interest. Each Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree that they and their Lot shall be subject to all of the terms, covenants, conditions, restrictions and easements of this Declaration.

2.2 **Reservation to Declarant.** There is reserved unto Declarant, its employees, agents, successors and assigns, such easements and rights of ingress and egress over, across, through, and under the Property, and any improvements now or hereafter constructed thereon as

may be reasonably necessary for the Declarant, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to: (a) engage in construction upon or to improve the Common Areas with such facilities (including, but not limited to, paving, curb and gutter, parking areas, sidewalks, parking area and sidewalk lighting, and various landscaped areas) designed for the use and enjoyment of all the Members as Declarant may reasonable determine to be appropriate; and (b) do all things reasonably necessary and proper for the construction, completion, development and sale of the Project including the construction of Dwellings and other Buildings on all or any of the Lots. If, pursuant to this reservation, the Property or any portion thereof, (including the Lots) or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County Utah unless such time is extended by the Declarant pursuant to the rights retained herein.

2.3 **Subject to Taxes, Instruments of Record.** The Property subjected to this Declaration is subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; all instruments of record which affect the Property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of -way of record.

2.4 **Form of Conveyancing.** Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. _____ contained within the **CREEKSIDE COVE SUBDIVISION** , as the same is identified in the plat recorded in the office of the County Recorder of Salt Lake County, Utah, as Entry No. _____, in Book _____, Page _____, and in the Declaration of Covenants, Conditions, Restrictions and Easements for _____, recorded in the office of the County Recorder of Salt Lake County, Utah as Entry No. _____, in Book _____, Page _____, TOGETHER WITH the rights and obligations of use and enjoyment in and to the Common Areas described and depicted on the Plat, and as provided for in said Declaration of Covenants, Conditions, Restrictions and Easements

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

**ARTICLE 3
PROPERTY RIGHTS**

3.1 **Owners' Easements of Enjoyment.** Every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Areas within the Project which shall be appurtenant to and shall pass with the title to the Owner's Lot, subject to the following provisions:

(a) the right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any roadway, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, and providing any other governmental or municipal service;

(b) the right of the Association to dedicate or transfer all or any part of the Common Areas pursuant to Article 4 of this Declaration;

(c) the right to the Declarant, prior to or after conveyance of the Common Areas to the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Areas, for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities and the construction of Dwellings and other Buildings on the Lots;

(d) the right of the Association to suspend the voting rights and the right to use of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid;

(e) the right of the Association to suspend the right of an Owner to use the Common Areas due to any infraction of the Rules for so long as the infraction continues;

(f) the right of the Association to limit the number of guests of Owners using the Common Areas; and

(g) the right of the Association to change and regulate the use of Common Areas in accordance with Section 4.6 hereof.

3.2 **Delegation of Use.** Any Owner may delegate, in accordance with and subject to any restrictions contained in the Governing Documents, such Owner's right of enjoyment to the Common Areas and the improvements thereon to such Owner's guests, tenants, or Occupants of such Owner's Dwelling.

3.3 **Owners' Easement of Enjoyment Limitations.**

(a) An Owner's easement and right of enjoyment in and to the Common Areas shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot, and such easement and right of enjoyment in and to the Common Areas shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Areas.

(b) Each Owner, his tenant, the Occupants of his Dwelling, and his guests may use the Common Areas in common with the Owners, invitees, tenants, and Occupants of the other Lots in accordance with the purposes for which it is intended without hindering or encroaching upon the lawful right of such others and in accordance with the Rules established by the Board.

3.4 **Easements for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon any Lot, an easement for such encroachment and for the maintenance of the same shall be created and does hereby exist. If any part of a Dwelling encroaches or shall hereafter encroach upon the Common Areas or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. Such easement must extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas, or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of one or more of the Buildings or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

3.5 **No Partition.** The Common Areas shall be owned by all the Owners in common, and no Owner may bring any action for partition thereof.

ARTICLE 4 THE ASSOCIATION

4.1 **The Association.** The Association is a Utah non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise modified or interpreted so as to be inconsistent with this Declaration.

4.2 **Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors of at least three (3) directors and such officers as the Board may elect or appoint, in accordance with the Articles and the Bylaws. The initial Board shall be composed of three (3) directors appointed by Declarant. The Board may also appoint various committees and appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager if it elects to appoint one.

4.3 **Powers and Duties of the Association.** The Association shall have such rights, duties and powers as set forth herein and in the Governing Documents. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Lots, Dwellings and/or Common Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

4.4 **Rules and Regulations.** By action of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of the Project; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. The Rules shall have the same force and effect as if they were set forth herein and were a part of this Declaration and may be recorded.

4.5 **Indemnification.** To the fullest extent permitted by law, the Association shall indemnify the following persons against all expenses and liabilities including, but not limited to, attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which such person may be a party, or in which such person may become involved, by reason of such person being or having served in any capacity on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the Architectural Committee):

- (a) every director and officer of the Association and every member of the Architectural Committee and any other committee of the Association;
- (b) Declarant; and
- (c) every person serving as an employee of the Association.

Any such person shall be entitled to indemnification whether or not such person is a director, officer or member of the Association or of the Architectural Committee or any other committee of the Association or is serving in any other such specified capacity at the time such expenses are incurred, provided that the Board shall determine, in good faith, that the person to be indemnified hereunder did not act, fail to act, or refuse to act with gross negligence or fraudulent or criminal intent in the performance of its duties. The foregoing rights of

indemnification shall be in addition to, and not in place of, all other rights to which such persons may be entitled at law or otherwise.

