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FOR: UTAH STATE SCHOOL & TRUST LANDS

After recording return to:  
Ms. Alexa Wilson  
State of Utah, School and Institutional  
Trust Lands Administration  
675 E. 500 South, Suite 500  
Salt Lake City, UT 84102

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
SIENNA HILLS**

## TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	2
1.1 "Additional Covenants" .....	2
1.2 "Agency" or "Agencies" .....	2
1.3 "Annexable Property" .....	2
1.4 "Annual Assessment Period" .....	3
1.5 "Annual Assessments" .....	3
1.6 "Apartment Land Use" .....	3
1.7 "Apartment Parcel" .....	3
1.8 "Articles" .....	3
1.9 "Assessments" .....	3
1.10 "Assessment Lien" .....	3
1.11 "Association" .....	3
1.12 "Association Rules" .....	3
1.13 "Board" .....	3
1.14 "Business Park Use" .....	3
1.15 "Bylaws" .....	3
1.16 "City" .....	3
1.17 "City Design Guidelines" .....	4
1.18 "Cluster Residential Use" .....	4
1.19 "Commercial Office" .....	4
1.20 "Community Center" .....	4
1.21 "Common Area" .....	4
1.22 "Common Expenses" .....	5
1.23 "Community Center Use" .....	5
1.24 "Condominium Land Use" .....	5
1.25 "Condominium Parcel" .....	5
1.26 "Condominium Unit" .....	5
1.27 "Covered Property" .....	5
1.28 "Declarant" .....	5
1.29 "Declarant Affiliate" .....	5
1.30 "Declarant Control Period" .....	6
1.31 "Declaration of Annexation" .....	7
1.32 "Declaration" .....	7
1.33 "Delinquent Amount" .....	7
1.34 "Design Review Committee" or "DRC" .....	7
1.35 "Design Guidelines" or "DRC Guidelines" .....	7
1.36 "Developer Owner" .....	7
1.37 "Development Agreement" .....	7
1.38 "District" .....	7
1.39 "District Assessment" .....	8
1.40 "District Association" .....	8
1.41 "District Declaration" .....	8
1.42 "District Expenses" .....	8
1.43 "Dwelling Unit" .....	8
1.44 "Eligible Mortgage Holder" .....	8
1.45 "Event of Foreclosure" .....	9
1.46 "Exempt Property" .....	9

**TABLE OF CONTENTS**  
(cont'd)

		Page
1.47	"First Mortgage" .....	9
1.48	"First Mortgagee" .....	9
1.49	"Governing Documents" .....	9
1.50	"Improvement" .....	9
1.51	"Hospital and Health Care Uses" .....	9
1.52	"Industrial and Warehouse Use" .....	10
1.53	"Interior Square Footage" .....	10
1.54	"Land Use Classification" .....	10
1.55	"Limited Common Area" .....	10
1.56	"Lot" .....	10
1.57	"Maintenance Assessments" .....	10
1.58	"Master Development Plan" .....	10
1.59	"Member" .....	11
1.60	"Membership" .....	11
1.61	"Mixed Land Use" .....	11
1.62	"Net Acre" .....	11
1.63	"Non-Developer Owner" .....	11
1.64	"Non-Residential Parcel" .....	11
1.65	"Occupant" .....	11
1.66	"Owner" .....	11
1.67	"Parcel" .....	11
1.68	"Person" .....	12
1.69	"Plat" .....	12
1.70	"Resident" .....	12
1.71	"Residential Land Use" .....	12
1.72	"Reviewing Authority" .....	12
1.73	"School Use" .....	13
1.74	"Single Family" .....	13
1.75	"Single Family Parcel" .....	13
1.76	"Single Family Residential Use" .....	13
1.77	"Special Assessments" .....	13
1.78	"Special Use Fees" .....	13
1.79	"State Commercial Tracts" .....	13
1.80	"Tenant" .....	13
1.81	"Tract Declaration" .....	13
1.82	"Visible From Neighboring Property" .....	14
1.83	"Voting Group" .....	14
1.84	"Voting Member" .....	14
1.85	"Washington Parkway Agreement" .....	14
ARTICLE II	PROPERTY AND PERSONS BOUND BY THIS DECLARATION .....	14
2.1	General Declaration .....	14
2.2	Right to Make Changes .....	15
2.3	Owners and Occupants Bound .....	15
ARTICLE III	EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA .....	16
3.1	Blanket Drainage Easements .....	16

**TABLE OF CONTENTS  
(cont'd)**

	Page
3.2 Easements and Rights of Enjoyment .....	16
3.3 Delegation of Use .....	18
3.4 Waiver of Use .....	19
3.5 Acceptance of Certain Common Area and Other Areas.....	19
3.6 Exclusive Use and Benefit Easements.....	20
<b>ARTICLE IV ARCHITECTURAL AND LANDSCAPING RESTRICTIONS AND CONTROL.....</b>	<b>21</b>
4.1 Control By Declarant of All Architectural and Landscaping Matters .....	21
4.2 Design Guidelines .....	24
4.3 Power and Duties Upon Assignment to Design Review Committee .....	25
4.4 Obligation to Obtain Approval.....	26
4.5 Organization of Design Review Committee.....	26
4.6 Waiver and Variance .....	27
4.7 Liability .....	27
4.8 Appeal to Board.....	28
4.9 Fees .....	28
4.10 Inspection .....	29
4.11 City Design Guidelines .....	29
4.12 State Commercial Tracts and other Annexable Property .....	30
<b>ARTICLE V LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS.....</b>	<b>31</b>
5.1 Land Use Classifications .....	31
5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Land Use Classifications .....	34
5.3 Covenants, Conditions, Restrictions and Easements Applicable to Single Family Residential Use, Residential Apartment Use, Residential Condominium Use, and Cluster Residential Use .....	44
5.4 Covenants, Conditions and Restrictions Applicable to Non-Residential Use and Mixed Use .....	55
5.5 Variances .....	55
<b>ARTICLE VI ORGANIZATION OF ASSOCIATION.....</b>	<b>55</b>
6.1 General Purpose and Charge .....	55
6.2 Board of Directors and Officers .....	56
6.3 Managing Agent .....	56
6.4 Association Rules .....	57
6.5 Personal Liability .....	57
6.6 District Associations .....	57
6.7 Mergers or Consolidations .....	58
6.8 Contracts with Others.....	58
<b>ARTICLE VII MEMBERSHIPS AND VOTING.....</b>	<b>59</b>
7.1 Votes of Owners.....	59
7.2 Membership is Appurtenant to Ownership .....	60
7.3 Declarant .....	60

**TABLE OF CONTENTS**  
(cont'd)

	Page
7.4 Voting Classes .....	60
7.5 Right to Vote .....	61
7.6 Members' Rights .....	62
7.7 Voting by District; Special Services .....	62
7.8 Control by Declarant, and Rights of the Class B Member .....	64
7.9 Voting Groups .....	64
7.10 Transfer of Membership .....	65
7.11 Compliance with Law .....	65
<b>ARTICLE VIII ASSESSMENTS AND CREATION OF LIEN .....</b>	<b>66</b>
8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner .....	66
8.2 Annual Assessments .....	66
8.3 Annual Assessment Period .....	67
8.4 Association's Rights in Spending Funds from Year to Year .....	67
8.5 Rate of Assessment .....	68
8.6 Obligation of Developer Owner .....	69
8.7 Obligation of Non-Developer Owner .....	71
8.8 Maintenance Assessments .....	71
8.9 District Assessments .....	72
8.10 Fines and Penalties .....	73
8.11 Special Assessments .....	74
8.12 Billing and Collection Procedures .....	75
8.13 Collection Costs and Interest on Delinquent Amounts .....	75
8.14 Working Capital Fund .....	76
8.15 Exempt Property .....	76
8.16 Exemption from Assessment Lien .....	76
8.17 Community Enhancement Fee .....	77
8.18 Declarant's Exemption .....	78
8.19 Limited Obligation of Declarant and Developer Owners to Pay Deficiencies .....	79
8.20 City Development and Impact Fees .....	81
8.21 "Washington City Development Agreement" .....	81
<b>ARTICLE IX ENFORCEMENT OF THE ASSESSMENT LIEN .....</b>	<b>82</b>
9.1 Association Remedies to Enforce Assessments .....	82
9.2 Subordination of Assessment Lien .....	82
<b>ARTICLE X MAINTENANCE .....</b>	<b>83</b>
10.1 Common Area and Public Rights-of-Way .....	83
10.2 Standard of Care .....	84
<b>ARTICLE XI RIGHTS AND POWERS OF ASSOCIATION .....</b>	<b>84</b>
11.1 Rights, Powers and Duties of the Association .....	84
11.2 Provisions of the Planned Community Development Regulations .....	85
11.3 Rules and Regulations .....	85
11.4 Association's Rights of Enforcement .....	85
11.5 Enforcement Methods and Means .....	85

**TABLE OF CONTENTS**  
(cont'd)

	Page
11.6 Contracts with Others; Bulk Service Agreements.....	86
11.7 Limited Common Area.....	88
<b>ARTICLE XII EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA.....</b>	<b>89</b>
12.1 Eminent Domain.....	89
12.2 Authority to Purchase Insurance .....	89
12.3 Individual Responsibility .....	90
12.4 Insurance Claims.....	90
<b>ARTICLE XIII ANNEXATION, DECLARATION OF ANNEXATION AND DE-ANNEXATION .....</b>	<b>91</b>
13.1 Annexation of Annexable Property.....	91
13.2 Declarations of Annexation .....	91
13.3 Annexation by Owners .....	92
13.4 De-Annexation of Covered Property .....	92
13.5 Protection of Declarant.....	93
<b>ARTICLE XIV TERM; AMENDMENTS; TERMINATION .....</b>	<b>93</b>
14.1 Term; Method of Termination .....	93
14.2 Amendments .....	94
14.3 Termination of Association; Condemnation Proceeds etc.....	95
<b>ARTICLE XV MISCELLANEOUS .....</b>	<b>96</b>
15.1 Additional Covenants .....	96
15.2 Communications Services Agreement .....	97
15.3 Enforcement Rights .....	98
15.4 Interpretation of the Covenants .....	98
15.5 View Impairment.....	98
15.6 Assumption of Risk.....	98
15.7 Severability.....	100
15.8 Change of Circumstances .....	100
15.9 Declarant's Disclaimer of Representations.....	100
15.10 Successors and Assigns .....	100
15.11 No Waiver of Governmental Immunity.....	101

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR SIENNA HILLS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed this \_\_\_\_\_ day of January, 2006, by THE STATE OF UTAH, ACTING THROUGH THE UTAH SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION, A BODY POLITIC ("Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property located in Washington County, Utah described in Exhibit A hereto (collectively, the "**PCD Lands**"). Said land includes certain planning areas or "**Neighborhoods**" of Sienna Hills, a Planned Community Development (the "**PCD**"), as adopted by Washington City Ordinance No. Z-2004-20 (the "**Ordinance**"), dated February 9, 2005, being Neighborhoods 1, 2, 3, 4, 4A, 4B, 4C, 5, 6, 7, 8, 9A, 9B, 11A, 11B, 12, 13, 14A, 14B, 15A, 15B, 16, 17, and 18, and also includes certain open spaces, future common areas and areas to be dedicated to the public.

B. No portion of the PCD Lands shall be burdened by the provisions hereof unless such land has been made a portion of the Covered Property, as defined below and described herein, or unless specifically set forth in a recorded Declaration of Annexation establishing uses and other terms applicable thereto. Lands brought under the purview hereof may, however, be removed from the purview by recordation of a Declaration of Withdrawal, as provided herein.

C. Until so annexed, if ever, the remainder of the PCD Lands shall constitute solely Annexable Property, as defined herein.

D. Notwithstanding the PCD, and without limitation upon Declarant's rights and discretion with respect to annexation of PCD Lands or other lands, Declarant does hereby give notice that it may determine in its discretion to annex only portions of the PCD Lands, and may elect never to annex others. As an example, Declarant may determine, without limitation, never to annex all or certain of those certain Neighborhoods 9A, 9B, 10A, 10B, 10C, 10D, 10E, 10F, 13, 14B and 17 (the "**State Commercial Tracts**"), and may further determine, without limitation, never to annex certain Mixed Land Use Parcels, though such lands may remain subject to review of plans and specifications for improvements, which review may in any case be made by

Declarant pursuant to the terms of the PCD, as defined herein. Without limitation, such State Commercial Tracts are completely excluded from the ambit and purview of this Declaration and shall not be a portion of the Covered Property unless Declarant should determine otherwise, though Declarant reserves the right to require submittal and approval of plans and specifications for any Annexable Property, even if not annexed, as provided in ARTICLE IV hereof.

E. The Covered Property shall generally be known as "Sienna Hills," and Declarant desires that Sienna Hills be developed as a master-planned community, with a variety of planned residential subdivisions, open-space, parks, trail systems, retail and commercial areas, if any, and other areas and facilities.

F. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the provisions hereof, which are for the purpose of protecting the attractiveness and character of the Covered Property and which shall run with all of the Covered Property. This Declaration shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof, and shall inure to the benefit of the aforementioned parties and their successors and assigns.

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

## ARTICLE I

### DEFINITIONS

As used in this Declaration, the following terms shall have following meanings:

- |   |  |
|---|--|
| <p><b>1.1 <u>"Additional Covenants"</u></b></p> | <p>Shall mean the covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements in addition to those provided for in this Declaration, which are provided for in any District Declaration, Tract Declaration, or other instrument approved by Declarant or by the Board, including those which may be adopted pursuant to Section 15.1 hereof.</p> |
| <p><b>1.2 <u>"Agency" or "Agencies"</u></b></p> | <p>Shall mean any of the Federal Housing Administration (FHA), Veterans Administration (VA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), and any other governmental agency or financial institution insuring or guaranteeing residential loans, or purchasing such loans on the secondary market.</p>                                      |
| <p><b>1.3 <u>"Annexable Property"</u></b></p>   | <p>Shall mean any or all real property other than the Covered Property within that certain real property located in Washington County, Utah described in Exhibit A hereto.</p>   |



- 1.4 "Annual Assessment Period"** Shall mean each period for which Assessments are to be levied against a Lot or Parcel pursuant to this Declaration, as more particularly described in Section 8.3 of this document.
- 1.5 "Annual Assessments"** Shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.
- 1.6 "Apartment Land Use"** Shall mean the Land Use Classification of Apartments.
- 1.7 "Apartment Parcel"** Shall mean a Parcel designated in a Tract Declaration as being intended for apartment development.
- 1.8 "Articles"** Shall mean the Articles of Incorporation of the Association, as amended or restated from time to time.
- 1.9 "Assessments"** Shall mean all Annual Assessments, District Assessments, Maintenance Assessments and Special Assessments, and shall include any charges or fines hereunder which are stated to be secured by the Assessment Lien.
- 1.10 "Assessment Lien"** Shall mean the charge and continuing servitude and lien against a Lot or Parcel for payment of Assessments, late charges for delinquent or late payment of Assessments, and reasonable attorneys' fees as further described in Section 8.1 of this Declaration.
- 1.11 "Association"** Shall mean "Sienna Hills Community Association", a Utah nonprofit corporation, its successors and assigns.
- 1.12 "Association Rules"** Shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 of this Declaration.
- 1.13 "Board"** Shall mean the Board of Directors of the Association.
- 1.14 "Business Park Use"** Shall mean such uses as are contemplated by the Master Development Plan with respect to such areas, including warehouse, light manufacturing, wholesale, and retail uses approved by Declarant, as limited by a Tract Declaration.
- 1.15 "Bylaws"** Shall mean the Bylaws of the Association, as amended or restated from time to time. The Bylaws contain the operational procedures of the Association.
- 1.16 "City"** Shall mean Washington City, Utah, a body politic.

**1.17 "City Design Guidelines"**

Shall mean the Design Guidelines & Standards for Sienna Hills as initially approved by Washington City pursuant to the Ordinance, as defined above.

**1.18 "Cluster Residential Use"**

Shall mean those types of residential housing arrangements known as "townhouses", "clustered housing", "zero-lot line housing", and similar arrangements. Such uses are Single Family uses.

**1.19 "Commercial Office"**

Shall mean any business, professional, administrative or other office use, as may be limited by a Tract Declaration.