4.6 Procedure for Change of Use of Common Areas. Upon (a) adoption of a resolution by the Board stating that the then current use of a specified part of the Common Areas is no longer in the best interests of the Owners and Members, and (b) the approval of such resolution by a three quarter 75%) majority of the votes of all Members in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof, (but not including any City storm drainage related features or curb, gutter or side street lights, without the approval from the City) and in connection therewith to take whatever actions are required to accommodate the new use. Provided such new use: (i) also shall be for the common benefit of the Owners and Members, and (ii) shall be consistent with this Declaration and any recorded restrictions or zoning regulations.

4.7 Procedure for Transfers of Common Areas. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public authority or utility (i) if the transfer or dedication does not have a substantial adverse effect on the enjoyment of the Common Areas by the Members or the residents, or (ii) if required by a recorded subdivision plat, a zoning stipulation or an agreement with the City, effective prior to the date hereof. Except as authorized in (i) or (ii) above, no such dedication or transfer shall be effective without the approval of a three quarter 75%) majority of the vote the Members, voting in person or by proxy at a meeting called for such purpose. The Association shall have the right to change the size, shape or location of the Common Areas, to exchange the Common Areas for other property or interests which become Common Areas, and to abandon or otherwise transfer Common Areas, (to a non-public authority) upon (x) the adoption of a resolution by the Board stating that ownership and/or use of the relevant Common Areas is no longer in the best interests of the Owners and Members, and that the change desired shall be for their benefit and shall not substantially adversely affect them, (y) the approval of such resolution by a three quarter 75%) majority of the votes of the Members, voting in person or by proxy, at a meeting called for such purpose, and (z) the approval by the City.

4.8 Power of Attorney. Each Owner, by acceptance of a deed to a Lot, appoints the Association or its designated representative, as his, her or its attorney-in-fact to execute, deliver, acknowledge, and record, for and in the name of such Owner, such deeds of easement licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board or its authorized representative, to further establish or effectuate the provisions of Section 4.6 and Section 4.7. This power is for the benefit of each and every Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS

5.1 **Membership.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Tenants and non-Owner Occupants of Dwellings shall not be Members of the Association.

5.2 **Voting Rights.** The Association shall have two (2) classes of voting Membership:

(a) **Class A Membership.** The Class A Members shall be all Owners with the exception of the Declarant. Each such Owner shall be entitled to one (1) vote for each Lot owned. 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 as such Owners among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B Membership.** The Class B Member shall be the Declarant and shall be entitled to six (6) votes for each Lot owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of the first to occur of the following events:

(i) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or

(ii) The 31st day of December, 2008; or

(iii) When, in its sole discretion, the Declarant so determines.

5.3 **Transfer of Membership.** The rights and obligations of the Owner of a Class A Member shall not be assigned, transferred, pledged, designated, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot and then only to the transferee of ownership to the Lot, A transfer of ownership to a Lot may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to automatically transfer the membership(s) appurtenant to said Lot to the new Owner thereof.

5.4 **Amplification.** The provisions of this Article 6 may be amplified by the Articles and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners or Declarant set forth in this Declaration.

ARTICLE 6 COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 **Creation of the Lien and Personal Obligation of Assessments.** Declarant covenants for each Lot, and each Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association: (1) annual assessments and (2) special assessments. Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest costs and reasonable attorneys' fees including collection costs, shall be a charge on the Lot and shall be a continuing lien thereon as well as the personal obligation of the Person who was the Lot Owner at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the Lot Owner's successors in title, unless expressly assumed, but shall at all times remain as a lien on the Lot.

6.2 **Capital Reserve Fund.** To ensure that the Association shall have adequate funds to meet its reserve amounts, each Person who is the initial purchaser of a Lot (other than the Declarant) shall pay to the Association immediately upon becoming the Owner of a Lot a sum equal to one-twelfth (*1/12th*) of the current annual assessment for the Lot ("Capital Reserve Fee"). Funds paid to the Association pursuant to this Section 6.2 are to be used by the Association for the purpose of establishing reserves. Such funds may only be used to establish a replacement and repair reserve account or to apply towards repair, replacement and reconstruction of improvements within the Common Areas. Payments made pursuant to this Section 6.2 shall be non-refundable and shall not be considered as an advance payment of any assessments levied by the Association pursuant to this Declaration.

6.3 **Transfer Fee.** In addition to the Capital Reserve Fee referred to in Section 6.2, each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot, other than the first Owner of the Lot, a transfer fee in such amount as is established from time to time by the Board to cover the expenses of the Association (or its management/accounting company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto.

6.4 **Reserve Studies.** The Board shall periodically obtain reserve studies and updates to assist the Board in determining an appropriate amount for repair and replacement reserves for the Association; provided, however, (i) no such report or study shall be required until at least three (3) years have elapsed following the date assessments begin to accrue; and (ii) the results of any such studies and reports shall be advisory only, and the Board shall have the right to provide for reserves which are greater or less than those shown in the study; and (iii) in establishing replacement and repair reserves for the Association, in addition to the recommendations of any such studies or reports and other relevant factors, the Board may take into account (a) the past incidences of required repairs at the Property; and (b) projected funds available to the Association pursuant to future Capital Reserve Fees paid pursuant to Section 7.2 of this Declaration.

6.5 **Purpose of Assessments.** In order to promote civic and social betterment for the common good of the Members of the Association, the assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents and Owners

of the Project in relation to the Common Areas and for: (a) the improvement and maintenance of the Common Areas landscaping, if any; (b) the costs of insurance required to be maintained by the Association; (c) the operating costs of the Association; and (d) any other costs or expenses incurred by the Association in connection with fulfilling its obligations under this Declaration.

6.6 **Maximum Annual Assessment.** Commencing when there is a certificate of occupancy granted on a home on a Lot, and until December 1, 2007, the maximum annual assessment shall be Six Hundred Dollars (\$600.00) per Lot. The annual assessment shall be payable annually, semi-annually, quarterly, or monthly as determined by the Board.

(a) From and after December 1, 2007, the maximum annual assessment shall automatically increase without a vote of the Members by an amount which is equal to the greater of: (i) five percent (5%) of the maximum assessment for the previous year; or (ii) a percentage equal to the average rate of change of the Consumer Price Index (the "cpr") for the most recent past twelve (12) months. For the purposes hereof, CPI shall mean the Monthly Labor Review by the United States Department of Labor Statistics, designated "Consumer Price Index--U.S. City Average for Urban Wage Earners and Clerical Workers, 1982-84 Equals 100, All Items." The maximum annual assessment automatically increases each year, even if the actual assessment does not increase.

(b) In addition to Section 6.6(a) above, the maximum annual assessment during each fiscal year of the Association shall be automatically increased by the amounts of any increases in insurance rates charged to the Association; and

(c) From and after December 1, 2007, the maximum annual assessment may be increased above the amount indicated in Section 6.6(a) above by a vote of more than three fourths (75%) of the votes who are voting in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

6.7 **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy in any assessment year other special assessments to defray the cost of operating the Association; provided, however, that any such assessments shall have the assent of not less than three fourths (75%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.8 **Special Individual Lot Assessments.** The Board may levy assessments against an individual Lot, or Lots, and the Owner or Owners thereof, shall reimburse the Association for those costs incurred in connection with that Lot or Lots thereof properly chargeable by the terms hereof to a particular Lot (such as, but not limited to, late charges, enforcement charges,

and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines and sets forth in a written notice to the Owners subject thereto. Additionally, until such time as real estate taxes and assessments are split into separate tax bills for each Lot, the Association shall have the right to pay the real estate taxes and assessments attributable to the Project in the event the same have not been paid, when due, and assess each Owner for his, her, or its share of such real estate taxes and assessments as a special individual Lot assessment. The share of those taxes and assessments attributable to a Lot shall be computed by multiplying the total taxes and assessments for all of the Project by the number of Lots. The calculation by the Association of the Lots' shares of taxes and assessments shall be binding upon all Owners.

6.9 Notice and Quorum for any Action Authorized Under Sections 6.6 and 6.7.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 6.6 and 6.7 shall be sent to all Members not less than fifteen (15) 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 sixty percent (60 %) of all the 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 notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.10 Uniform Rate of Assessment. The annual assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual, quarterly, or monthly basis, as designated by the Board.

6.11 Exception for Declarant.

(a) Notwithstanding anything in this Declaration to the contrary, the annual assessments for each Lot which Declarant owns shall be an amount equal to twenty-five percent (25%) of the annual assessments to all other Lot Owners in the Project plus pro rata property taxes for the Common Areas times the number of Lots owned by Declarant, except that Declarant shall pay and be liable for the full assessment amount for any Lots owned by Declarant which are being used by Declarant as model homes or otherwise being used and occupied for residential purposes (but not sooner than the closing of the first Lot to a residential homebuyer). Any Owner renting or leasing a Lot to Declarant which is not being occupied for residential purposes shall pay twenty-five percent (25%) of the annual assessment for such Lot plus pro rata property taxes for the Common Areas times the number of Lots owned by such Owner.

(b) Declarant reserves the right, in its sole and exclusive discretion, to subsidize the Association (rather than paying assessments under Section 6.11 (a)) for the amount by which (i) the actual cost and expense of operating and administering the Association and maintaining reasonable reserves for maintenance, replacement and

repairs and for contingencies, all as provided in this Declaration, exceeds (ii) the total amount of assessments levied against and collected from Owners other than Declarant. Notwithstanding the foregoing, Declarant shall have no obligation to fund to or for the account of the Association any amounts under this Section 6.11(b) after such time as the Declarant no longer owns any Lots. The subsidy required of Declarant under this section may in the sole discretion of Declarant be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing. The Association shall have the right to enter into written or oral contracts with Declarant for the contribution of such goods or services for such purpose. Nothing in this Section 6.11(b) or elsewhere in this Declaration shall be deemed to impose on the Association (or Declarant) any duty whatsoever to refrain from increasing (or from causing the Association to increase) the assessments from fiscal year to fiscal year, or from levying special assessments, all to the extent otherwise permitted by this Declaration.

6.12 Date of Commencement of Annual Assessments: Due Date. The annual assessments provided for herein shall commence as of the first day of the month following the first conveyance by Declarant to a residential homebuyer of a Lot within the Project. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by a representative of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as to the matters described therein. If the amount of the annual assessment is not fixed by the Board thirty (30) days prior to the next fiscal year, then the current assessment shall be used until the Board establishes the next annual assessment. Failure by the Board to notify the Owners of the new annual assessment shall not relieve said Owners of assessments due the Association.

6.13 Effect of Non-Payment of Assessments: Remedies of the Association Any assessment not paid within fifteen (15) days after the due date shall be subject to a late payment charge equal to the greater of Fifteen Dollars (\$15.00) or ten percent (10%) per annum interest on the amount unpaid, which shall be assessed on the amount owing from the date of delinquency until such time as it is paid, but in no event exceeding the maximum rate or amount allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of his Lot. In addition, the Board may, in its discretion, require an Owner and any predecessor in interest who was in arrears at the time of a voluntary conveyance to pay a late charge, in an amount to be determined by the Board, but in no event exceeding the maximum rate or amount allowed by law, for delinquency in the payment of Assessments which are fifteen (15) days or more overdue.

6.13.1 **Enforcement by Suit** The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, from the date of delinquency, court costs, reasonable attorneys' fees, late fees, collection costs and lien fees in such amount as the court may adjudge against the delinquent Owner.

6.13.2 **Enforcement by Loss of Services** If an Owner fails or refuses to pay any assessment when due, the Association, after giving notice and an opportunity to be heard in accordance with notice provisions set forth herein, may terminate the Owner's right to receive utility services paid as a common expense, and terminate the Owner's right of access.