**1.20 "Community Center"**

Shall mean social, recreational, civic or other such uses made of facilities available for use by Owners and Members, or any use made of facilities on Common Area designated as a Community Center, if any. Nothing herein shall be deemed a representation that any portion of the Covered Property shall be developed as a Community Center.

**1.21 "Common Area"**

Shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association within the Covered Property or Annexable Property (including, but not limited to, areas used for landscaping, including landscaped public rights of way, medians and median landscaping, private roadways, certain front yards of lots, flood control, drainage improvements and detention basins, ponds, lakes and other water features, bicycle or jogging paths, active and passive recreational areas, open space, parks, walkways, equestrian trails, if any, and pedestrian and vehicular ingress and egress), or with respect to which the Association has undertaken (or is required to undertake) administrative, maintenance or other similar responsibilities. Without limitation, Declarant may establish certain open spaces and other lands adjacent to the Covered Property, and as may be shown in the PCD as Common Area. Common Area may include any drainage improvements and/or detention basins agreed to be maintained by the City pursuant to the Development Agreement or the PCD, which areas may be the maintenance obligation and responsibility of the City. Notwithstanding anything to the contrary contained in this Declaration, Common Area may include areas owned, controlled or operated by the Association within the Annexable Property, such as landscaped rights of way,

monument signs, lighting or other features, which may never be annexed into the Covered Property, and such areas shall be treated the same as portions of the Common Area within the Covered Property.

**1.22 "Common Expenses"**

Shall mean the expenses incurred or to be incurred by the Association, as estimated by the Board, for the benefit of the Members and Owners within the Covered Property, generally, including reasonable reserves, and which are, in the sole and absolute discretion of the Board, determined to be properly chargeable by Assessments to all Owners and Members, or allocated solely to certain Lots, Parcels or Districts.

**1.23 "Community Center Use"**

Shall mean such uses, if any, as are contemplated by the Master Development Plan with respect to such areas so designated therein.

**1.24 "Condominium Land Use"**

Shall mean the Land Use Classification of Condominiums.

**1.25 "Condominium Parcel"**

Shall mean a Parcel designated in a Tract Declaration as having a Residential Condominium Land Use Classification.

**1.26 "Condominium Unit"**

Shall mean a Dwelling Unit constituting a "unit" in a "condominium", together with any appurtenant interest in all "common elements", as such terms are defined in Chapter 8, Title 57, Utah Code Annotated, as amended.

**1.27 "Covered Property"**

Shall initially mean those portions of the PCD Lands described in Exhibit B hereto (being Neighborhoods 1, 11A, 11B, 15B, and associated "Open Space"), and shall later include such other portions of the PCD Lands which may be annexed hereunder by a Declaration of Annexation, subject to the further provisions hereof, including those dealing with withdrawal of land.

**1.28 "Declarant"**

Shall mean the State of Utah, acting through the Utah School And Institutional Trust Lands Administration, and any Declarant Affiliate or assignee of the rights and duties granted or reserved to Declarant herein, which assignment may be in whole or in part.

**1.29 "Declarant Affiliate"**

Shall mean any Person owning any portion of the Covered Property or Annexable Property and directly or indirectly controlling, controlled by or under common control with Declarant, including any agency or instrumentality of the

State of Utah, and including any trust of which the State of Utah or an agency or instrumentality of the State of Utah is the beneficiary, but a Declarant Affiliate shall not include cities, towns, counties or political subdivisions of the State of Utah unless the State of Utah in writing so agrees. A Declarant Affiliate shall include without limitation any general or limited partnership, limited liability company, corporation or trust in which Declarant is a general partner, managing member, controlling shareholder, or beneficiary.

**1.30 "Declarant Control Period"** Shall mean the earlier of:

- (a) The period of time expiring when ninety-five percent (95%) of the total number of Dwelling Units which are permitted to be built both within the Covered Property and within the Annexable Property and ninety-five percent (95%) of the total buildable ground floor area of Non-Residential buildings which is permitted to be built within the Covered Property, as such percentages are determined by Declarant in its sole discretion based upon the Master Development Plan, as amended from time to time, have had certificates of occupancy (or the equivalent approval) issued and have been conveyed to Persons other than Declarant, a Declarant Affiliate, or Developer Owners;
- (b) such date as Declarant relinquishes its rights which may be exercised during the Declarant Control Period, at Declarant's sole option and discretion; or
- (c) December 31, 2030.

The Declarant Control Period, if once expired, shall revive if subsequent annexations or other events should occur which indicates that the percentage in sub-part 1.30(a) above no longer exists.

In no event shall the Declarant Control Period endure more than five (5) years after neither Declarant nor any Declarant Affiliate owns any land within either the Covered Property or Annexable Property.

- 1.31 **"Declaration of Annexation"** Shall mean any declaration, including a Tract Declaration, executed by Declarant and declaring that any portion of the Annexable Property is made subject to this Declaration and annexed under the purview hereof and made a portion of the Covered Property.
- 1.32 **"Declaration"** Shall mean this Declaration of Covenants, Conditions, Restrictions and Easements, as amended, restated, or supplemented from time to time.
- 1.33 **"Delinquent Amount"** Shall mean any Assessment, late charge, or installment thereof, or any other sum due hereunder and not paid when due.
- 1.34 **"Design Review Committee" or "DRC"** Shall mean the committee(s) formed pursuant to Article IV of this Declaration.
- 1.35 **"Design Guidelines" or "DRC Guidelines"** Shall mean the rules and regulations adopted, amended and supplemented by Declarant and Design Review Committee pursuant to Section 4.2 of this Declaration.
- 1.36 **"Developer Owner"** Shall mean a Person in the business of developing, leasing and/or selling real property, who has acquired four or more Lots or one or more Parcels within the Covered Property in connection with, and in the course of, such business, for the purpose of developing, leasing or selling Lots or Parcels. A Developer Owner shall include a land trust, land banker, option or a similar entity or nominee developing, owning or selling land for ultimate construction of Dwelling Units or buildings.
- 1.37 **"Development Agreement"** Shall mean that certain recorded "Development Agreement" by and between the City and Declarant, as the same may from time to time be amended, which Development Agreement is recorded at 00985651, Book 1815, Page 0165, Washington County Records. Nothing in the Development Agreement shall be deemed a representation or warranty by Declarant as to any Owner hereunder that any improvement or development requirement set forth in the Development Agreement shall be constructed or completed. No Owner hereunder shall be deemed a third party beneficiary under the Development Agreement.
- 1.38 **"District"** Shall mean a group of Lots or Parcels designated as a District (whether or not governed by a District Association) by Declarant or by the Board as provided herein, which

have common interests or characteristics such as shared common facilities or Limited Common Area not enjoyed by all other Members, and/or which may be receiving special services or benefits and which may be charged District Assessments as provided herein.

**1.39 "District Assessment"**

Shall mean Assessments levied against the Lots or Parcels in a particular District to pay the budgeted expenses, including reserves, insurance, administration and other costs associated with Limited Common Area of a District, or associated with other costs and expenses attributable and allocable to a District, as described in Section 8.9, including District Expenses.

**1.40 "District Association"**

Shall mean a Utah nonprofit corporation, its successors and assigns, if any, established for the purpose of administering and enforcing the provisions of any District Declaration or Tract Declaration establishing a District. The Board may approve of an unincorporated District Association if the interests of the Membership will be served and protected.

**1.41 "District Declaration"**

Shall mean any declaration of covenants, conditions and restrictions or like instrument recorded after the recording of this Declaration and pertaining to any District within the Covered Property, which shall in all cases, be consistent with and subordinate to this Declaration and any applicable Tract Declaration.

**1.42 "District Expenses"**

Shall mean the expenses incurred or estimated to be incurred by the Association with respect to a particular District, including expenses for the maintenance of Limited Common Area, special facilities or services benefiting primarily the Owners within such District, reasonable reserves for repair and replacement of improvements and facilities, and other costs and expenses including costs of administration.

**1.43 "Dwelling Unit"**

Shall mean any building, or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

**1.44 "Eligible Mortgage Holder"**

Shall mean a First Mortgagee who has in writing requested notice of material amendments to this Declaration pursuant to Section 14.3 hereof.

- 1.45 "Event of Foreclosure"** Shall mean the foreclosure, judicially or non-judicially, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.
- 1.46 "Exempt Property"** Shall mean portions of the Covered Property not burdened by this Declaration, which shall be the following areas now or hereafter located within the Covered Property:
- 1.46.1** All government property comprising public streets (except to the extent that any parking restrictions and regulations contained herein affect such public streets), utility stations, public parks, public trails, public schools and publicly owned open spaces;
- 1.46.2** All unmanned property owned by a public utility.
- 1.47 "First Mortgage"** Shall mean any mortgage or deed of trust on any Lot or Parcel, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot or Parcel, or portion thereof.
- 1.48 "First Mortgagee"** Shall mean the holder of any First Mortgage.
- 1.49 "Governing Documents"** Shall mean this Declaration, the Articles of Incorporation and Bylaws of the Association, the City Design Guidelines, the Design Guidelines or the DRC Guidelines and the Association Rules, as same may from time to time be amended.
- 1.50 "Improvement"** Shall mean any structure or improvement, including any Dwelling Unit or modification thereof, any patio, outbuilding, pool, wall, path, driveway, excavation, landscaping, fixture, antennae, satellite system, fence, coping, awning, sunshade, flagpole, or other structure or improvement or appurtenance, and including decorative or aesthetic changes, such as color changes or changes to materials.
- 1.51 "Hospital and Health Care Uses"** Shall mean hospital use, whether public or private, and medical, dental, and affiliated uses approved by Declarant, including eye care, eyeglass sales, radiology, ophthalmology, and other health care uses approved by Declarant, including medical offices, all as may be limited by a Tract Declaration.

- 1.52 "Industrial and Warehouse Use"** Shall mean industrial or warehouse uses approved by Declarant, as may be limited by a Tract Declaration.
- 1.53 "Interior Square Footage"** Shall mean the gross square footage (without deduction for interior stairwells, storage areas, mechanical rooms, interior hallways, etc.) of area within a building on a Parcel; inclusive of upper floors and mezzanine areas, and inclusive of basements and parking space within parking garages.
- 1.54 "Land Use Classification"** Shall mean a classification of a portion of the Covered Property, as set forth herein or in a Tract Declaration, restricting development to the applicable classification(s).
- 1.55 "Limited Common Area"** Shall mean all areas designated by Declarant in a Tract Declaration, District Declaration or on a recorded subdivision plat as an area to be used in common by the Owners or Occupants of some, but not all, of the Owners of Lots within the Covered Property, which areas shall be owned by the Association and maintained, repaired and managed at the expense of the Owners or Occupants of such Lots by imposition of District Assessments, or which shall be owned by a District Association established and levying assessments against such Lots for ownership, maintenance, repair and management of such areas.
- 1.56 "Lot"** Shall mean:
- (a) an area of real property designated as a "Lot" on any recorded subdivision plat and which has a designated Land Use Classification of Single Family Residential Use or Cluster Residential use; or
  - (b) a Condominium Unit.
- 1.57 "Maintenance Assessments"** Shall mean the Assessments, if any, levied by the Board pursuant to Section 8.8 of this Declaration.
- 1.58 "Master Development Plan"** Shall mean the master plan maintained in the offices of the Association and offices of Declarant depicting the plan for future development of portions of the Covered Property, and shall include the Planned Community Development document for Sienna Hills as adopted by the Ordinance ("PCD"), as well as the Master Plan for Sienna Hills, or any portion thereof, may from time to time be amended at the sole and absolute discretion of Declarant or with the



approval by Washington City.

- 1.59 **"Member"** Shall mean any Owner or Person entitled to Membership, including Declarant for so long as Declarant is a Class A or Class B Member and whether or not Declarant owns any Lot or Parcel.
- 1.60 **"Membership"** Shall mean the rights and duties of Owners, including Declarant so long as Declarant is a Class A or Class B Member, with respect to the Association.
- 1.61 **"Mixed Land Use"** Shall mean a use of a portion of the Covered Property restricted by a Tract Declaration permitting both Residential and Non-Residential Use, or a mix of both.
- 1.62 **"Net Acre"** Shall mean an area of 43,560 square feet of land, with the acreage of any Parcel being rounded to nearest full acre in size.
- 1.63 **"Non-Developer Owner"** Shall mean any Owner who is not a Developer Owner, excluding Declarant.
- 1.64 **"Non-Residential Parcel"** Shall mean a Parcel designated in a Tract Declaration for use for commercial, medical, retail, office or other use, other than Residential Land Use.
- 1.65 **"Occupant"** Shall mean any Person, other than an Owner, occupying a Lot, or any portion thereof or building or structure thereon, as a Resident, Tenant, and licensee or otherwise, other than on a merely transient basis.
- 1.66 **"Owner"** Shall mean the record holder of legal title to the fee simple interest in any Lot or Parcel, but excluding others who hold such title merely as security, such as any trustee under a deed of trust. An Owner shall include any Person who holds record title to a Lot or Parcel in joint ownership or as an undivided fee interest.
- 1.67 **"Parcel"** Shall mean any parcel of land within the Covered Property, including a Parcel designated for Residential Apartment Use or Residential Condominium Use, other than Common Area to be owned in fee title by the Association, and including any portion, pad, or subparcel thereof, if such portion, pad, or subparcel shall have been created by a parcel split or subdivision approved or permitted in accordance with this Declaration. The term "Parcel" shall include a condominium unit within a Non-Residential Parcel. Notwithstanding the foregoing, a

Parcel other than a Non-Residential Parcel (and other than a commercial condominium unit) shall cease being a Parcel upon recording of a subdivision plat or a declaration of condominium creating Lots or Condominium Units in regard thereto. In the case of the staged development of a Parcel having a Land Use Classification of Cluster Residential Use, Single Family Residential Use or Residential Condominium Use, those areas of such Parcel not yet covered by a recorded subdivision plat or declaration of condominium creating Lots or Condominium Units shall continue to be a Parcel for purposes of this Declaration.

- 1.68 **"Person"** Shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.
- 1.69 **"Plat"** Shall mean a recorded plat for the Covered Property, and any amendment or resubdivision thereof, and in the event of successive plats of portions of the Covered Property, the term shall include all such plats unless the context clearly indicates otherwise.
- 1.70 **"Resident"** Shall mean:
- 1.70.1 each Owner who resides on the Covered Property and the members of the immediate family of each Owner who reside on the Covered Property;
- 1.70.2 each Tenant who resides on the Covered Property and the members of the immediate family of each Tenant who reside on the Covered property;
- 1.70.3 such persons as the Board, in its absolute discretion, may authorize, including without limitation, guests of an Owner or Tenant.
- 1.71 **"Residential Land Use"** Shall mean a use of a portion of the Covered Property restricted by a Tract Declaration to Single Family Residential Land Use, Apartment Land Use, or Condominium Land Use. Cluster Residential Use shall be deemed a Residential Land Use unless the context clearly indicates otherwise.
- 1.72 **"Reviewing Authority"** Shall mean Declarant unless and until Declarant has assigned its rights pursuant to ARTICLE IV to the DRC or another person or entity, which assignment may be in

whole or in part.

- 1.73 **"School Use"** Shall mean any public or private school use approved by Declarant, as limited by a Tract Declaration.
- 1.74 **"Single Family"** Shall mean a group of persons related by blood, marriage or legal adoption, or a group of not more than three unrelated persons maintaining a common household. "Single Family" use shall not include any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.
- 1.75 **"Single Family Parcel"** Shall mean a Parcel designated in a Tract Declaration as having a Single Family Residential Use or Cluster Residential Use Classification.
- 1.76 **"Single Family Residential Use"** Shall mean Single Family attached or detached residential use. Depending upon the context, the term may include Cluster Residential Use.
- 1.77 **"Special Assessments"** Shall mean the assessments, if any, levied by the Board pursuant to Section 8.11 of this Declaration.
- 1.78 **"Special Use Fees"** Shall mean any fees charged by the Association for use of the Common Area pursuant to this Declaration. Special Use Fees which are charged annually and billed by invoice may be treated the same as Assessments for all purposes hereof.
- 1.79 **"State Commercial Tracts"** Shall generally mean those tracts described in the PCD as Neighborhoods 9A, 9B, 10A, 10B, 10C, 10D, 10E, 10F, 13, 14B, and 17.
- 1.80 **"Tenant"** Shall mean a Person occupying any part of the Covered Property under any type of rental agreement.
- 1.81 **"Tract Declaration"** Shall mean any declaration of covenants, conditions and restrictions or like declaration recorded after the recording of this Declaration and pertaining to any portion of the Covered Property, which shall in all cases, be consistent with and subordinate to this Declaration. Tract Declarations may establish the Land Use Classification of Property and, unless the context otherwise indicates, the

term Tract Declaration may include District Declarations, Additional Covenants (including any condominium declaration), and any Declaration of Annexation establishing additional covenants.

**1.82 "Visible From  
Neighboring Property"**

Shall mean, with respect to any given object, that such object is or would be reasonably visible to a Person six feet tall, standing at ground level on neighboring property (either Lots or Common Area) six feet back from the property line of the neighboring property, provided, however, that the Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

**1.83 "Voting Group"**

Shall mean one or more Voting Members who vote on a common slate for election of Board members, or if the context indicates, a group of Members whose Lots or Parcels are represented by Voting Members.

**1.84 "Voting Member"**

Shall mean each Class A Member, and shall include each Owner of a Lot within a District; provided, however, that Declarant or the Board, as provided herein, may in writing elect in connection with any District Declaration or Tract Declaration to establish representative voting and declare that a single person shall be the Voting Member, with such Voting Member to have the number of votes equal to the sum total of the votes of all Owners governed by the District Declaration, except as may be provided therein.

**1.85 "Washington  
Parkway Agreement"**

Shall mean that certain Washington Parkway Funding and Implementation Agreement entered into between Declarant and the City on September 24, 2003.

## ARTICLE II

### PROPERTY AND PERSONS BOUND BY THIS DECLARATION

**2.1 General Declaration**

Declarant desires to facilitate development of the Covered Property in accordance with the Master Development Plan, as may be amended from time to time in the sole and absolute discretion of Declarant. Though the Master Development Plan has in good faith been created and adopted by Declarant as the initial plan for the

Covered Property, such plans may change, and nothing herein or in any other instrument shall be deemed a representation or warranty that land shall be developed as shown in the Master Development Plan or that such plan may not materially be revised or changed at Declarant's discretion and in accordance with such applicable rules, regulations and zoning restrictions as may from time to time exist.

In accordance with the foregoing, as portions of the Covered Property are developed, Declarant, without obligation, may record one or more Tract Declarations or District Declarations creating Parcels, designating Land Use Classifications, designating Common Area and Limited Common Area, and may establish such additional covenants, conditions and restrictions as may be appropriate for the respective portions of the Covered Property. Nothing in this Declaration, in any Tract Declaration or in any District Declaration shall be construed to prevent or limit Declarant's right to modify any part of the Master Development Plan with respect to property, or from dedicating or conveying portions of the Covered Property for uses other than as a Lot, a Parcel, or Common Area.

**2.2 Right to Make Changes**

Nothing in the PCD shall in any way be deemed a representation as to the manner in which the property shall be developed. The PCD may at any time be changed, the land shown therein may be resubdivided, and the planning areas and Neighborhoods shown therein, and the boundaries thereof, may be altered and changed at any time at Declarant's discretion. In no manner whatsoever shall designation of open space in the PCD is deemed a representation that such areas shall, in fact, be open space. Such designations shall have meaning only if provided in a Tract Declaration or Additional Covenants pertaining thereto, and even such Tract Declarations or Additional Covenants may later be changed or amended.

**2.3 Owners and Occupants Bound**

Upon the recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Parcel or Lot to or from such Owners or Occupants.

Each Owner, and all Members of the Association,

shall at all times be deemed to be fully aware and cognizant of the terms and provisions of the PCD, the Development Agreement, the Washington Parkway Agreement, and all other pertinent instruments applicable to the Covered Property, including without limitation the location and nature of planned public and private improvements, park areas, drainageways, and other facilities, all as such may from time to time change or be altered.

### ARTICLE III

#### EASEMENTS AND RIGHTS OF ENJOYMENT IN THE COMMON AREA

##### **3.1 Blanket Drainage Easements**

Declarant does hereby reserve and establish over and across each Parcel a perpetual easement for the establishment and maintenance by the Association of such drainage patterns, drainageways, drainage facilities, canals and laterals as may be necessary in Declarant's sole judgment to permit the Covered Property and Annexable Property to be improved, developed and protected in a manner best determined by Declarant. Such easements may be defined and limited by Declarant in subsequent Plats and Tract Declarations.

The protections of this Section may not be amended without Declarant's written approval.

##### **3.2 Easements and Rights of Enjoyment**

Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Area, which nonexclusive easement shall be appurtenant to and shall pass with the title to each owner's Lot or Parcel, subject to the Association Rules and other restrictions of the Association. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Area so long as they remain Occupants. The foregoing grants and rights are subject to the following limitations, in addition to all other limitations and reserved powers set forth in this Declaration:

***Right to Modify and Change***

3.2.1 The rights, duties and obligations of the Association, and the reserved right of Declarant, and of the Association, to modify the use of Common Area, or to convey same free of claims or rights of the Owners or Members;

***Special Use Fees***

3.2.2 The right of the Association pursuant to this Declaration to charge reasonable Special Use Fees for the use of the Common Area. Any such Special Use Fees shall be set by the Board from time to time, in its sole discretion. Special Use Fees shall be charged only for actual entry upon or utilization of that portion of the Common Area selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Area so that all of the costs of operating such selected Common Area are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Area;

***Suspension of Rights***

3.2.3 The right of the Association, after such notice and hearing as may be required by law (including Utah Code Annotated, Title 16, Chapter 6a, Section 609), to suspend the voting rights and the rights to use and enjoyment of the recreational or open space components of the Common Area of any Owner or occupant, as the case may be, for any period during which an Assessment remains delinquent, or for a period not to exceed 60 days for any single infraction of this Declaration, a recorded Tract Declaration, District Declaration, the Association Rules, or the DRC Guidelines (provided such suspension shall not be limited if the infraction remains uncured);

***Limitation of Guests***

3.2.4 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Area; and

***Regulation, Mortgages and Conveyances; Power of Association***

3.2.5 The right of the Association to regulate use of the Common Area in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent, with or without a meeting, of Declarant and Voting Members representing at least two-thirds (2/3) of the total votes allocable to Lots and Parcels.

***Broad Reserved Powers  
of Declarant***

Notwithstanding the foregoing, the Association may at any time convey, and Declarant may cause the Association to convey, minor, insignificant, or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters), and portions of Common Area determined by Declarant to be more burdensome or costly to own than the accompanying benefit to the Association would warrant, and such conveyance may be made without the consent or vote of any other Person or Member, should Declarant or the Board determine that such conveyance or transfer is in the best interests of the Association or Covered Property. Furthermore, Declarant may at any time resubdivide Common Area into Lots, Parcels or other Common Area or dedicated land, and may cause the Board or Association to execute such instruments as may be necessary to cause such resubdivision or dedication, and no consent or approval shall be required of any other Members nor shall a meeting of Members be required.

Any sale, disposition or resubdivision of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof.

In addition, Declarant and the Association shall in all cases have the right to convey and dedicate the lands and interests such as public roads, streets, drainageways, culverts, parks, sewer facilities and other Common Area, and such action shall not require the approval of any Owners or Members of the Association.

**3.3 Delegation of Use**

Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his or her rights of use and enjoyment in the Common Area to the members of his or her family or his or her occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules, and in the event of such delegation, including any lease of a Lot, the Owner shall be deemed to have relinquished his or her right of use and enjoyment for the period of such lease or delegation. Without limitation, the Rules may limit the number of guests, prescribe restrictions on certain types of gatherings or events, and impose Special Use Fees for certain gatherings or events.



**3.4 Waiver of Use**

No Owner shall be exempt from personal liability for Assessments, nor shall any Owner have any right to release a Lot or Parcel from the liens or charges arising under this Declaration, any District Declaration or Tract Declaration by waiver of the right of use and enjoyment of Common Area or for any other reason, and no Owner shall in any fashion or by any means have a right of set-off of claims against any sum owed to the Association.

**3.5 Acceptance of  
Certain Common Area  
and Other Areas**

In the course of development and sale of land within the Covered Property, or within portions of the Annexable Property, fee title to land which in the future is to become Common Area may be held by, or transferred to, Persons acquiring fee title to portions of the Covered Property. Notwithstanding that fee title to such land may be held by Persons other than the Association (or Declarant); such land may, upon acceptance by the Association, become Common Area. If such areas become Common Area of the Association, whether by Tract Declaration, plat or otherwise, all Owners and Occupants shall have the easements, licenses and rights to the use and enjoyment of such Common Area as with respect to the other Common Area generally, unless such lands are Limited Common Areas. Such rights shall be subject in all cases to the provisions of this Declaration and the Association Rules. In the event such areas are to become Common Area, the Association shall accept same only if such land is free of monetary liens or encumbrances.

Notwithstanding the foregoing, Declarant shall have the absolute right to require that the Association accept title to future Common Area and open spaces shown upon any Plat or other instrument pertaining to the Covered Property, whether the Plat or other instrument was recorded prior to or after annexation of the land under the purview hereof as a portion of the Covered Property, and such right of Declarant shall, without limitation, extend to all areas of the Annexable Property that Declarant determines are appropriate for Common Area designation or otherwise appropriate for Association control and maintenance.

Future Common Area to be accepted may include, but shall not be limited to, recreational features, one or more swimming pools, open spaces, trails, and other areas or facilities, but no representation or warranty is

made as to any such facilities or which shall be offered or included in the Covered Property. It is acknowledged that should a future feature, such as a recreational amenity, be included within the Common Area, the Association shall have the right to increase Assessments by the maximum permitted by law to assure adequate funds, and shall further have the right to impose a Special Assessment during such initial fiscal years as may be necessary or appropriate, subject to limitations as may exist at law.

**3.6 Exclusive Use and Benefit Easements**

On certain Common Area, particularly where perimeter or similar walls are to be built (including yard walls, landscape walls, subdivision boundary walls and the like), such walls may be constructed within the Common Area at varying distances from the adjacent Lot line in order to avoid monotony of design. Portions of the Common Area may be located on the Lot or Parcel side of any such dividing wall (each, an "Easement Area"). Each Easement Area will adjoin and be contiguous to a Lot or Parcel (each, a "Dominant Lot or Parcel"). The Association may, in its sole discretion, at any time and from time to time, grant to the Owner of a Dominant Lot or Parcel and record a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot or Parcel for the use, benefit and enjoyment of that Owner (each, an "Easement"). Such Easement shall run with the land and be appurtenant to the abutting Dominant Lot or Parcel and may not be sold, transferred or otherwise conveyed apart therefrom.

The Easements shall be limited to the extent that no structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area without the express written approval of the Reviewing Authority, as provided herein. The Association shall have no possession or control of the Easement Areas, except that the Association shall have the right of ingress and egress for the sole purpose of any maintenance and repair obligations the Association may have with respect to such dividing wall.

***Easements Benefiting Individual Owners***

Each Easement Area shall be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot or Parcel shall indemnify, protect, defend and hold

harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot or Parcel.

***Easements Benefiting  
the Association***

In addition to the Easement Areas set forth above, to permit a varying or undulating design of perimeter or yard walls visible from certain of the main spine roads within Sienna Hills, there shall exist, and there is hereby granted and reserved, a valid, perpetual easement in favor of the Association for the maintenance and repair of landscaping and other improvements which may be installed or built on the street or Common Area side of any such wall built or to be built partly into the area of any adjacent Lot or Parcel, as determined by the Design Review Committee at the time of original construction of improvements. The Association shall be solely responsible for maintaining any such Lot or Parcel area upon which such easement exists. The limit and extent of any such easement shall be determined by the Design Review Committee upon approval of designs and plans submitted by Owners or Developer Owners, as the case may be.

**ARTICLE IV**

**ARCHITECTURAL AND LANDSCAPING  
RESTRICTIONS AND CONTROL**

**4.1 Control By Declarant  
of All Architectural and  
Landscaping Matters**

***Reserved Rights of  
Declarant***

4.1.1 Broad Reserved Rights of Declarant. Each and every Owner, and all other Persons, by accepting a deed or otherwise having ownership, possession or control over any Lot or Parcel, agrees that Declarant, as the initial entity planning for the development of the Covered Property and Annexable Property, and as an initial Owner of all or portions of the Covered Property and Annexable Property, has a vital and legitimate interest in seeing the Covered Property developed in a manner consistent with Declarant's wishes and plans, as those plans may from time to time change.

***Approval Required***

4.1.2 All Development to be Approved. In accordance with the foregoing, and as more specifically set forth below, no development, construction, grading, improvement, landscaping or other work or alteration of any land shall be commenced unless and until Declarant has given its prior written approval of same, which

approval may be granted or denied in the sole and absolute discretion of Declarant. Declarant intends to and shall in writing delegate certain or all of its rights of review and approval to a Design Review Committee, which shall be an agent or committee of the Board, though Declarant may retain certain rights of review and approval and may also delegate certain of its rights of review and approval to others.

***Reviewing Authority***

Declarant, or the DRC to the extent Declarant has assigned its rights for review and approval, shall be deemed a "Reviewing Authority" for purposes of this Article IV, and Declarant or the Reviewing Authority, as applicable, shall in all cases be deemed to be acting for and on behalf of the Association and shall be deemed an agent and Committee of the Association.

In exercising its right of assignment or delegation, Declarant may elect to establish more than one Reviewing Authority and may retain unto itself, or assign to a Reviewing Authority, or to more than one Reviewing Authority, all rights of approval and review with respect to commercial, industrial, or other non-residential use, and may further establish a Reviewing Authority, or more than one Reviewing Authority, for residential development, which committee or committees shall each be considered a residential design review committee. Reference herein to the Reviewing Authority shall be considered a reference to each such assignee, all as the context may dictate.

Upon any delegation to the DRC or other Reviewing Authority, Declarant shall be fully released of all obligation, right and responsibility with respect to the functions of the Reviewing Authority so delegated or assigned. In any case in which Declarant has retained rights as the Reviewing Authority, the Association shall nevertheless, with Declarant's approval, have full rights of enforcement of the provisions hereof, and may take legal and other action against any Owner, Person or entity, or their agents, contractors and subcontractors, who may be in violation of the provisions hereof or of the DRC Guidelines, or who may have acted without approval of the Reviewing Authority.

Declarant shall have full rights and authority to cause the Association to take such enforcement action

and to expend Association funds and resources in pursuit thereof, it being acknowledged that the Association and Members are or shall be benefited by such enforcement or other action.

***Developer Owner Site Plans***

4.1.3 Developer Owner Site Plans. In addition to the foregoing, each Developer Owner must, prior to beginning any grading, clearing, construction, or other activity upon the Covered Property submit to the Reviewing Authority for the Reviewing Authority's review and approval a development site plan, meeting standards established by the Reviewing Authority, and shall at the time of submittal to the Reviewing Authority certify that such Developer Owner has met with the City and reviewed the requirements of the City with respect thereto.

***DRC, DRC Guidelines and City Design Guidelines***

4.1.4 DRC, DRC Guidelines and City Design Guidelines. The Reviewing Authority shall be guided in its functions by the Design Guidelines (the "DRC Guidelines") and by the City Design Guidelines.

***Protection of Declarant***

4.1.5 Declarant's Interests Protected. In exercising its rights hereunder, including in the review, approval or denial of any application or request, and during the Declarant Control Period, or for so long as Declarant owns any portion of the Covered Property or Annexable Property, whichever period shall last expire, Declarant may act, or cause the DRC to act, in Declarant's interest and as Declarant determines based upon its desires for the Covered Property. Declarant's rights reserved hereunder may in writing be waived, terminated or assigned.

***Delegation of Review Rights***

4.1.6 Delegation of Rights. Declarant may, from time to time, delegate all or a portion of its reserved rights hereunder to either or both of: (i) the DRC; or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association, it being acknowledged that certain portions of the Covered Property, including non-residential portions, may be treated differently, and may at Declarant's discretion, be under the control solely of Declarant or, for example, and without limitation, a committee separate from that which reviews Residential Lots and Parcels.

Any delegation by Declarant to the DRC or to any other committee shall be in writing specifying the

scope of responsibilities delegated and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason.