- A. **Notice.** The Owner will be notified in writing 48 hours before terminating utility services or right of access. The notice will contain the amount of the assessment due, including any interest or late payment fee, and the right to request a hearing.
- B. **Hearing.** An Owner who is given notice under Subsection A. may request an informal hearing to dispute the assessment by submitting a written request to the Association within 14 days from the date the notice is received. If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility service to the unit.

6.13.3 **Lessor Owner Failure or Refusal to Pay Assessments.** If an Owner who is leasing the Lot fails to pay any assessment for a period of more than 60 days after it is due and payable, the Association may, after giving notice in accordance with Subsection A., demand the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid.

- A. **Notice.** The Association shall provide the Owner with written notice of its intention to demand full payment from the tenant. This notice shall:
 - 1. provide notice to the Owner that full payment of remaining lease payments will commence with the next monthly or other periodic

payment unless the assessment is received within 5 business days of the date of the notice;

2. state the amount of the assessment due, including any interest or late payment fee;
3. state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and
4. provide the requirements and rights described in Sections 6.13 c) A through E.

B. If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the Association may deliver written notice to the tenant demanding future payments due to the Owner be paid to the association pursuant to Subsection C. A copy of this notice will be mailed to the Owner. The notice provided to the tenant shall state:

1. that dues to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the management committee's intent to collect all lease payments due to the Association pursuant to this Article 6;
2. that until notification by the Association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the Association; and
3. payment by the tenant to the Association in compliance with this Section 6 will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Section 6 suit or other action may not be initiated by the Owner against the tenant for failure to pay.

C. All funds paid to the Association pursuant to this Article 6. shall be deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the Association.

D. Within five business days of payment in full of the assessment, including any interest or late fee payment fee, the Association must notify the

tenant in writing that future lease payments are no longer due to the Association. A copy of this notification must be mailed to the Owner.

- E. As used in this Article 6, "lease" or "leasing" means regular, exclusive occupancy of a unit by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including fee, service, gratuity, or emolument.

6.13.4 **Enforcement by Lien Foreclosure.** There is hereby created a claim of lien on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of Lots covered by this Declaration, together with interest thereon at the rate of ten percent (10%) per annum or such lower rate that is equivalent to the maximum rate allowed by law, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to record in the Office of the Recorder of Salt Lake County, Utah such claim of lien on behalf of the Association against the Lot of the defaulting Owner. The Association shall also mail to the defaulting Owner a copy of such claim of lien, but the failure of the Association to mail to the Owner a copy of such claim of lien shall not affect the validity or enforceability of the claim of lien. Such claim of lien shall contain substantially the following information: (1) the name of the delinquent Owner; (2) the legal description and street address of the Lot against which the claim of lien is made; (3) the total interest thereon, collection costs, and reasonable attorneys' fees; (4) a statement that the claim of lien is made by the Association pursuant to this Declaration, and (5) a statement that a lien is claimed against such Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such claim of lien, the lien claimed shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien, except only tax liens for real property taxes and liens which are specifically described in Section 6.14. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Utah, as the same may be changed or amended. If the Association elects to foreclose the lien for unpaid assessments in the same manner as a nonjudicial

trustee's sale under a trust deed, then each Owner by accepting a deed to such Owner's Lot hereby designates the Association as the beneficiary under such trust deed and hereby irrevocably appoints First American Title Insurance Company as trustee under such trust deed and hereby confers upon said trustee the power of sales set forth with particularity in Section 57-1-23 of the Utah Code, as it may be amended. In addition, each Owner hereby transfers in trust to said trustee all of his right, title and interest in and to such Owner's Lot for the purpose of securing such Owner's performance of the obligation set forth therein. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure or trustee's sale and to purchase, acquire, hold, lease, mortgage, and convey any such Lot. In the event of such foreclosure or trustee's sale, reasonable attorneys' fees, court costs, trustee's fees, title search fees, interest and all other costs and expenses shall be allowed to the extent pennitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

6.14 **Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed that does not allow, by the terms of the mortgage/trust deed or stated policy of the mortgagee/trust deed beneficiary, such lien to take priority over said first mortgage/trust deed lien. The sale or transfer of any Lot shall not affect any assessment lien recorded prior to such sale or transfer. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, foreclosure or trustee's sale, or any proceeding in lieu thereof, that does not allow, by the terms of the mortgage/trust deed or stated policy of the mortgagee/beneficiary, such lien to take priority over said first mortgage/trust deed lien shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

6.15 **No Offsets.** All assessments and charges shall be payable in the amount specified in the assessment or by notice, and no offsets against the specified amount shall be permitted for any reason, including, but not limited to, a claim that (a) the Association, the Board, or Declarant is not properly exercising its duties and powers as provided in this Declaration; (b) assessments for any period exceeding expenses for the Association; or (c) an Owner has made, or elects to make, no use of the Common Areas.

ARTICLE 7 USE RESTRICTIONS

7.1 **Permitted Uses and Restrictions -Residential.** The permitted uses, easements, and restrictions for all Property covered by this Declaration shall be as follows:

(a) **Single Family Residential Use.** All Lots shall be used, improved, and devoted exclusively to single family residential use. No trade or business may be conducted on any Lot except that an Owner may conduct a business activity within the

Dwelling on the Lot so long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Dwelling; (2) the business activity conforms to all applicable zoning ordinances or other legal requirements for the Property; (3) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners within the Property; (4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of any portion of the Property or other Owners, and (5) the business actually conducted on a Lot does not involve any on-site employees other than family members residing on the Lot, all as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section 7.1(a) shall be construed to have ordinary, generally accepted meanings. These shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis, which involves the provision of goods or services to persons, and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part time; (2) such activity is intended or does generate a profit; or (3) a license is required for such activity. Lots owned by Declarant or its designee or assignee may be used as model homes and for sales and construction offices. Such use is for the purpose of enabling Declarant or its designee or assignee to sell Lots within the Property until such time as all of the Lots owned by Declarant or its designee or assignee have been sold or leased to purchasers or tenants.