So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically so delegates. It is understood that Declarant shall have full authority to assign enforcement powers and duties in relation to both the DRC Guidelines and the City Design Guidelines, or Declarant may elect to retain certain enforcement powers while assigning others.

#### **4.2 Design Guidelines**

**4.2.1 Content of DRC Guidelines.** The initial DRC Guidelines may be adopted by the Reviewing Authority with the approval of Declarant.

#### ***Content of Guidelines***

Subject to the written approval of the contents thereof by Declarant for so long as Declarant owns any portion of the Covered Property or Annexable Property, and thereafter subject to the written approval of the Board, the Reviewing Authority may adopt, amend, and supplement the DRC Guidelines. Such DRC Guidelines shall not be materially inconsistent with the City Design Guidelines. Amendments by Declarant or by the Board may consist of non-material amendments to the City Design Guidelines, or may consist of material amendments to the City Design Guidelines if such amendments have been approved by the City. No request shall be made to the City to amend the City Design Guidelines, or to permit a material deviation therefrom unless Declarant has in writing consented to such request.

The right of Declarant to approve the DRC Guidelines is paramount to the right of the Board or any Reviewing Authority other than Declarant, and no amendment may be made without Declarant's consent as long as Declarant owns any portion of the Covered Property.

The DRC Guidelines may be different for various portions of the Covered Property. The DRC Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for review and

the standards for development within all or various portions of the Covered Property. The DRC Guidelines may include, without limitation, provisions regarding:

- (a) the size or maximum Lot coverage for Single Family Dwelling Units;
- (b) architectural design of Improvements, including Dwelling Units, with particular regard to the harmony of the design with surrounding structures and topography;
- (c) placement of buildings;
- (d) landscaping design, content and conformity with the natural desert character of Sienna Hills;
- (e) requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments (Visible from Neighboring Property), recreational equipment, exterior lighting and exterior furniture (Visible from Neighboring Property), and other items or improvements Visible From Neighboring Property;
- (f) signage and mailboxes; and
- (g) perimeter and screen wall design and appearance.

***Adoption and Force and Effect of Rules and DRC Guidelines***

**4.3 Power and Duties Upon Assignment to Design Review Committee**

**4.2.2 Force and Effect.** The DRC Guidelines and City Design Guidelines shall have the same force and effect as the Association Rules.

After such time as Declarant shall have assigned its right of review and approval to the DRC or other assignee, it shall be the duty of the such assignee, as the Reviewing Authority, to consider and act upon all proposals or plans submitted to it pursuant to the provisions hereof, to adopt the DRC Guidelines, with the approval of Declarant or the Board, as applicable, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration. The DRC shall have the right from time to time to assign certain of its powers, authority and duties

hereunder to one or more District Associations.

**4.4 Obligation to Obtain Approval**

**Mandatory Submittal**

4.4.1 Mandatory Submittal of Plans and Specifications. Without the prior written approval by the Reviewing Authority of plans and specifications prepared and submitted to the Reviewing Authority in accordance with the provisions of this Declaration and the DRC Guidelines:

- (a) No Improvements, alterations, repairs, excavation, grading, landscaping or other work shall be done which in any way alters the exterior appearance of any property or improvements thereon from their natural or improved state; and
- (b) No building, fence, exterior wall, pool, roadway, driveway or other structure, improvement or grading shall at any time be commenced, erected, maintained, altered, changed or made on any Lot or Parcel.

**Landscaping**

4.4.2 Landscaping. No exterior trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Reviewing Authority in accordance with the DRC Guidelines, and except for replacements of plants previously approved and which remain acceptable in accordance with the then current DRC Guidelines.

**Changes and Deviations**

4.4.3 Changes or Deviations. No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Reviewing Authority, shall be permitted without approval of the change or deviation by the Reviewing Authority.

**Verbal Statements**

4.4.4 Verbal Statements. In no event shall the Reviewing Authority be bound by any verbal statements, no single member thereof having the right to bind the committee.

**4.5 Organization of Design Review Committee**

The Reviewing Authority, whether Declarant, the DRC, or other assignee, shall be deemed an agent and committee of the Board. All members of the DRC, and all



persons acting on behalf of the Reviewing Authority shall be appointed and removed solely by Declarant so long as Declarant is a Member of the Association, unless such right is in writing waived by Declarant. Thereafter, the right of appointment shall rest with the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant.

#### **4.6 Waiver and Variance**

The Reviewing Authority may grant variances and waivers from the requirements of the DRC Guidelines if it believes it is in the best interests of the Covered Property to do so, or if hardship justifies the variance. In addition, Declarant may at any time grant a variance or waiver. The approval by the Reviewing Authority of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

No application or approval shall be required for any Improvement to be made within the Covered Property by Declarant or its authorized agents, affiliates or representatives.

#### **4.7 Liability**

Neither the Reviewing Authority, Declarant nor the DRC (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;
- (c) the development of any Lot or Parcel; or
- (d) the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member

of the DRC, such member has acted in good faith on the basis of such information as may be possessed by him.

Without in any way limiting the generality of any of the foregoing provisions of this Section, the Reviewing Authority, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner (other than the Owner applying for consent or approval, whose views the Reviewing Authority shall be required to hear) with respect to any plans, drawings, specifications, or any other proposal submitted for review.

#### **4.8 Appeal to Board**

Any Owner who initially made application to the Reviewing Authority, and who is aggrieved by a decision of the Reviewing Authority, may appeal the decision to the Board in accordance with procedures to be established in the DRC Guidelines. In the event the decision of the Reviewing Authority is overruled by the Board on any issue or question, the prior decision of the Reviewing Authority shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, there shall be no appeal from a decision of the Reviewing Authority, and no appeal from a decision of the Reviewing Authority may be taken, so long as Declarant has the right to appoint the members of the Reviewing Authority or the DRC.

#### **4.9 Fees**

##### ***Power to Assess***

**4.9.1 Power to Assess Fees.** The Reviewing Authority, whether Declarant, the Board or whomsoever may be vested with authority to review plans, applications and submittals in accordance herewith, may establish a reasonable processing fee to defer the costs of the Reviewing Authority in considering any requests for approvals submitted to the Reviewing Authority or for appeals to the Board, which fee shall be paid at the time the request for approval or review is properly submitted.

***Refundable and Non-Refundable Fees and Deposits***

**4.9.2 Refundable and Non-Refundable Fees and Deposits.** In addition, the Reviewing Authority may implement: a) refundable and non-refundable fees and deposits for revegetation and restoration of any site, with a portion of a fee being non-refundable should an Owner default in its obligations to restore or revegetate a site when required hereunder or by the Reviewing Authority, or should the Association or Reviewing Authority incur cost as a result thereof; b) refundable and non-refundable fees to assure that all damage or degradation to Common Area, streets and roads caused or to be caused by construction traffic is promptly repaired or otherwise addressed by the Owner responsible therefor, or to enable the Association to accomplish such work, itself, or to establish a fund for future restoration of such areas; and c) such deposits as may be appropriate to assure completion of components of any work that may interrupt or interfere with the use of Common Area or operations of the Association.

**4.10 Inspection**

Declarant and any member or authorized consultant of the Reviewing Authority, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Parcel, after reasonable notice to the Owner of such Lot or Parcel, in order to inspect the improvements constructed or being constructed on such Lot or Parcel to ascertain that such improvements have been, or are being, built in compliance with the DRC Guidelines, this Declaration, and any applicable Tract Declaration or District Declaration.

**4.11 City Design Guidelines**

Notwithstanding anything to the contrary in this Article IV, all development, construction, grading, improvement, landscaping or other work or alteration of any land, structure or Improvement shall be in compliance with the City Design Guidelines and no such work shall commence unless and until Declarant or the Reviewing Authority, if other than Declarant, has given its prior written approval of same. Plans, specifications and submittals are required to the fullest extent, and in the manner set forth herein for all other submittals.

In the event there are any material inconsistencies between the DRC Guidelines and the City Design Guidelines, the City Design Guidelines shall control, except that should the DRC Guidelines be more restrictive,

they shall apply to the extent that the intent of the City Design Guidelines can still be achieved and any deviation from the City Design Guidelines is immaterial. The City Design Guidelines may from time to time be amended at the sole and absolute discretion of Declarant to conform to the restrictions contained in this Declaration or in the DRC Guidelines, provided that such amendments are not "material" (as such term is defined in the City Design Guidelines). Material amendments to the City Design Guidelines shall require the approval of the City through a public hearing.

Declarant may, in its sole and absolute discretion, grant variances from the restrictions set forth in the City Design Guidelines in accordance with the requirements set forth in the City Design Guidelines.

**4.12 State Commercial Tracts and other Annexable Property**

The State Commercial Tracts, like other Annexable Property, are not a part of the Covered Property unless annexed by Declarant and with Declarant's written consent. Because such lands, and other Annexable Property, however, remain subject to the City Design Guidelines and the PCD, Declarant reserves the right, at its sole discretion, to accomplish review and approval of all submittals, including submittals of all plans and specifications for improvements, either itself or through the Reviewing Authority, in the same fashion as for the Covered Property. This Declaration shall serve as notice of such right of Declarant, and the right to charge commensurate submittal and review fees, but the undertaking of such review and approval processes shall in no way serve to extend the purview of this Declaration to the said State Commercial Tracts or to any other Annexable Property, and unless annexed under the purview hereof none of the State Commercial Tracts or other Annexable Property shall be subject to enforcement action by the Association with respect to any matter other than compliance with approved plans and specifications to the extent applicable, and even then only with Declarant's written approval.

The provisions of this Section 4.12 may not be amended without the written approval of Declarant.

**ARTICLE V****LAND USE CLASSIFICATIONS, PERMITTED USES AND  
RESTRICTIONS****5.1 Land Use  
Classifications**

As portions of the Covered Property are readied for development, Land Use Classifications may be fixed by Declarant in a Tract Declaration which may be recorded at such time as the applicable portion of the Covered Property is conveyed by deed or, if retained by Declarant, at such time as Declarant begins development thereof. If any provision of a Tract Declaration is inconsistent with any provision of this Declaration, the provisions of this Declaration shall control.

Except with respect to Covered Property owned by Declarant, no Tract Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be recorded against any Lot or Parcel without the written approval of Declarant or, if Declarant has waived and relinquished such right, of the Board, and without such approval, such Tract Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall at Declarant's option be deemed null and void. All Tract Declarations or other recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant shall reasonably require. After expiration of the Class B Membership, the right to approve of any Tract Declaration shall rest with the Board, except that so long as Declarant owns any portion of the Covered Property or Annexable Property it may approve any Tract Declaration relating to land annexed hereunder. A Tract Declaration shall not be amended except as specifically permitted by this Declaration or by such Tract Declaration. Approval of Tract Declarations shall not unreasonably be withheld, and denial may not be made for purposes of attempting to disapprove an otherwise allowable use of the land which Declarant approves or has approved.

***Listing of Land Uses;  
Not Exclusive***

The Land Use Classifications contemplated as of the date of this Declaration are:

**5.1.1 "Single Family Residential Use";**

- 5.1.2 "Cluster Residential Use";
- 5.1.3 "Residential Apartment Use", which shall include congregate care or similar facilities;
- 5.1.4 "Residential Condominium Use";
- 5.1.5 "Business Park Use";
- 5.1.6 "Industrial and Warehouse Use"
- 5.1.7 "Community Center Use";
- 5.1.8 "Commercial Office Use";
- 5.1.9 "Hospital and Health Care Use";
- 5.1.10 "General Commercial and Retail Use";
- 5.1.11 "Common Area";
- 5.1.12 "Park Use";
- 5.1.13 "School Use"; and
- 5.1.14 "Church Use".

***Determination of Use in Tract Declaration***

The characteristics of land within a Land Use Classification, and the specific permitted and prohibited uses of the real property within a particular Land Use Classification may be set forth in the respective Tract Declaration. Such uses may at any time be amended to permit other uses, provided the provisions of the Tract Declaration dealing with amendment have been met; provided, however, that any Land Use Classification may be changed if both Declarant and the Owner of the land or any portion thereof burdened by a Tract Declaration consent to such change.

Notwithstanding the foregoing listing, Declarant shall not be obligated to establish within the Covered Property each of the uses listed above, nor shall such listing prohibit the establishment by Declarant of other Land Use Classifications. Without limitation, certain commercial or other uses may be established near or adjacent to the Covered Property, without being annexed hereunder, and the Covered Property may or may not actually contain commercial uses. In addition, Declarant

may, in its sole discretion, record a Tract Declaration requiring, or otherwise require that the Owner of the Annexable Property, or any portion thereof, obtain the initial approval of Declarant that all plans and specifications, architectural design or covenants binding on such land are in compliance with the DRC Guidelines, but not require that such land be annexed or require further approval.

***Additional Restrictions  
by Tract Declaration***

A Lot or Parcel shall, prior to being used or improved in any manner or fashion whatsoever, be defined and limited to a specific development type or Land Use Classification by a Tract Declaration approved by Declarant in accordance with the provisions hereof. Declarant may require imposition of special conditions in a Tract Declaration in any case where deemed appropriate in the sole and absolute discretion of Declarant, and may require adequate provision for assessments and maintenance of the property and improvements and such other provisions as are deemed proper. Should for any reason a Parcel be subdivided and developed or partially developed prior to Declarant's recordation of a Tract Declaration establishing the Land Use Classification therefor, then Declarant may later record the appropriate Tract Declaration with the consent of the Owner of the property in question, and until such time the Land Use Classification shall be deemed to be Single Family Residential Use. The initial Covered Property, Neighborhoods 1 and 11A are hereby declared to be Single Family Residential Use for detached housing, and no separate Tract Declaration shall be required therefor.

No Condominium Parcel or subdivision containing common area may be developed, nor shall a Tract Declaration therefor be approved, unless an incorporated owners association is established for the maintenance and repair of common elements or common area thereof, except in cases where the Association may elect to accept ownership of same.

**5.2 Covenants,  
Conditions, Restrictions,  
and Easements  
Applicable to All Land  
Use Classifications**

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels in the Covered Property included within all Land Use Classifications, and to the Owners and Occupants thereof:

**5.2.1 Prohibited Uses.** The following uses are prohibited:

- (a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a clear public nuisance, or which is hazardous by reason of risk of fire or explosion, or which is otherwise materially injurious to the perceived value of any Lot or Parcel; provided that for Parcels used for commercial or industrial uses, Declarant shall have broad discretion in determining the propriety and acceptability of any such use; and,
- (b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Utah, Washington City, County of Washington or any other governmental entity having jurisdiction over the Covered Property.

***Plat Notes***

**5.2.2 Plat Notes.** In addition to the restrictions contained herein, the Covered Property shall be subject to all applicable restrictions and limitations set forth on recorded plats and set forth in the Master Development Plan, and such limitations as may be provided in the Sienna Hills Planned Community Development regulations approved by Washington City, as same may from time to time be amended.

***Duty of Maintenance***

**5.2.3 Duty of Maintenance.** Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot or Parcel, including buildings, Improvements, grounds, private drives, and easement areas in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental



health, fire and safety statutes, ordinances, regulations and requirements. Each Owner shall be responsible for the maintenance and repair of all utility lines, including sewer, located within such Owner's Lot or Parcel, and such maintenance obligation shall include maintenance and repair beyond the Lot or Parcel boundary to the point of service line connection or junction in the adjacent street, Common Area or easement area.

No Improvement on any Lot or Parcel shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the Improvement. In the event any building or Improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or Improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs within the time limits established by the Board, the Board and its agents and representatives are empowered to enter on the Lot or Parcel and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments. Any such entry shall be after reasonable notice of the time and date of entry, and after such hearings and notice as the law may require.

***Building Exteriors***

**5.2.4 Building Exteriors.** All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4.

***On Site Grading and Drainage***

**5.2.5 On Site Grading and Drainage.** No water shall be drained or discharged from any Lot or Parcel, or building thereon, except in accordance with approvals of the Reviewing Authority and applicable City ordinances, as well as the Master Development Plan.

***Utility Lines and Connections***

**5.2.6 Utility Lines and Connections.** Unless Declarant expressly approves otherwise, all utility wires, lines, pipes, conduits, facilities, connections and installations (including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer) shall be installed and maintained underground or concealed in, under, or on structures approved in writing in

advance by the Reviewing Authority. All transformers shall be placed on or below the surface of the Lot or Parcel. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Reviewing Authority.

Notwithstanding the above, the following permitted uses may be installed and maintained above ground:

- (a) Existing utility installations, for so long as Declarant shall approve;
- (b) Any future relocation of existing utility installations, for so long as Declarant shall approve;
- (c) Any fiber optic or related facility or improvement approved by Declarant; and
- (d) Other facilities which the Reviewing Authority determines are appropriate for above-ground placement and which comply with law.

No other utility or service equipment or lines may be installed or relocated on any Lot, Parcel the Common Area or the Limited Common Area except as approved by the Reviewing Authority

***Overhead Encroachment***

**5.2.7 Overhead Encroachments.** No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Reviewing Authority. The Reviewing Authority shall have the right to cause the Association to trim any offending tree, shrub or planting.

***Permissible Encroachment***

**5.2.8 Permissible Encroachments.** Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Developer Owner may from time to time encroach in minor degree upon the Common Area or other Lots or Parcels in the Covered Property. Such encroachments caused incidentally and which are minor in

scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments shall be burdened with a perpetual easement in favor of the Owner of the Lot or Parcel upon which the majority of the encroaching structure is built.

***Further Subdivision***

**5.2.9 Restriction on Further Subdivision, Property Restrictions and Rezoning.**

- (a) So long as Declarant is a Member of the Association, all subdivision plats, Tract Declarations, District Declarations and Additional Covenants must be submitted to and approved by Declarant before being recorded or approved by the City, as applicable. Except for property owned by Declarant, after a subdivision plat has been approved, no Lot or Parcel, or any portion of a Lot or Parcel, shall be further subdivided and no portion less than all of the Lot or Parcel shall be conveyed or transferred by any Owner without the prior written approval of Declarant. The combining of a Lot or Common Area with an adjacent Lot or Common Area, where no additional Lot is created, and which is approved by the Reviewing Authority shall not be deemed a resubdivision in accordance with the foregoing requirements.
- (b) No proposed application for rezoning, variance or use permit for any portion of the Covered Property shall be made, filed, submitted to, or recorded with City or any other governmental authority or agency unless it has first been approved by Declarant so long as Declarant is a Member of the Association.
- (c) Neither subsection (a) nor (b) shall apply to portions of the Covered Property owned by Declarant or to subdivision plats, Tract Declarations, District Declarations or Additional Covenants submitted or proposed

by Declarant and pertaining to portions of the Covered Property owned by Declarant. Further, Declarant reserves the absolute right, without any other consent or approval, to resubdivide and change the use of any portion of the Covered Property, including any Common Area, Lots or Parcels, and may cause the Board or the Association to execute such instruments as may be necessary to accomplish same.

- (d) Declarant may at any time in writing relinquish all or a portion of its approval rights under this Section. After Declarant no longer is a Member of the Association, or after Declarant may have relinquished its rights under this Section, the Board shall succeed to the right to approve of subdivision plats, District Declarations, Tract Declarations or Additional Covenants, unless Declarant has assigned such right to one or more Developer Owners, in which case the Board shall succeed to such rights only after such Developer Owners no longer own any portion of the Covered Property or Annexable Property.

***Maintenance of  
Landscaping and  
Driveways***

**5.2.10 Maintenance of Landscaping and Driveways.** Unless otherwise provided in a Tract Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

- (a) on the Owner's Lot or Parcel (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot or Parcel is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;
- (b) portions of the Common Area adjacent to an Owner's Lot or Parcel and which are on the Lot's or Parcel's side of any wall erected on the Common Area; and,

- (c) public right-of-way area; between sidewalks and the street curb on the Owner's Lot or Parcel, or other public or easement areas adjacent to the Owner's Lot or Parcel, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials. All lawn areas shall be timely mowed needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds.

All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately.

All bed areas shall be kept free of weeds and cultivated periodically as needed. No area shall be over watered so as to create a risk of damage to nearby structures or Improvements. Landscaping may be required to be placed on a Lot or Parcel within certain time frames established by the Reviewing Authority. Each Owner shall maintain (including, without limitation, snow and ice removal as necessary) in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot or Parcel.

Any Owner who fails to properly maintain the landscaping upon the Lot or Parcel, shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot or Parcel, after receiving notice from the Board to do so, and after such hearing and notice as may be required by law, the Association is empowered

to enter upon the Lot or Parcel, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as Maintenance Assessments.

In addition to the foregoing, each Owner acknowledges that the DRC Guidelines may require that each Owner, or Owners of portions of the Covered Property, install landscaping on such Owner's Lots or Parcel, within a specified period of time after acquiring title thereto, if landscaping was not installed by the builder or Developer Owner at the time of such acquisition. Such obligation may include trees, plants or other landscaping Improvements (together with an irrigation system sufficient to adequately water the trees, plants or other landscaping Improvements). All landscaping and irrigation facilities must have the written approval of the DRC before installation.

***Nuisances, Dust Control  
and Construction  
Activities***

**5.2.11 Nuisances; Dust Control; Construction Activities.** No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or Parcel so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot and Parcel shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots and Parcels must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot or Parcel, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to Persons or property in the vicinity of such Lot or Parcel, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants. The Association may, but is not required, to take action to abate what any Owner may consider a nuisance.

Nothing herein shall purport to require that Declarant or any other Owner take action to abate any existing condition on land graded or developed prior to the date of recordation hereof, nor to abate any condition naturally existing upon the land.

**Temporary Occupancy  
Prohibited**

**5.2.12 Temporary Occupancy and Temporary Buildings; Outside Storage.** No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot or Parcel with the prior written approval of the Reviewing Authority, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot or Parcel from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semi-finished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on any Lot or Parcel, necessary construction materials and supplies may be stored on the Lot or Parcel without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Reviewing Authority is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

**Health and Welfare**

**5.2.13 Health and Welfare.** In the event uses of, activities on, or facilities upon or within a Parcel or Lot are deemed by the Board to be a nuisance or to adversely affect the health or welfare of Owners or Occupants, the Board or the Reviewing Authority may make rules restricting or regulating their presence.

**Incidental Uses**

**5.2.14 Incidental Uses.** Subject to the provisions of any applicable Tract Declaration, the Board may approve, regulate and restrict incidental uses of property within a Land Use Classification. By way of example and not of limitation, the Board may adopt Rules governing tennis and/or swimming clubs and facilities, and other recreational facilities.

***Mineral Exploration;  
Prohibition of Wells***

**5.2.15 Mineral Exploration; Prohibition of Wells.** No Lot or Parcel shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, by well, derrick or otherwise, except in each case as Declarant shall specifically approve.

***Diseases and Insects***

**5.2.16 Diseases and Insects.** No Owner or Occupant shall permit any thing or condition to exist upon any Lot or Parcel which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

***Parcel Coverage***

**5.2.17 Parcel Coverage.** The percentage of each Lot or Parcel which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot or Parcel) shall be subject to the review and approval of the Reviewing Authority (or the duly constituted review committee of any District Association established pursuant to the provisions hereof), as part of the Reviewing Authority's review of plans for proposed improvements on such Lot or Parcel pursuant to this Declaration, but shall in no event violate City or local ordinances and regulations in effect from time to time. This Section shall not permit restrictions which impede the use and enjoyment of a Lot or Parcel in accordance with the provisions of the Master Development Plan, nor shall it apply to Declarant's Lots or Parcels nor to Lots or Parcels owned by a Developer Owner whose plans and specifications have been approved by the Reviewing Authority.

***Party Walls***

**5.2.18 Party Walls.** Except as hereinafter provided, the rights and duties of Owners of contiguous Lots or Parcels which have shared walls or fences ("Party Walls") shall be as follows:

- (a) Each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof.
- (b) If a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to



rebuild and repair the Party Wall at the Owner's sole expense. Any dispute over an Owner's liability shall be resolved as provided below.

- (c) In the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots or Parcels adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots or Parcels on the damaged or destroyed Party Wall.
- (d) In the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Reviewing Authority; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final.
- (e) Notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Area and Lots or Parcels; or, (b) situated on Common Area within or adjacent to a Lot or Parcel, the Owners and Occupants of such Lots or Parcels shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof.
- (f) This Section does not and is not intended to control or relate to Party Walls between Residential Condominium Developments or Condominium Units, or between non-residential condominium units, if any, which shall be governed, to the extent applicable, by Utah Code Annotated, Title 57, Chapter 8, and by any condominium declaration

recorded pursuant thereto.

**5.3 Covenants,  
Conditions, Restrictions  
and Easements  
Applicable to Single  
Family Residential Use,  
Residential Apartment  
Use, Residential  
Condominium Use, and  
Cluster Residential Use**

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and Parcels included within the Land Use Classifications of Single Family Residential, Residential Apartment Development, Residential Condominium Development or Cluster Residential, and to the Owners and Occupants thereof:

**Single Family Use**

5.3.1 Single Family Residential Use. No structure whatsoever, other than one private, Single Family residence per Lot, together with such private garage, guest facilities, recreational and storage facilities which may be approved in advance by the Reviewing Authority in accordance with this Declaration, shall be erected, placed or permitted on any Lot designated in a Tract Declaration as having Single Family Residential Use Land Use Classification, and no use of any such Lot may be made other than Single Family Residential Use.

**Apartments,  
Condominiums, etc.**

5.3.2 Residential Apartment Use, Residential Condominium Use, and Cluster Residential Use. No structure whatsoever, other than one or more buildings each containing one or more private Dwelling Units, together with parking garages or structures, storage facilities, recreational facilities, including but not limited to tennis courts and swimming pools, and property management sales or rental offices incidental or appurtenant thereto, shall be erected, placed or permitted on any portion of the Covered Property designated in a Tract Declaration as having Land Use Classifications of Residential Apartment Development, Residential Condominium Development or Cluster Residential. No use of any apartment, Lot or Dwelling Unit may be made other than by a Single Family.

**Commercial Restriction**

5.3.3 No Commercial Use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on or in any Lot or Parcel except as set forth in this subparagraph. Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner or Occupant may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means

work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

- (a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;
- (b) the business activity conforms to all zoning requirements for the Lot; and
- (c) the business activity does not involve traffic by persons who do not reside therein, nor regular arrival of employees of the Owner; and
- (d) the business activity is lawful and consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use within the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately. In no event shall any form of detention house, reform school, rooming or boarding house, sanatorium, or any form of group home whether or not providing services to occupants, be permitted within the Covered Property, except that this prohibition shall not apply to group homes or similar living or care arrangements which by state or federal law may not be prohibited by enforcement of private restrictive covenants.

Notwithstanding the foregoing, nothing herein shall limit the placement of antennae, microwave reception or communication equipment, fiber optic facilities, or other such equipment which Declarant may approve.

***Front Yard Landscaping***

The Association may elect to maintain front yard landscaping, or a Tract Declaration approved by Declarant may require such maintenance. Such landscaping shall generally be limited to:

- (e) landscaping located in front yards outside the courtyards, limited to such landscaping initially installed by a Developer Owner; and
- (f) if the Board elects, lighting fixtures, if any, and/or light bulbs appurtenant to front courtyard walls.

The maintenance obligation for front yards shall not include repair of any damage which is not regular maintenance. Repair, and any expense therefor, of any damage to landscaping shall be the responsibility of each Owner.

The Association shall have the right, but not the obligation, to maintain other front yard features if necessary to create a uniform and pleasing appearance of the Covered Property, and such right shall include the painting or maintenance of the front face of any garage door (excluding the mechanical or operating components thereof). The Association shall have an easement onto each Lot for purposes of the foregoing matters of maintenance and repair.

With respect to such front yard landscape maintenance, the Association's responsibility shall be limited to plants and irrigation equipment relating thereto installed by the Developer Owner, and with respect to the irrigation of vegetation, only for so long as such irrigation is necessary. Water for such vegetation, and any damage from irrigation systems serving the same, and electricity required therefor or for any lighting, shall be the sole responsibility of the Owner whose Lot or Parcel is affected or benefited thereby as determined in the sole discretion of the Board, unless the Board determines to make such expense a Common Expense. An easement on, in and over such portions of each Lot or Parcel, and rights to connect to water and electric sources, and to place any fixtures and equipment, for such purposes is hereby granted and conveyed to the Association by this Declaration. No Owner shall disconnect or otherwise preclude or interfere with electric connections or the delivery of water to their Lot or Parcel or to any adjacent Lot, Parcel or Common Area.

Each of such Lot or Parcel Owners, for themselves and for and on behalf of their family members

and tenants, licensees and invitees, do hereby waive and release the Association, the Developer Owner and Declarant from any and all claims, demands and liabilities which are, or may be, asserted relating in any way to such landscaping, improvements or equipment, or the maintenance, repair or replacement thereof, or the use of water or electricity in connection therewith, including, without limitation, any claims for personal injury or property damage, or for expense for water or electric charges.

Where the Association has undertaken front yard landscaping or related maintenance activity within a District, District Assessments may be levied against the Lots or Parcels benefited.

**Leasing**

**5.3.4 Leasing.** The entire (but not less than all) of a Dwelling Unit or Apartment Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, any applicable Tract Declaration and the Association Rules. Each Owner shall provide to the Association a copy of any written lease agreement for any Lot, and Tenants shall be required in each form of lease to abide by all provisions of this Declaration. Should a tenant fail to so abide, the Association shall have the right to cause the Owner to declare a default under the lease and to take appropriate action, including eviction of the tenant.

**Animals**

**5.3.5 Animals.** No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot or Parcel and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing or confinement of any permitted pet shall be Visible From Neighboring Property. The Board shall have the right by Rule or otherwise to determine what shall constitute a generally recognized house pet, and what a reasonable number of such pets shall, in any instance, constitute.

Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot or Parcel which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a

Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. The Board has the right, after notice and the opportunity for a hearing, to require the removal of any pet which the Board, in its sole discretion, has determined is a nuisance. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

***Clothes Drying***

Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot or Parcel without the prior written consent of the Reviewing Authority unless they are not Visible from Neighboring Property.

***Window Coverings***

Window Treatments. No visible window covering or reflective covering may be placed, or permitted to remain, on or adjacent to the exterior of any window of any building, structure or other improvement without the prior written approval of the Reviewing Authority.

***Garbage and Trash Regulation***

5.3.6 Garbage. No garbage or trash shall be allowed, stored or placed on a Lot or Parcel except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and Parcel and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be visible from Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

***Machinery and Equipment***

5.3.7 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot or Parcel, except:

- (a) during the period of construction, such machinery or equipment as is usual and

customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or

- (b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of the Covered Property.

***Antennas, Dishes, etc.***

**5.3.8 Antennas and Dishes; Solar Devices.** No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antenna structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

Notwithstanding the foregoing, nothing herein shall limit the placement of antennas, microwave reception or communication equipment, fiber optic facilities, or other such equipment which Declarant may approve.

No solar heating or cooling equipment or other visible solar device may be installed or erected without approval of the Reviewing Authority, which shall

give due regard to state law restricting the limitation of such devices. To the extent permitted by law, any such equipment installed on a Dwelling Unit or on a Lot shall be designed to integrate into the architecture of the Improvements upon the Lot, or into the Dwelling Unit, and shall not detract from the aesthetics of the Improvements.

### **Signs**

**5.3.9 Signs.** No signs of whatever nature may be erected or placed within the Covered Property, except such signs as are permitted by the DRC Guidelines, and further except for those signs approved by the Board or by Declarant. Declarant may approve signs without any other consent or approval, and may approve signs of Developer Owners. Except as stated, no sign shall be placed on any Lot or Parcel other than:

- (a) signs required by legal proceedings;
- (b) a maximum of 2 identification signs for Dwelling Units, each with a maximum face area of 72 square inches or less;
- (c) such other signs as the DRC Guidelines shall permit, including signs necessary for marketing and sales by Developer Owners; and
- (d) such signs approved by Declarant.

The foregoing restrictions shall be subject to such limitations and privileges as are established at law, including for the placement of political signs and signs pertaining to candidates for political office or to other such protected matters.

After providing notice to any Owner that a sign is in violation of the Governing Documents, the Association has the right to remove such signs from the Common Areas, the Lot or Parcel, or any other place in the Covered Property and to dispose of such signs. The Association has an easement over any Lot for that express purpose and in exercising its easement rights is not guilty of trespassing.