(b) **Renting and Leasing Restrictions** . No Dwelling or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental under which Occupants are provided customary hotel services such as room service for food and beverages, maid service", the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Dwelling only. Leasing must be for thirty days (30) or longer. A copy of the lease agreement evidencing any such lease must be provided to the Board. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions of this Declaration, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Governing Documents shall be a default under the lease.

(c) **Antennas**. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained so as to be Visible from Neighboring Property, unless approved by the Board.

(d) **Utility Service**. All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be contained in conduits or cables installed and maintained underground or concealed in, under, or on buildings or other structures approved by the Board.

Temporary power or telephone structures incident to construction activities and approved by the Board are permitted.

(e) **Improvements and Alterations.** No improvements, alterations, repairs, excavation or other work which in any way alters the exterior appearance of any Dwelling on a Lot or in the Common Areas or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to a home buyer shall be made without the prior approval of the Board. No building, fence, wall, or other structure or in the Common Areas shall be erected, maintained, improved, altered, made or done on a Lot or in the Common Areas without the prior written approval of the Board.

(f) **Trash Containers and Collection.** No garbage or trash shall be placed or kept on any Lot or other portion of the Property except in covered sanitary containers or in the Common Areas except in the enclosed container in the Dumpster Area. In no event shall such containers on any Lot be maintained so as to be Visible from Neighboring Property except to make same the available for collection and, then, only the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.

(g) **Machinery, Equipment and Structures.** No machinery or equipment of any kind shall be placed, operated or maintained upon the Property except usual and customary equipment and machinery used in connection with the use, maintenance or construction of permitted improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Project.

(h) **Restriction on Further Subdivision.** No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion *less* than all of any such Lot, shall be conveyed or transferred by any Owner. No Lot may be converted into a condominium or cooperative or other similar type of entity. No further covenants, conditions, restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions, and without such approval any such, restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use is in compliance with this Declaration,

(i) No sign of any nature (other than a name and address sign, not exceeding 9" x 30" in size) shall be permitted on any Lot; provided, however, that one sign of not more than five square feet may be temporarily erected or placed on a Lot for the purpose of advertising the Lot for sale or rent; and provided further the Declarant or its designee or assignee may erect any signs during construction. These restrictions shall not apply to the Association in furtherance of its powers and purposes herein set forth.

(j) **Utility Easements.** There is hereby created a blanket easement upon, across, over and under the Property for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, storm drain water, sewer, gas, telephone, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment, and to affix and maintain wires, circuits and conduits on, in and under footings, foundations, roofs and exterior walls of the Buildings or other improvements to the Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated except as initially developed and approved by the Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements.

(k) **Animals.** No animal or fowl, other than a reasonable number of generally recognized house or yard pets, shall be (i) maintained on any Lot or in any Dwelling covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes; or (ii) permitted to make an unreasonable amount of noise, or create a nuisance. No structure for the care, housing or confinement of any animal or fowl shall be maintained so as to be Visible from Neighboring Property.

(l) **Temporary Occupancy.** No temporary building, structure or vehicle of any kind shall be used as a residence, either temporary or permanent.

(m) **Trailers, Boats, Aircraft, and Motor Vehicles.** No automobile, motorcycle, motor bike, motorized hang glider, or other motor vehicle shall be constructed, reconstructed or repaired on any Lot, street, or Common Area within the Project so as to be Visible from Neighboring Property, and no inoperable vehicle may be stored or parked so as to be Visible from Neighboring Property, except in the event of an emergency.

(n) **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to a Lot and no odors or loud noises shall be permitted to arise or emit therefrom or from any Dwelling thereon, so as to create a nuisance, render any such Property or any portion thereof or activity thereon unsanitary, unsightly, offensive or detrimental to the Lot or person in the vicinity thereof. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such Property. The Board in its sole discretion shall have the right to determine the existence of any violation of this Section and its determination shall be final and enforceable as provided herein.

(o) **Mineral Exploration.** No Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, or minerals of any kind.

(p) **Diseases and Insects.** No Owner or resident shall permit any thing or condition to exist upon the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

(q) **Drainage Easement.** There is hereby created a blanket easement for drainage of surface water runoff on, over and across the Property. No Owner shall obstruct, divert, alter or interfere with any portion of the Property that results in the obstruction, diversion, alteration or interference of any drainage of surface water runoff on, over and across the Property. Each Owner shall at his own expense maintain the drainage ways and channels on his Lot in proper condition free from obstruction.

(r) **Parking.** It is the intent of the Declarant to eliminate on-street parking as much as possible. Vehicles of all Owners, residents, guests and invitees are to be kept in garages, carports, residential driveways on each Lot. No vehicle which is Visible from Neighboring Property may be parked on gravel, grass, landscaped or other non-concrete areas of a Lot. Limited, short-term on-street parking will be limited to the designated parking areas in the Common Area . The Board may remove, or cause to be removed, any unauthorized vehicle at the expense of the Owner thereof in any manner consistent with applicable law with the cost there of to be accessed as a Special Assessment.

(s) **Health, Safety and Welfare.** In the event uses, activities and facilities in the Common Area are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence as part of the Rules.

(t) **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of improvements or signs necessary or convenient to the development or sale of Lots within the Property.

(u) **Structural Integrity of Buildings.** Nothing shall be done in any Dwelling or in, on, or under or the Common Areas, that will impair the structural integrity of any Building or structurally change the same or any part thereof except as is otherwise provided in this Declaration.