In addition to the foregoing, Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across all Common Area for purposes of installing and maintaining signs for



the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property and Annexable Property, but in no event later than twenty (20) years after the date this Declaration is recorded.

**General Parking and  
Street Parking Limitation**

**5.3.10 Vehicles and Parking.** As used in this Section: (a) "Motor Vehicle" means a car, van, sport utility vehicle, bus, truck, recreational vehicle, motor home, motorcycle, all terrain vehicle, utility vehicle, pickup truck or other motor vehicle; and (b) "Streets" means the streets shown on any Plat of the Covered Property.

No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Common Area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment may be parked, kept or stored on any Lot so as to be Visible From Neighboring Property, except with the written approval and limiting stipulations of the DRC which shall include provision for mandatory screening and placement of any such equipment or vehicle, but in no event may any such equipment or vehicle be placed in any front yard, driveway, or driveway-apron area. No mobile home, travel trailer, tent trailer, trailer, camper shell, boat trailer or other similar equipment or vehicle may be parked, kept or stored on the Streets, except that the Board may adopt rules and regulations governing the subject matter and further restricting such parking or establishing limited exceptions thereto, such as for loading and unloading, emergencies, and the like.

Except as permitted by this Section, no Motor Vehicle may be parked, kept or stored on any Lot or the Common Area. No Motor Vehicles designed or used for carrying merchandise, supplies or equipment for commercial purposes may be parked on the Common Area or on a Lot, except for the temporary parking of the Motor Vehicles of contractors, subcontractors, suppliers or vendors of the Association or the Owners, Lessees or Residents.

It is also the intent of this Section to require that Motor Vehicles owned or leased by an Owner, Lessee

or Resident of the Lot be parked only in the garage, carport, driveway or approved driveway expansion areas situated on the Lot, as constructed by Developer Owners in the course of original construction approved by the Reviewing Authority. Accordingly, Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot must be parked in the garage or carport situated on the Lot to the extent space is available in the garage or carport for the parking of such Motor Vehicles. If space is not available in the garage or carport, then Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may be parked on the driveway constructed as part of the initial construction of Improvements on the Lot. Parking of Motor Vehicles owned or leased by an Owner, Lessee or Resident of a Lot may only be parked on an approved driveway expansion area if space for the parking of such Motor Vehicles is not available either in the garage or carport or in the driveway constructed as part of the initial construction or Improvements on the Lot. The parking of a Motor Vehicle owned or leased by an Owner, Lessee or Resident of a Lot on a driveway expansion area is also subject to such rules and regulations as may be adopted by the Board.

No Motor Vehicle of any kind may be stored on a Lot except in a garage, and no Motor Vehicle of any kind may be stored on the Common Area. For purposes of illustration but not of limitation, a Motor Vehicle shall be deemed stored if it is covered by a car cover, tarp or other material. Motor Vehicles owned by guests of an Owner, Lessee or other Resident may be parked in the driveway on a Lot or, in the case of visits, parties, or special events, on the Streets or in designated parking spaces on the Common Area.

Recreational vehicles, motor homes and similar vehicles owned or leased by an Owner, Lessee or Resident may be parked in the driveway on a Lot for the purpose of loading or unloading, subject to such limitations as may be established by the Board.

No Motor Vehicle shall be constructed, reconstructed or repaired on any Lot in such a manner as to be Visible From Neighboring Property, and no inoperable Motor Vehicle may be stored or parked on any Lot in such a manner as to be Visible From Neighboring Property, nor stored or parked on the Streets or any other

part of the Common Area. Except for emergency repairs, no Motor Vehicle shall be constructed, reconstructed or repaired on the Streets or any other part of the Common Area.

The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Motor Vehicles on Lots or the Streets and implementing the provisions of this Section, and establishing certain exceptions that may in certain cases be warranted. In the event of any conflict or inconsistency between the provisions of this Section and the rules and regulations adopted by the Board, the provisions of this Section shall control.

#### ***Use of Garages***

**5.3.11 Use of Garages.** Vehicles shall be kept in garages where adequate space exists, or in other designated parking areas or as otherwise required in a District Declaration or Tract Declaration. No garage doors shall be permitted to remain open except for a temporary purpose (such as during ingress or egress, or when the garage is physically occupied by an Owner or Occupant therein) and no less than two stalls in all garages shall be kept free of obstruction and available for parking of vehicles.

The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation, enforceable as all other Assessments and in the same manner as other provisions of this Declaration. The Association may also delegate its authority to enforce such parking restrictions to the appropriate District Association.

#### ***Commercial Vehicles***

**5.3.12 Commercial Vehicles.** No vehicle shall be parked on the Covered Property if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage), except such signage that is limited to the exterior driver or passenger door of such vehicle shall be permitted if the vehicle is used by the Owner as regular transportation in commuting to work.

No vehicle shall be permitted to park on a Lot, even if such vehicle otherwise qualifies under the

preceding paragraph, or under any other provision hereof, if such vehicle is used for a commercial enterprise or activity and such vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from such vehicle so as to be visible from the exterior of such vehicle (and the vehicle is not kept in an approved enclosed garage).

The foregoing restriction shall not apply to vehicles parked within an enclosed structure approved by the Reviewing Authority, nor to commercial vehicles of contractors, Developer Owners and others working on the Covered Property, nor to vehicles of vendors, business invitees and others in the process of temporarily serving the Covered Property.

**Model Homes**

**5.3.13 Model Homes.** Nothing contained herein or in any applicable District Declaration or Tract Declaration shall prohibit the construction and maintenance of model homes, sales offices, property management offices and parking incidental thereto by persons engaged in the construction, servicing, marketing, rental or management of Dwelling Units within the Covered Property, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and ordinances of the City. Except as otherwise approved in writing by the Board:

- (a) all model homes and sales offices shall cease to be used as such at any time the owner (or lessee thereof as the case may be) is not actively engaged in the construction or sale of Dwelling Units within the Covered Property (provided that the foregoing portion of this sentence shall not apply to property management offices or other offices or stations permitted under zoning which serve the Covered Property, including utility offices and offices related to communications facilities and services); and
- (b) no model home, sales office, or property management office shall be used for the sale or rental of residences not located within the Covered Property.

**5.4 Covenants, Conditions and Restrictions Applicable to Non-Residential Use and Mixed Use**

Should any portion of the Covered Property be permitted by Declarant to be used for a Non-Residential Use or Mixed Use, Declarant may record Additional Covenants as a part of a Tract Declaration therefor, and may establish in such Tract Declaration special provisions for voting rights, assessment obligations, and other pertinent restrictions under the purview of the Association.

**5.5 Variances**

Declarant may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof or in any Tract Declaration if Declarant determines:

5.5.1 1. Either that (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; (b) a change of circumstances has rendered the particular restriction obsolete; or (c) other circumstances warrant a variance in Declarant's sole and absolute discretion; and

5.5.2 2. the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants.

Declarant may assign to the Reviewing Authority its right to grant and approve variances. Such assignment may be subject to terms, conditions, and limitations. Any request made to Declarant or to the Reviewing Authority, shall be made in writing and be accompanied by supporting documentation. Declarant or the Reviewing Authority, if other than Declarant, shall approve or disapprove of requests, in writing, and promptly, as the particular circumstances may warrant. All decisions of Declarant or the Reviewing Authority shall be final and non-appealable. No variance granted by the Reviewing Authority, if other than Declarant, may be given that reverses or alters a decision made by Declarant unless Declarant shall consent thereto.

**ARTICLE VI**

**ORGANIZATION OF ASSOCIATION**

**6.1 General Purpose and Charge**

The Association is a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. Neither the Articles nor the Bylaws shall be

amended or interpreted so as to be inconsistent with this Declaration.

**6.2 Board of Directors and Officers**

The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. During the Class B Membership, the Board shall consist of at least three (3) directors who shall be Members or individuals designated by a corporate, partnership or other non-individual Member, and all of the directors may be appointed by Declarant and the Class B Member during the Declarant Control Period. After the Declarant Control Period has expired, or at such earlier time as Declarant relinquishes its rights to appoint the Board, the Board shall be elected by the Class A Members as more fully set forth in the Bylaws of the Association. Reference is made to the Bylaws for the manner in which the Class A Members shall elect, and Class B Member(s) shall appoint, directors of the Association.

The Board may appoint various committees at its sole and absolute discretion, including an advisory committee of Class A Members who may provide non-binding advice to the Board and assist with gradual transition from control by the Class B Members to the Class A Members. The Board may appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area. The Board shall determine the compensation to be paid to the manager.

**6.3 Managing Agent**

All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a professional management company as managing agent under a management agreement; provided, however, that no such delegation shall relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' written notice; provided, however, that the Association may terminate the agreement for cause upon thirty (30) days' written notice.

**6.4 Association Rules**

By a majority vote of the Board, the Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Area, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Area and the Limited Common Area. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein, and may be enforced in the same manner as the provisions of this Declaration. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association. During the period while the Class B Membership continues to exist, the Class B Member may disapprove of actions of the Board to adopt, amend or repeal the Rules.

**6.5 Personal Liability**

No Reviewing Authority, Board member, officer, committee member, employee or representative of the Association, or the Association itself, nor Declarant, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

Notwithstanding the foregoing, where applicable, the personal liability of any Reviewing Authority, Board member, officer, committee member, employee or representative of the Association, the Association itself, or Declarant shall be further limited by the Governmental Immunity Act of Utah, Utah Code Ann. § 63-30d-101 to -904, as may be amended from time to time.

**6.6 District Associations**

In the event any homeowners or similar District Association is formed by a Developer Owner (other than Declarant or a Declarant Affiliate) of a group of Lots or Parcels, such District Association's governing documents shall not be effective unless they have been approved in

advance by Declarant during the period that Declarant is a Class A or Class B Member of the Association or, thereafter, by the Board, and they specify that such governing documents, such group of Lots or Parcels, the District Association, and the District Association's members are subject and subordinate to this Declaration and the Articles, Bylaws, and Association Rules. Neither Declarant nor the Board shall disapprove any such governing documents unless, in the Board's sole discretion, either:

- (a) they are inconsistent or in conflict with this Declaration, the Articles, the Bylaws, the Association Rules, the DRC Guidelines, any applicable Tract Declaration, or are legally or practicably ineffective to accomplish their intended purposes; or
- (b) they fail to contain the recitation required by the provisions above.

District Associations shall have the right to own, operate and maintain Limited Common Area and shall not be required to dedicate same as Common Area hereunder.

Notwithstanding any other provision of this Declaration, no District Association may be created without the written approval of Declarant.

**6.7 Mergers or Consolidations**

The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association.

**6.8 Contracts with Others**

Adjacent to or in the vicinity of the Covered Property are properties that have been or, in the future, may be developed as independent commercial and/or residential areas. Declarant or the Association may enter into a covenant to share costs with all or any of the owners of such adjacent or nearby commercial and/or residential areas which allocates access, use of Common Area, maintenance responsibilities, expenses, and other matters between the Association and such property owners. Unless annexed in accordance with the provisions hereof, the owners of adjacent or nearby properties shall not be entitled to vote on Association matters, shall not be



Members of the Association, and shall not be subject to Assessments or other conditions or restrictions set forth in this Declaration.

## ARTICLE VII

### MEMBERSHIPS AND VOTING

#### **7.1 Votes of Owners**

Every Owner of a Lot or Parcel (but not an Owner who owns solely Exempt Property), and Declarant so long as it is a Class B or Class A Member, shall automatically be a Member of the Association and shall remain a Member for so long as such ownership continues. Each Class A Member shall have the following applicable number of votes in regard to votes of the Members of the Association:

#### ***Lots***

7.1.1 Lots. In the case of Lots, one (1) vote for each Lot owned;

#### ***Single Family Parcels***

7.1.2 Single Family Residential Parcel. In the case of a Single Family Residential Parcel which has not been divided into Lots by a subdivision plat or other recorded instrument, five (5) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote).

#### ***Condominium Parcels***

7.1.3 Residential Condominium Parcel. In the case of a Residential Condominium Development Parcel for which a condominium declaration has not been recorded, eight (8) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote).

#### ***Apartment Parcels***

7.1.4 Apartment Parcel. In the case of an Apartment Parcel upon which construction has not yet been completed, eight (8) votes for each Net Acre owned within such Parcel (with each such Owner to have at least one whole vote); provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall have the greater of eight (8) votes for each Net Acre or one-half (1/2) of a vote for each Apartment Unit built upon the Parcel.

#### ***Number of Lots***

7.1.5 Determination of Lots. If a subdivision plat, condominium declaration or other instrument creating Lots is recorded which covers all or part of a Parcel, then the votes attributable to the Lots shall be determined as set

forth above. If a subdivision plat, condominium declaration or other instrument creating Lots for such Parcel is later recorded showing a different number of Lots, the number of votes shall be adjusted to reflect the actual number of Lots as set forth in the recorded subdivision plat, condominium declaration or other instrument creating Lots. All votes attributed to an unsubdivided Parcel as a "Parcel" shall cease and be made applicable to Lots when all of the area is platted or otherwise divided into Lots.

***Non-Residential Parcels***

**7.1.6** Non-Residential Parcels and Mixed Use Parcels. The Owner of a Non-Residential Parcel or Mixed Use Parcel within the Covered Property shall have the greater of six (6) votes per Net Acre of the Parcel or one (1) vote for each five hundred (500) square feet of Interior Floor Area of buildings constructed upon the Parcel.

**7.2 Membership is Appurtenant to Ownership**

Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot or Parcel to which the Membership is attributable, except that Declarant shall be a Member of the Association for so long as Declarant possesses either a Class B or Class A Membership, unless Declarant shall earlier relinquish its Membership. There shall be only the Memberships for each Lot and Parcel as are described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot or Parcel. Rather, the votes must be cast together in one unit.

**7.3 Declarant**

Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

**7.4 Voting Classes**

The Association shall have two classes of Members:

***Class A Members***

**7.4.1** Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1.

***Class B Members***

**7.4.2** Class B. The Class B Member shall be Declarant. The Class B Membership shall terminate and be

converted to a Class A Membership upon the happening of the first of the following events:

- (a) two (2) years after termination of the Declarant Control Period (as such period may revive);
- (b) the date on which the Class B Member relinquishes its Class B Membership by notifying the Class A Members in writing.

Declarant shall have the right to assign its rights and privileges as Declarant and as the Class B Member in whole or in part. Such assignment may include all special voting and other provisions set forth herein.

Upon termination of the Class B Membership, Declarant shall be a Class A Member entitled to Class A votes for all Lots and Parcels which it owns. Should the Class B Membership not have expired, Declarant shall retain its Class B Membership, even if Declarant owns no Lot or Parcel.

The Class B Membership, if once expired, shall revive if subsequent annexations or other events should occur which cause the Declarant Control Period to revive pursuant to Section 1.30 above.

#### **7.5 Right to Vote**

Class A votes shall only be cast by the Voting Member, except as stated otherwise in the Governing Documents. The Voting Member shall cast the votes attributable to a District as required by the applicable District Declaration. No change in the ownership of a Lot or Parcel shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the recorded deed showing the name of the Owner of such Lot or Parcel. The vote for each Member must be cast as a single unit, and solely by the Voting Member as and when applicable. Fractional votes shall not be allowed, except as provided in Section 7.1 relating to Apartments.

In the event that a Lot or Parcel is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast (such as when voting for the representative of a District), they shall not be entitled to vote on the matter in question. If any Owner

casts a vote or votes representing a certain Lot or Parcel, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot or Parcel unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot or Parcel all such votes shall be deemed void.

**7.6 Members' Rights**

Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the DRC Guidelines.

**7.7 Voting by District;  
Special Services**

***Designation of Districts***

**Designation of Districts.** During the Declarant Control Period, Declarant shall have the right, by Recordation of a Tract Declaration or otherwise, to designate groups of Lots or Parcels having common interests, goals, facilities, etc. as a District. Following the Declarant Control Period, or upon Declarant's delegation of its right to designate Districts, the Board shall have the right to create and designate Districts.

***Voting Member***

If all of the Owners of Lots within a District are members of a District Association, and if Declarant in a District Declaration has required representative voting whereby all votes attributable to Owners within the District are to be cast as a block, then the Voting Member for such District shall be the president of the District Association. If a District does not have a District Association, and if Declarant has in a District Declaration required representative voting, then the Class A Members within such District shall elect a representative to serve as the Voting Member.

Notwithstanding the foregoing, Declarant may at any time, and from time to time, determine that votes cast at certain meetings, including advisory votes, shall be cast not by the Voting Member, but by each Member whose vote otherwise would be cast by the Voting Members. Such determination may be made at Declarant's sole and absolute discretion.

***Election***

**7.7.1 Election of Voting Member.** In those Districts where, by District Declaration or otherwise, representative voting is required, but no District Association exists, a meeting may at any time be called for the purpose of electing a Voting Member as the representative of all

Owners, or for replacing such Member, and the presence or concurrence, by ballot, proxy, email or otherwise of twenty-five percent (25%) of the Class A Members within such District shall constitute a quorum for the conduct of the election. The candidate who receives the greatest number of votes shall be elected as Voting Member and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Member. The Voting Member and the alternate Voting Member shall serve a term of one year and until their successors are elected.

#### ***Initial Election***

7.7.2 Initial Election. The first election of a Voting Member and alternate Voting Member from each District, if applicable, shall occur within one year after the sale of the first Lot in the District to a Person other than a Developer Owner, unless Declarant shall in its discretion determine that such election may be delayed or postponed. Thereafter, the Board shall call for an election of Voting Members and alternates on an annual basis, either by written ballots cast by mail, computer, or at a meeting of the Class A Members within such District, as the Board determines. Upon the written request of Class A Members representing at least ten percent (10%) of Class A Members within a District, a meeting shall be required for election of the Voting Member.

#### ***Special Services***

7.7.3 Special Services to a District. Any District, acting either through a District Committee elected as provided in the Bylaws or through a District Association, if any, may request that the Association provide a higher level of service than that which the Association generally provides to all Districts or may request that the Association provide special services for the benefit of Lots in such District. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Lots within a District, a request may be made to the Association to provide additional requested services.

The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot to all Districts receiving the same service), shall be assessed against the Lots within such District as a District Assessment.

The Owner of a Parcel may similarly request special services which may be assessed specially to the Parcel or Parcels in question, without such Parcels being a part of a District.

**7.8 Control by  
Declarant, and Rights of  
the Class B Member**

Declarant, as the Class B Member, has the right to control the Association. Such control shall exist by virtue of the right, at all times during the Declarant Control Period, to appoint the Directors of the Association, as well as their replacements in the event of death, removal, resignation or otherwise. Additionally, continuing even after expiration of the Declarant Control Period, the Class B Member may amend this Declaration, may amend the Articles and Bylaws of the Association, may appoint the DRC, and may veto amendments proposed to be made by the Class A Members. The Class B Member and Declarant shall have such additional and other rights and powers as are set forth herein or in other Governing Documents, including the right to disapprove of actions of the Board.

In cases where by law a vote or approval of Members of an association is required before certain action may be taken, and where such action may not be taken without such vote or approval, then in addition to all of its rights of appointment or direct action granted hereunder, the Class B Member shall be deemed to have three (3) times the number of votes for each Lot or Parcel owned that a Class A Member would have for such Lot or Parcel.

**7.9 Voting Groups**

Declarant may at any time during the period of the Class B Membership designate one or more Districts within the Covered Property as a Voting Group. The purpose of such designation shall be to enable each such Voting Group designated to elect at least one member of the Board at the option or election of the Members of such Districts and as set forth in the Bylaws. During such time as Declarant has the right to appoint any director, Declarant may reserve the right of appointment with respect to any particular District. It is acknowledged by all Owners, Members and Occupants that Declarant may determine to establish no separate Voting Groups, and such determination may be made at Declarant's sole and absolute discretion.

After such time as the Declarant Control Period has expired, the number of Voting Groups shall be not greater than the number of directors that the Class A Members are

entitled to elect pursuant to the Bylaws. As more specifically set forth in the Bylaws, should there be fewer Voting Groups than directors to be elected, then the remaining directors shall, unless appointed by Declarant, be elected at large.

Declarant may at any time during the period of the Class B Membership change, amend or revoke the establishment of a Voting Group. After such time as any Voting Group has been established, the remainder of the Membership within the Covered Property not within a Voting Group shall be deemed a single Voting Group. This provision shall in no way limit or restrict Declarant's right to appoint the majority of the Board.

The votes of Class A Members within Voting Groups shall, unless determined otherwise by Declarant as provided herein, be cast solely by the Voting Members representing Districts within such groups if so required by a Tract Declaration approved by Declarant.

**7.10 Transfer of Membership**

The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot or Parcel, and then only to the transferee thereof. Such transfer may be affected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Utah law. Any attempt to make a non-approved form of transfer shall be void. Any transfer of ownership in a Lot or Parcel shall operate to transfer the Membership appurtenant to ownership to the new Owner.

**7.11 Compliance with Law**

All notices or other express requirements shall comply with Utah Code Annotated, Title 16, Chapter 6a (Utah Non-Profit Corporation Act), but only to the extent applicable, and only to the extent permitted provisions of the Governing Documents do not otherwise control.

**ARTICLE VIII****ASSESSMENTS AND CREATION OF LIEN****8.1 Creation of  
Assessment Lien;  
Personal Obligation of  
Lot Owner**

Each Owner by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument) is deemed to covenant and agree, to pay to the Association the Assessments and Special Use Fees when due. The amount and time for payment of the Special Use Fees and the Assessments shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Special Use Fees and the Assessments, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate.

Assessments, together with interest thereon and late charges and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot or Parcel against which such Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot or Parcel at the time when such Assessments become due and payable. This provision shall be subject to such limitations as are imposed by law, including Utah Code Annotated Title 57, Chapter 8a (the Utah Community Association Act), and such limitations and exemptions as are set forth in Section 8.16 hereof.

**8.2 Annual  
Assessments**

The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to accomplish the duties and purposes of the Association within the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Area, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. Without limitation, the Annual Assessments may include amounts due and owing from each Owner for services rendered pursuant to the terms and provisions of the Communications Agreement, as defined in Section 15.2 hereof. The Annual Assessments shall take into account



the Common Expenses of the Association benefiting all Lots and Parcels, and distinguish such expenses from District Expenses.

Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association and collect such increased Annual Assessment in accordance with the provisions hereof.

**8.3 Annual Assessment Period**

Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The initial Assessment Period shall commence upon conveyance of the first Lot or Parcel from Declarant to a Developer Owner, or, if earlier, upon annexation of the first Lot or Parcel owned by a Developer Owner, and shall terminate on December 31 of the same year. The Annual Assessments shall be prorated for the initial Assessment Period. Without limitation, Assessments shall commence upon initial conveyance to any person or entity, other than Declarant or to a Declarant Affiliate, whether such initial conveyance is to a Developer Owner or to a Non-Developer Owner.

If any installment permitted for the payment of Assessments is not paid when due, the Board may accelerate the entire Annual Assessment or other Assessment. Late fees and interest may be added to the Delinquent Amount of any Assessment, as provided herein, and become a part thereof, and may continue to accrue interest thereon, all to the extent permitted by law. Delinquent payments shall, to the extent permitted by law, apply first to the principal amount of any delinquent Assessments, then to accrued interest, and then to late fees and other sums due. The Owner shall also be liable for attorneys fees and legal costs, including litigation related expenses and expert witness fees, if any. Attorneys fees and costs incurred shall to the extent permitted by law, be deemed a part of the delinquent Assessment, and shall be secured by the lien therefor.

**8.4 Association's Rights in Spending Funds from Year to Year**

The Association shall not be obligated to spend in any year all monies received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce

the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year. The Association shall be under no obligation to refund any surplus balance, and may transfer surpluses to the reserve account or other account at the Board's discretion.

### **8.5 Rate of Assessment**

The amount of the Annual Assessments, Maintenance Assessments, District Assessments, and Special Assessments shall be established by the Board, in its sole discretion.

#### ***Base Assessment***

**8.5.1 Base Assessment.** In establishing its budget and creating its plan for Assessments each year, the Board shall first establish an Annual Assessment per Lot payable for each Lot (the "Base Assessment").

#### ***Single Family and Cluster Parcels***

**8.5.2 Single Family Residential Parcel or Cluster Residential Parcels.** In the case of a Single Family Residential Parcel or Cluster Residential Use Parcel that has not been subdivided into Lots, the Annual Assessment shall be five (5) times the Base Assessment for each Net Acre in the Parcel.

#### ***Apartment and Condominium Parcels***

**8.5.3 Residential Apartment Use and Residential Condominium Use Parcels.** In the case of a Residential Apartment Use Parcel upon which construction has not been completed, or a Residential Condominium Use Parcel for which a condominium declaration has not been recorded, the Annual Assessment shall be eight (8) times the Base Assessment for each Net Acre in the Parcel. Provided, however, that upon completion of construction upon an Apartment Parcel, the Class A owner thereof shall pay the greater of eight (8) times the Base Assessment for each Net Acre or one-half (1/2) of the Base Assessment for each Apartment Unit built upon the Parcel.

#### ***Non-Residential Parcels***

**8.5.4 Non-Residential and Mixed Use Parcels.** In the case of a Non-Residential Parcel or Mixed Use Parcel, if any, the Annual Assessment shall be established in a Tract Declaration for such parcel, but the Annual Assessment for a Non-Developer Owner of such land, shall not be less than six (6) times the Base Assessment for each Net Acre within the Non-Residential Parcel or Mixed Use Parcel.

**8.6 Obligation of  
Developer Owner**

***Reduced 25%  
Assessment Ratio***

**8.6.1** Twenty Five Percent Reduced Rates for Developer Owners. Subject to the provisions of Section 8.19 hereof, the Developer Owner of a Lot or Parcel, including a Non-Residential Parcel, is entitled to pay only 25% of the otherwise applicable Annual or Special Assessment for each Lot or Parcel owned, until the earlier of:

- (a) the initial conveyance of a Dwelling Unit on the Lot to the first Non-Developer Owner thereof, or, in the case of an Apartment Parcel, the date of completion of construction of Apartments thereon, or the date of completion of construction of a Condominium building thereon in the case of an Condominium Parcel, or the date of completion of construction of a Non-Residential or Mixed Land Use building thereon in the case of a Non-Residential Parcel or Mixed Land Use Parcel; or
- (b) the date which is at least twelve (12) months after the date of the initial conveyance of the Lot or Parcel from Declarant to the first Developer Owner thereof.

***Reduced 40%  
Assessment Ratio***

**8.6.2** Forty Percent Reduced Rates for Developer Owners. Subject to the provisions of Section 8.19 hereof, after such time as a Developer Owner no longer qualifies for the 25% rate set forth in Section 8.6 above, the Developer Owner of a Lot or Parcel, including a Non-Residential Parcel, is entitled to pay only 40% of the Annual Assessments and Special Assessments for each Lot or Parcel owned until the earlier of:

- (a) the initial conveyance of a Dwelling Unit on the Lot to the first Non-Developer Owner thereof, or, in the case of an Apartment Parcel, the date of completion of construction of Apartments thereon, or the date of completion of construction of a Condominium building thereon in the case of an Condominium Parcel, or the date of completion of construction a Non-Residential or Mixed Land Use building thereon in the case of a Non-Residential Parcel or Mixed

Land Use Parcel; or

- (b) twelve (12) months after the Developer Owner ceased to qualify for the reduced 25% rate above.

***Completion of Construction***

**8.6.3** Completion of Construction. Completion of construction, in the case of a Parcel designated for Apartment Land Use, Condominium Land Use, Non-Residential Use, or Mixed Land Use shall be the date of completion of construction of improvements on the Parcel as determined by the Board in its sole discretion, and may have reference to the date of issuance of a certificate of occupancy.

***Discretion of Board***

**8.6.4** Discretion During Reduction Period. Because actual revenues may depend upon sales and other factors, the Board shall have the discretion to consider the percentages in this Section 8.6 to be maximums, with the actual amounts payable to be determined each year by the Board based on the Association's operating budget for the next fiscal year.

***Portions of Parcels***

**8.6.5** Partial Development of Parcels. In the case of a site plan approved by the Reviewing Authority for a Parcel on which it is contemplated that more than one building will be constructed, the Parcel will, for the purposes of this Article only, be deemed subdivided into the number of sub-parcels equal to the number of approved buildings set forth on the approved site plan.

***Duty to Notify***

**8.6.6** Duty to Notify. If a Developer Owner ceases to qualify for the applicable reduced rate set forth above during any Assessment Period, such Developer Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot or Parcel having the right to pay the reduced rate fails to notify the Board of the date the payment amount is to be increased, that Owner will still be liable for the full amount of the Assessment as of the date it was required to pay that full or greater amount of the Assessment and such Owner's failure to notify the Board will not relieve the Owner of liability for the full amount of the Assessment.

***Qualification for  
Reduction of  
Assessment***

**8.6.7 Evidence of Qualification.** The Board, at any time, has the right to request that any Developer Owner being assessed at a reduced rate furnish the Association with evidence that such Developer Owner continues to be entitled to the applicable reduced rate under this Section. If such Developer Owner fails to produce the requested evidence within 30 days of the date of the Board's request, or if the evidence which is furnished is unsatisfactory in the Board's reasonable discretion, to demonstrate that Developer Owner's continued entitlement to the Reduced Rate, the Board may terminate the reduced rate as of the date reasonably deemed appropriate by the Board.

**8.7 Obligation of Non-Developer Owner**

A Non-Developer Owner (not including Declarant) is not entitled to the reduced assessment rates set forth in the above Sections and a Developer Owner is only entitled to such reduced rates if it is a Developer Owner of the specific Lot or Parcel being assessed.

**8.8 Maintenance Assessments**

The Association may assess Maintenance Assessments against a Lot or Parcel in the event the need for maintenance or repair of areas maintained by the Association is caused through:

**8.8.1** the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law); or

**8.8.2** the maintenance of a Lot or Parcel by an Owner, or failure to maintain, so as to present a nuisance, or to substantially detract from or negatively affect the appearance or quality of any neighboring Lot or Parcel or other area; or

**8.8.3** the maintenance of a Lot or Parcel by an Owner, or failure to maintain, so as to violate this Declaration or any applicable Tract Declaration; or

**8.8.4** any use of, or activity on, any Lot or Parcel that causes maintenance or repair costs incurred or to be incurred by the Association with respect to Common Area to be substantially greater than those costs which would typically be incurred in relation to such Common Area, whether such use or activity is of a continuing nature or an isolated event.

In any such case, the Board may, depending upon the circumstances, give notice to the Owner of such Lot or Parcel that unless specified corrective action is taken within a specified time period, the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action.

If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, at the Owner's sole cost, the Board is authorized and empowered, subject to such notice and hearing as may be required by law, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys, fees, shall be charged to the Owner as a Maintenance Assessment.

The Maintenance Assessment shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot or Parcel is subject, shall be secured by the Assessment Lien, and shall be due fifteen (15) days after written demand or notice by the Board.

In no case may any form of Maintenance Assessment be levied or charged with respect to Lots or Parcels owned by Declarant.

This Section shall be subject to such equitable and other limitations as may be imposed by law, including by the Utah Community Association Act.

**8.9 District Assessments**

Where the Association has undertaken, by virtue of its obligations hereunder, or pursuant to a Tract Declaration or District Declaration approved by Declarant, or by the Board as provided herein, or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational or other common facilities or any guard gates, or any Limited Common Area, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of certain groups of Lots or Parcels, may assess all (or such

appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing, operation, and, if applicable, ownership, solely against the Lots or Parcels within such subdivision or area within the Covered Property (and the respective Owners thereof) as a District Assessment.

A District Assessment may also include the cost of any special or extra services provided by the Association to a District pursuant to an approved request under Section 7.7 hereof.

A District Assessment shall be assessed uniformly against each of the Lots or Parcels within such area and shall be secured by the lien for Assessments as described herein. Such additional District Assessment may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. In any case where a District Association exists, the Board may require that the District Association collect and transmit District Assessments to the Association.

One of the purposes of this Section is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots and Parcels within a particular area or subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners, rather than to require formation of a District Association to undertake such ownership and maintenance.