7.2 **Use of Common Areas.** Except as otherwise provided herein, the Common Areas shall be used in general for the exclusive benefit of the Owners, for the furnishing of services and facilities for which the same are reasonably intended and for the enjoyment to be derived from such reasonable and proper use, without hindering the exercise of or encroaching upon the right of any other Owner to utilize the Common Areas, provided that no unlawful use

shall be permitted. The Common Areas shall not be used by Owners for storage of supplies, material or personal property of any kind. Except as otherwise provided herein, no activity shall be carried on nor condition maintained by any Owner upon the Common Areas which spoils the appearance of the Property or hinders or encroaches upon the right of any other Owner to utilize the Common Areas as reasonably intended.

7.3 **Maintenance by Association.** The Association has the right and may, at any time, as to any Common Areas or other Property placed under its jurisdiction without any approval of the Owners being required:

(b) Reconstruct, repair, replace or refinish any improvement or portion thereof located on the Common Areas or the above described easement areas (to the extent that such work is not the responsibility of any governmental entity or utility);

(c) Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, and parking area (to the extent that such work is not done by a governmental entity or utility, if any such entity is responsible for the maintenance and upkeep of such area);

(e) Provide snow and ice removal for the streets, sidewalks, and such other areas within the Project as determined by the Board in its discretion;

(f) Place and maintain upon the Common Areas such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof;

(g) Remove all papers, debris, filth and refuse from the Common Areas and wash or sweep paved areas as required, and clean and relamp lighting fixtures as needed;

(h) Repaint striping, markers, directional signs, and similar identification or safety devices as necessary;

(i) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Areas;

(j) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and the Project and the beauty thereof, and to maintain or increase the value of the community in accordance with the general purposes specified in this Declaration;

(k) The Board shall be the sole judge as to the appropriate maintenance within the Common Areas; and

(l) Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a project manager or agent or to other persons or entities, public or private.

(m) The City is not responsible for and will not accept maintenance of any portion of the Common Areas including, without limitation, streets, sidewalks, improvements or facilities thereon or landscaped areas within the Project. All portions of the Common Areas are to be maintained by the Association.

(n) In the event any Common Areas are damaged or destroyed by an Owner or any of his guests, tenants, licensees, or agents, such Owner does hereby authorize the Association to repair said damaged area. Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall, to the extent permitted under law, be paid by said Owner to the Association, and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

ARTICLE 8 CASUALTY AND INSURANCE

8.1 **Casualty.** In the event of destruction or damage to part or all of the Common Areas, the provisions of this Section 8.1 shall apply:

(a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be promptly carried out.

(b) If proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Owners shall be subject to a special assessment for any deficiency.

(c) Any insurance proceeds remaining after repairing or replacing the damaged improvements shall be applied to reserves for future repairs and replacements.

(d) Any reconstruction or repair which is required to be carried out by this Article shall be accomplished at the request and direction of the Board.

(e) The term "reconstruction," as used in this Article, shall mean restoring the damaged Building to substantially the same condition in which it existed prior to the fire or other disaster, with each Building and the Common Areas having substantially the same vertical and horizontal boundaries as before.

8.2 Insurance

(a) **Fire and Extended Coverage.** The Board shall have the authority to, and may obtain, insurance for fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Areas or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location, and use including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times (i) that is sufficient to prevent the Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and (ii) that is not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). If acquired by the Association, this insurance shall also:

(i) provide that no assessment may be made under the policy against a first mortgage lender, or its insurer or guarantor that does not allow such assessment by the terms of the mortgage/trust deed or stated policy of the mortgagee/trust deed beneficiary and, that any assessment under such policy made against others may not become a lien on a Lot and its appurtenant interests superior to a interest of the first mortgage lender that does not allow, by the terms of the mortgage/trust deed or stated policy of the mortgagee/trust deed beneficiary subordination to such assessment;

(ii) be written in the name of the Association for the use and benefit of the Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners;

(iii) have a deductible amount no greater than the lesser of one thousand dollars or one percent of the policy face amount;

(iv) be paid for by the Association through annual assessments of the Owners;

(v) contain a waiver of subrogation of rights by the carrier as to the Association, to its officers and directors, and to all Owners;

(vi) provide that the insurance shall not be prejudiced by any acts or omissions of individual Owners who are not under the direct control of the Association; and

(vii) be primary, even if an Owner has other insurance that covers the same loss.

(b) **Liability Insurance.** The Association shall obtain and maintain a commercial policy of general liability insurance covering all of the Common Areas, public ways, and any other areas under the Association's supervision insuring the Association, the directors of the Board, and the Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (i) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (ii) two million dollars, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, Lots and Buildings, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party.

(c) **Fidelity Coverage.** The Board may obtain and maintain fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (i) an amount equal to the Association's reserve funds plus three months' assessments on all Lots, and (ii) the maximum amount that will be in the custody of the Association or the Manager at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association and any insurance trustee. Any Manager who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage no less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.

(d) **Hazard Insurance Carrier.** Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Utah which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-international edition, a "BBBQ" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

(e) **Other Association Insurance.** In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine.

(f) **Insurance Representative: Power of Attorney.** There may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Owners, as their interests may appear. This power is for the benefit of each and every Owner, the Association, and the Project, and runs with the land, and is coupled with an interest.

(g) **Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner, and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

(i) **Worker's Compensation and Employer's Liability Insurance.** The Board shall acquire workmen's compensation and employer's liability insurance and all

other similar insurance in respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(j) **Directors and Officers Liability.** The Association shall obtain and continue in effect insurance for the protection of the directors and officers of the Association from personal liability in the management of the Association's affairs.

ARTICLE 9 ALTERNATIVE DISPUTE RESOLUTION

9.1 **Alternative Method for Resolving Disputes.** Declarant, the Association, its officers, and directors, all Owners and Members or other parties subject to this Declaration (each a "**Bound Party**") agree to encourage the amicable resolution of disputes involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 9.2 (collectively, "**Claims**") to the procedures set forth in Section 9.3.

9.2 **Claims.** Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration or relating to the design or construction of improvements on the Property shall be subject to the provisions of Section 9.3. Notwithstanding the foregoing sentence, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 9.3 (collectively "**Claims Exempt from Dispute Resolution**"):

(a) any suit or action by the Association against any Bound Party for delinquent assessments or to enforce the provisions of Article 6;

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 7;

(c) any suit between or among Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations has expired or would expire within 180 days of giving the Notice required by Section 9.3.

9.3 **Mandatory Procedures.**

(a) **Notice.** Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually referred to as a "Party," or collectively referred to as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the proposed remedy; and

(iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation and Mediation.**

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations") Claimant shall have an additional 30 days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services with substantial experience with comparable disputes.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation

notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section 9.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 9.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(c) **Termination of Mediation.** Upon Termination of Mediation, Claimant shall thereafter be entitled to submit the matter to binding arbitration. Any arbitration proceeding will (i) proceed in Salt Lake County, Utah; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code); and (iii) be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). Any arbitration proceeding will be before a single arbitrator. The parties shall use reasonable efforts to agree upon a single arbitrator within ten (10) days after written notice from one party to the other requesting arbitration. If the parties are unable to agree upon an arbitrator within such ten (10) day period, at any time thereafter either party may require that the arbitrator be selected according to the Commercial Arbitration Rules of the AAA. The arbitrator will be a neutral attorney who practices in the area of commercial real estate or business law. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any Claim. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In any arbitration proceeding, the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. In any arbitration proceeding, discovery will be permitted and will be governed by the Utah Rules of Civil Procedure. All discovery must be completed no later than 20 days before the hearing date and within 180 days of the commencement of arbitration proceedings. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with the provisions of this Declaration. The laws of the State of Utah shall apply in any arbitration proceeding without regard to its conflict of laws rules.

9.4 **Member Approval of Association Claims and Actions.** Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Association may not submit a Claim against Declarant or an affiliate of Declarant to binding arbitration upon Termination of Mediation, and (if the provisions of Section 9.3 do not apply) may not file any action against Declarant or an affiliate of Declarant arising out of or related to the design, construction, condition or sale of any part of the Property or any improvements thereon, until all of the following have occurred:

(a) In advance of the meeting described in Section 9.4(b) below, the Board has provided full disclosure in writing to all Members of all material information relating to the Claim or action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable.

(b) The Association has held a duly called meeting of its Members and the Board, at which a majority of all Class A Members (not merely a majority of those Class A Members voting in person or by proxy), voting in person or by proxy, authorize the submittal of the Claim to arbitration or the filing of the action, as applicable.

(c) The Board has authorized the submittal of the Claim to arbitration or the filing of the action, as applicable.

9.5 **Waiver.** Declarant and Owner, by accepting a deed for a Lot, as the case may be, the Association and each Owner agree to have any dispute resolved according to the provisions of this Article 9 and waive their respective rights to pursue any dispute in any manner other than as provided in this Article 9. Such parties acknowledge that by agreeing to resolve all disputes as provided in this Article 9, they are giving up their respective rights to have such disputes tried before a court or jury.

ARTICLE 10 MISCELLANEOUS

10.1 **The Declaration.** By acceptance of a deed or by acquiring any ownership interest in any portion of the Property, each Owner, his heirs, representatives, successors, transferees and assigns, binds himself, his heirs, representatives, successors, transferees and assigns, to restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Owner by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and thereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such Owner fully understands and acknowledges that this

Declaration shall be mutually beneficial, prohibitive and enforceable by the various future Owners.

10.2 **Enforcement.** Subject to Article 9 of this Declaration, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event any portion of any Lot is maintained so as to present a public or private nuisance, or substantially detract from or affect the appearance or quality of any surrounding Lot, or is used in a manner which violates this Declaration, or in the event the Owner or resident of any Lot is failing to perform its obligation under this Declaration the Association or any Owner(s) may give notice to the Owner of such Lot that unless corrective action is taken within the time frame as stated in the notice, the Association or such Owner may take, at such Owner's cost, whatever action is appropriate to complete compliance including, without limitation, appropriate legal action. Charges incurred by the Association or such Owner(s) in making any repairs or maintenance shall be borne by the violating Owner and shall be paid to the Association or such Owner(s), as appropriate on demand with interest at ten percent (10%) per annum accruing from the date said charges are incurred until paid in full. Any sum not paid hereunder by the violating Owner shall be treated as an assessment and collected in accordance with the procedures provided in Article 6.

10.3 **Severability.** Invalidation of anyone of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

10.4 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, and thereafter shall automatically extend for consecutive periods of ten (10) years each, unless there is an affirmative vote, not more than one (1) year prior to the date otherwise scheduled for commencement of the next extension of the term of this Declaration, not to renew this Declaration by a vote of three-quarters (75%) of the Owners.

10.5 **Amendment**

(a) This Declaration may be amended at any time only by the affirmative vote or written consent, or any combination thereof, of Owners representing not less than three-quarters (75%) of the Owners of the authorized votes of the Members; except that the Declarant or Board may amend this Declaration as may be requested by the FHA, VA, FHLMC or FNMA, or any government agency which requests such amendment as a condition of approving this Declaration or any federally chartered lending institution which requests such amendment as a condition to lending funds upon the security of any Lot, or as may be appropriate in the event of any such requested amendment that deletes, diminishes or alters Declarant's control of the Association and

its activities, to permit the Declarant to adopt other and different control provisions. Any amendment must be recorded.

(b) The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, to make technical corrections to correct mistakes or remove/clarify ambiguities; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property, unless any such Owner shall consent thereto in writing. Further, so long as the Class B Membership exists, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

10.6 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction, the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such action or transaction from Members entitled to vote at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned.

10.7 **Notices.** Notices provided for in this Declaration shall be in writing and shall be addressed to the last known address of the Lot Owner in the files of the Association. Notices shall be deemed delivered when mailed by United States first class, registered or certified mail addressed to the Lot Owner at such address or when delivered in person to such Owner. Owners must notify the Association of any changes of mailing address or change in ownership of the Lot.

10.8 **Condemnation.**

(a) Upon receipt of notice of intention or notice of proceedings whereby all or any part of the Property is to be taken by any governmental body by exercise of the power of condemnation or eminent domain, all Owners and first mortgagees shall be immediately notified by the Association thereof. The Association shall represent the Owners in any condemnation or eminent domain proceeding authority for acquisition of any part of the Common Areas, and every Owner appoints the Association as his/her attorney-in-fact for this purpose. The entire award made as compensation for such taking of Common Areas, including but not limited to any amount awarded as severance damages, or the entire amount received and paid in anticipation and settlement for such

taking, after deducting therefrom, in each case, reasonable and necessary costs and expenses, including but not limited to attorneys' fees, appraisers' fees and court costs (which net amount shall hereinafter be referred to as the "Award"), shall be paid to the Association as trustee for the use and benefit of any Owners and their first mortgagees as their interests may appear. The Association shall, as it is practicable, cause the Award to be utilized for the purpose of repairing and restoring the Property, including, if the Association deems it necessary or desirable, the replacement of any improvements so taken or conveyed.

(b) In the event of any taking of any Lot in the Property by eminent domain, the Owner of such Lot shall be entitled to receive the award for such taking, and after acceptance thereof, the Lot Owner and all of Lot Owners' mortgagees shall be divested of all interest in the Property if such Owner shall vacate Lot Owners' Lot as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Property or take other action. The remaining portion of the Property shall be reserved, if necessary, and this Declaration shall be amended to reflect such taking. In the event of a taking by eminent domain of more than one Lot at the same time, the Association shall participate in the negotiations and shall propose the method of division of the proceeds of condemnation where Lots are not valued separately by the condemning authority or by the court. The Association should give careful consideration of the allocation of common interests in the Common Areas in determining how to divide lump sum proceeds of condemnation. In the event any Lot Owner disagrees with the proposed allocation, such Lot Owner may submit such matter to the procedures set forth in Section 10.3.

10.9 **Waiver: Remedies Cumulative.** No failure or delay on the part of any Person in exercising any right, power or privilege hereunder and no course of dealing between or among the Persons subject hereto shall operate as a waiver of any provision hereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other right, power or privilege. Subject to the limitations of Article 10 hereof, the rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which any Person subject hereto would otherwise have. No notice to or demand upon any Person in any case shall entitle such Person to any other or further notice or demand in similar or other circumstances or constitute a waiver of rights to any other or further action in any circumstances.

10.10 **Topical Heading.** The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs of this Declaration.

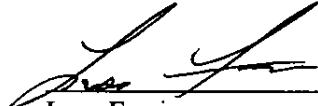
10.11 **Declarant's Rights Assignable.** The rights of Declarant under this Declaration or in any way relating to the Property may be assigned. Upon assignment, references to the "Declarant" contained herein shall refer to such assignee.

10.12 **Prior Approval.** As long as there is a Class B Membership, then if this Declaration has previously been approved by the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas, and the amendment of this Declaration.

10.13 **Common Sewer Laterals.** Declarant intends to design and construct a common sanitary sewer lateral or line from the sewer main located in a street to each Building to serve the Dwellings located within each Building. The Salt Lake City Suburban Sanitary Sewer District #1 is not responsible for and will not accept the repair, maintenance or replacement of any portion of the common sanitary sewer laterals located on, in or under the Common Areas or the Lots. Except as otherwise provided in this Declaration, the Association shall have the responsibility to repair, maintain and replace the common sanitary sewer laterals to each Building.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

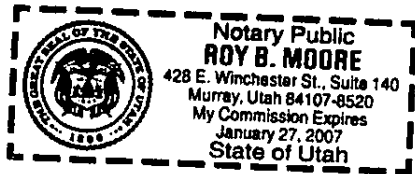
DECLARANT:



Les Ferrin

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

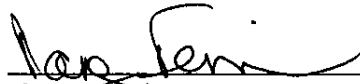
On this 28 day of March, 2006, personally appeared before me Les Ferrin, who being by me first duly sworn did say that he is the signer of the within instrument and acknowledged to me that he executed the same.





NOTARY PUBLIC

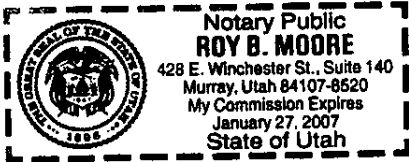
DECLARANT:



Nancy Ferrin

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

On this 28th day of March, 2006, personally appeared before me Nancy Ferrin, who being by me first duly sworn did say that she is the signer of the within instrument and acknowledged to me that she executed the same.




NOTARY PUBLIC

EXHIBIT "A"
TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR CREEKSIDE COVE SUBDIVISION
A PLANNED RESIDENTIAL UNIT DEVELOPMENT

PROPERTY DESCRIPTION

BEGINNING AT A POINT BEING S 00°18'03" W 9.90 FEET FROM THE
NORTHEAST CORNER OF LOT 15, BLOCK 32, TEN ACRE PLAT "A", BIG FIELD
SURVEY; RUNNING THENCE S 89°57' 33" W 165.00 FEET; THENCE S
00°17'00"W 3.50 FEET; THENCE S 89°57'33"W 136.10 FEET; THENCE N
00°14'56" E 121.00 FEET, THENCE N 89°57'49" E 301.21 FEET; THENCE S
00°18'03" W 117.48 FEET TO THE POINT OF BEGINNING.
CONTAINS 35,858 SQFT OR 0.82 ACRES