A District Assessment pursuant to this Section shall be secured by the Assessment Lien on each Owner's Lot or Lots affected, and shall be due and payable by such Owners to the Association fifteen (15) days after such dates or times as are determined by the Board.

#### **8.10 Fines and Penalties**

If any Owner, his or her family, or any licensee, invitee, tenant or lessee violates the provisions hereof, or any provision of any of the DRC Guidelines or other rules of the Association, the Board after providing the Owner with notice of the violation and an opportunity for a hearing as required by law, may levy a fine upon the Owner, may suspend the violator's right to use the Common Area and may charge such Owner all costs incurred by the Association in connection with enforcement or other action

taken by the Association, including attorneys fees and costs incurred. Such violation shall also be grounds for the Association, should it wish, to suspend the said rights of the Owner and its family members, guests and invitees.

The Board may establish a procedure for conducting hearings and imposing penalties. Any fines imposed against the Owner which are not paid within fifteen (15) days of notice of the due date, may be charged to the Owner of the Lot or Parcel in question, may be collected in the same manner as delinquent Assessments, and shall be deemed a part of the Assessments for which such Owner is liable, with a lien on the Lot or Parcel to secure same, all as provided by law for the collection of Assessments, penalties and other charges.

In no event shall any fine be imposed for a default or violation of the Governing Documents, other than a failure to pay Assessments, without first affording the Owner notice and an opportunity for hearing.

This Section shall be subject to such limitations as exist at law, including by the Utah Community Association Act.

#### **8.11 Special Assessments**

In addition to the Annual Assessments, the Board may levy a special Assessment a) for the purpose of constructing improvements to Common Area; b) correcting an inadequacy in the Association's accounts; c) defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association; or d) defraying other extraordinary expenses or paying other expenses the Board may deem appropriate, including increased expenses encountered by the Association in connection with new or expanded Common Area amenities or features, including such amenities or features within annexed land. The Board may also levy a Special Assessment against the Lots within any District if such Special Assessment is for District Expenses. The Board shall specify the effective date of any Special Assessment and may provide that the Special Assessment is payable in installments. Special Assessments shall be approved by the Class B Member and either the written consent of, or vote at any annual or special meeting of, Voting Members (or Members, if determined by Declarant, representing a majority of all votes allocable to Lots and Parcels. In the case of District



Expenses, a Special Assessment may be approved by the vote or written consent of Owners representing a majority of the total votes allocated to Lots which will be subject to such Special Assessment. The Board may in any case, however, impose and assess a Special Assessment as to all Lots or Parcels, or Lots within a District, without any vote or consent of Members whatsoever if the purpose is to pay the increased costs and expenses of the Association in connection with annexed land or new Common Areas, amenities or features, or increased expenses due to insurance premiums, taxes or governmental charges, or increased utilities charges, and the Class B Member shall have the right to cause the Board to make and levy such Special Assessments.

**8.12 Billing and  
Collection Procedures**

The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, which procedures may include delegating to the applicable District Association the authority and obligation of billing and collecting some or all of the Assessments and Special Use Fees. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot or Parcel changes during an Assessment Period. Any successor Owner shall be given credit for any non-refunded prepayments made by a prior Owner.

In case the Owner of a Lot or Parcel having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

**8.13 Collection Costs  
and Interest on  
Delinquent Amounts**

Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within fifteen (15) days after the due date. Any Delinquent Amount shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, the then prevailing interest rate on loans insured by FHA or VA, or such rate as is

determined from time to time by the Board. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount, and such amounts, to the extent permitted by law, shall be deemed a part of the Assessment Lien. This Section shall be subject to such equitable and other limitations as may be imposed by law including by the Utah Community Association Act.

**8.14 Working Capital Fund**

To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment and services, each purchaser of a Lot or Parcel upon which the construction of improvements is complete, as evidenced by a certificate of occupancy or similar instrument which allows the Lot to be used as a residence or non-residential establishment, shall pay to the Association immediately upon becoming the Owner of a Lot or Parcel a sum equal to twenty-five percent (25%) of the then-current Annual Assessment applicable to such Lot or Parcel (the "Working Capital Fund Contribution").

A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot or Parcel. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

**8.15 Exempt Property**

Exempt Property shall be exempt from Assessments and the Assessment Lien, and the Owner thereof, if other than Declarant, shall have no voting rights in the Association on account thereof.

**8.16 Exemption from Assessment Lien**

Notwithstanding any other provision of this Declaration, no Assessment Lien created hereunder may ever attach to land: a) owned by Declarant, or by any trustee for Declarant, so long as Declarant or any beneficiary of Declarant or of any such trustee is the State of Utah or any agency or instrumentality thereof, including Utah School and Institutional Trust Lands Administration; or b) owned, either beneficially or in fee, by the State of Utah or any agency or instrumentality thereof, including Utah

School and Institutional Trust Lands Administration.

**8.17 Community Enhancement Fee**

**8.17.1 Authority.** The Board shall have the authority, on behalf of the Association, to establish and collect a Community Enhancement Fee from the transferring Owner upon each transfer of title to a Lot in the Covered Property used or to be used for residential purposes, which Community Enhancement Fee shall be payable to the Association at the closing of the transfer and shall be secured by the Association's lien for assessments under Section 8.1. No Community Enhancement Fee shall apply to or be payable on account of any Parcel. Owner shall notify the Association of a pending title transfer at least seven (7) days prior to the transfer. Such notice shall include the name of the buyer, the date of title transfer, and such other information as the Board may reasonably require.

**8.17.2 Fee Limit.** The Board shall have the sole discretion to determine the amount and method of determining any such Community Enhancement Fee, except that the manner of determining the fee shall be uniform as to all Lots. In no event shall any such Community Enhancement Fee exceed one-quarter of one percent (.25%) of the selling price of the Lot (which includes, if applicable, any Dwelling Unit thereon).

**8.17.3 Exempt Transfers.** Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Lot:

- (a) By or to Declarant;
- (b) by or to a Developer Owner in the course of or pursuant to development or resale;
- (c) by and among joint owners or co-owners pursuant to tax planning, estate planning, or merely to change ownership for convenience, liability avoidance or similar transactions where a bona fide sale to a third person is not involved;
- (d) to a trustee of which an Owner is the sole beneficiary, or to an Owner's estate, surviving spouse or child upon the death of the Owner;

- (e) to an entity wholly owned by the grantor, provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due; or
- (f) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

**8.17.4 Purpose.** All Community Enhancement Fees which the Association collects shall be deposited into a segregated account used for such purposes as the Board deems beneficial to the general good and welfare of the Covered Property, which the Governing Documents do not otherwise require to be addressed by the Association's general operating budget. Without limitation, such fees may be used by the Association for the following purposes:

(i) preservation and maintenance of natural areas, special preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding the Covered Property;

(ii) programs, services, and activities which serve to promote a sense of community within the Covered Property, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, and a community computer network;

(iii) social services, community outreach programs, and other charitable causes;

(iv) Association reserve accounts; and

(v) operating and maintenance costs.

**8.18 Declarant's Exemption**

Anything in this Declaration to the contrary notwithstanding, neither Declarant nor any Declarant Affiliate shall be liable for, nor shall they be required to pay, Assessments of any nature for Lots or Parcels owned by them, except that Declarant and Declarant Affiliates shall pay Assessments on Completed Lots they may own. For purposes of this Section, "Completed Lots" shall mean any

Lot with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Covered Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed), but shall not include any Lots with improvements thereon used by Declarant or by a Declarant Affiliate as models or sales offices. Nor shall Declarant or a Declarant Affiliate be liable for the payment of any Assessments for any Lot or Parcel that, having been previously sold to a purchaser, has been deeded back to Declarant by foreclosure or deed in lieu of foreclosure, unless in the case of a Lot such Lot is a Completed Lot.

**8.19 Limited  
Obligation of Declarant  
and Developer Owners  
to Pay Deficiencies**

**8.19.1** Declarant and Declarant Affiliates. Each Declarant and each Declarant Affiliate shall, however, pay for any given Assessment Period in which Declarant and a Declarant Affiliate has paid or contributed to the Association less than the full ratable Annual Assessment for each Lot or Parcel owned by Declarant or by a Declarant Affiliate, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Area (i.e., only for actual budget deficits), but only up to the full Annual Assessment for each such Lot or Parcel actually owned by Declarant or Declarant Affiliate in the Covered Property, pro-rated for the relevant portion of the Assessment Period in question. A shortfall or deficiency shall exist if current ordinary and budgeted expenses of the Association are greater than the revenues of the Association from all sources for the Assessment Period in question; provided, however, that neither Declarant nor a Declarant Affiliate shall be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot or Parcel owned by them, and not more. In addition, such assignee's exemption, if any, shall expire with respect to any Lot or Parcel upon which construction of improvements has been completed.

Declarant and any Declarant Affiliate or Developer Owner may at any time at their sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay instead up to the full Annual Assessment for each Lot or Parcel owned by them.

In no event shall Declarant or any Declarant Affiliate be required to contribute to any deficiency or shortfall after termination of the Declarant Control Period, and in no event shall property of Declarant or of the State of Utah or any instrumentality thereof, as more specifically provided herein, be deemed encumbered by any Assessment Lien.

**8.19.2 Developer Owners.** Should a deficiency continue to exist after Declarant and each Declarant Affiliate has paid up to the full Annual Assessment for each such Lot or Parcel they own within the Covered Property, whether or not the expense therefor is advanced by Declarant or a Declarant Affiliate, then each Developer Owner who has paid or contributed to the Association less than the full Annual Assessment for each Lot or Parcel owned shall pay its share of the remaining deficiency, if any, but only up to the full Annual Assessment for each such Lot or Parcel actually owned by them in the Covered Property.

The ratable share of such deficiency shall be based upon the number of full Annual Assessments that would be payable for each Lot or Parcel owned, disregarding any reduced assessments otherwise applicable to any Developer Owners.

For example, should a single Developer Owner own four hundred (400) Lots, and should all Developer Owners, together, own five hundred (500) Lots and two (2) Single Family Residential Use Parcels each fifty (50) Net Acres in size for which Parcels an Owner would otherwise pay three hundred (300) Annual Assessments, and should such Lots and Parcels be held during the entire Assessment Period, then the Developer Owner owning four hundred (400) Lots would pay one-half of the remaining deficiency (i.e.,  $400/800=1/2$ ; where the denominator is determined by adding 500 Annual Assessments for all Developer Owner Lots plus 300 Annual Assessments for Developer Owner Parcels, and where the numerator is the number of Annual Assessments assumed for the Developer Owner in

question).

The Board in its reasonable discretion shall adjust the calculations above to account for Lots or Parcels owned for less than a full Assessment Period, with the number of assumed Annual Assessments pro-rated accordingly.

**8.20 City Development and Impact Fees**

Pursuant to the Washington Parkway Agreement, the City intends to assess certain street impact and utility connection and user fees, including the "Parkway Impact Fee," all as more fully described therein, upon development and improvement of the Covered Property and Annexable Property, or any portion thereof. Payment of any such fees and assessments levied by the City pursuant to the Washington Parkway Agreement shall be the sole obligation and responsibility of the Developer Owner of such land said fees and assessments are levied against and shall not be a part of any Assessment or other fee collected by the Association as provided herein. Any and all credits owing to Declarant or granted by the City pursuant to the terms of the Washington Parkway Agreement are solely Declarant's credits, unless otherwise in writing agreed to by Declarant.

**8.21 "Washington City Development Agreement"**

The PCD Lands, including the Covered Property, are burdened and governed by that certain Development Agreement by and between Declarant and Washington City. All Owners must comply with the applicable provisions of such Development Agreement. The Common Expenses of the Association shall include all cost and expense of complying with such agreement, and the provisions hereof shall be notice to all Owners of Lots and Parcels of the Association's obligations hereby confirmed to assume and be responsible for the maintenance, repair and replacement of certain open spaces to be acquired by the Association at the discretion and direction of Declarant, and the maintenance, repair and replacement of certain landscaping within public right of way, and to comply with all other applicable provisions of the said Development Agreement. Among other things, the Association shall accept drainageways and basins, including detention and retention basins, and shall be responsible to maintain and repair such drainage facilities and improvements except to the extent the City may be responsible therefor pursuant to the terms of the Development Agreement or PCD, but the Association shall have no right to object to any determination by the City as to which improvements shall

be maintained by the Association.

Without limitation, each Owner is deemed to acknowledge that easements for drainage, utilities, fiber optic and other communications networks and other facilities may be reserved over and across Common Area and the Association shall be required to maintain and protect the easement areas, and that whatever responsibility the Association may have had with respect thereto, including with respect to landscaped rights of way, shall cease to be the responsibility of Declarant and shall become the responsibility of the Association immediately upon recordation hereof.

The provisions of this Section may not be amended without the written consent of Declarant.

## ARTICLE IX

### ENFORCEMENT OF THE ASSESSMENT LIEN

#### **9.1 Association Remedies to Enforce Assessments**

If any Owner fails to pay any Assessment when due, the Association may (and each Owner hereby authorizes the Association to) enforce the payment thereof and the Assessment Lien by taking any and all action available at law or in equity, including:

9.1.1 Bringing an action against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and,

9.1.2 Foreclosing the Assessment Lien against the appropriate Lot or Parcel in accordance with then prevailing Utah law. Though not required, the Association may record notice of its lien, and all costs of preparation of such notice, recording and releasing same, including attorneys fees and costs, shall be paid by the delinquent Owner, with all expense thereof being a part of the lien of the Assessment.

#### **9.2 Subordination of Assessment Lien**

The Assessment Lien shall have priority from the date of recording of this Declaration, and shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot or Parcel, except as provided by law. Without limitation, the Assessment lien is junior to:



9.2.1 the lien of any First Mortgage encumbering a Lot or Parcel; and

9.2.2 the lien for taxes or other governmental assessments which are deemed superior hereto by applicable law.

Sale or transfer of any Lot or Parcel shall not affect the Assessment Lien; provided, however, the sale or transfer of any Lot or Parcel pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot or Parcel, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. No Event of Foreclosure shall relieve the Owner whose interest was foreclosed from liability for Assessments payable through the date of such Event of Foreclosure.

In addition, no Event of Foreclosure shall impair the Assessment Lien, except that a First Mortgagee obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

## ARTICLE X

### MAINTENANCE

#### 10.1 Common Area and Public Rights-of- Way

##### *Association Duty*

10.1.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage Common Area, including landscaping in public rights of way shown on the Master Development Plan, depicted in the PCD, or which are the subject of the Development Agreement. Common Area to be maintained by the Association may be identified on recorded subdivision plats approved by Declarant, in the Master Development Plan, in the PCD, or in a Tract Declaration, District Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. A Tract Declaration or District Declaration, or a separate instrument approved by Declarant may limit the Association's responsibilities with respect to certain Common Area.

The Association shall further have the right, to the fullest extent permitted by law, to regulate and restrict use of trail systems established within Common Area or within the Covered Property, and may adopt Rules pertaining to such matters. Such Rules may, without limitation, contain provisions necessary to protect nearby or surrounding landowners from trespass or nuisance, and no right of use associated with any trail within the Covered Property shall carry with it any right of occupancy or use, except for direct ingress and egress, and then only in accordance with the terms of a separate instrument establishing such right of ingress and egress.

***Rights of Way***

10.1.2 Rights of Way. The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within the Covered Property, other than those already the subject of Tract Declarations, the PCD, the Development Agreement or a District Declaration, to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity with respect to such public rights of way.

10.2 **Standard of Care**

The Association shall use a reasonable standard of care in providing for the repair, management and maintenance of the Common Area so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Area.

**ARTICLE XI**

**RIGHTS AND POWERS OF ASSOCIATION**

11.1 **Rights, Powers and Duties of the Association**

In addition to the rights and powers of the Association set forth in the Governing Documents, the Association shall have such rights and powers and duties as may be reasonably necessary in order to affect all the objectives and purposes of the Association as set forth herein. A copy of the Governing Documents shall be available for inspection at the office of the Association during reasonable business hours. To the extent development may be governed by the Sienna Hills Planned Community Development regulations, the Association shall in performing its duties and functions comply with the specific terms thereof that pertain to the Association.

**11.2 Provisions of the  
Planned Community  
Development  
Regulations**

Notwithstanding anything contained in this Declaration to the contrary, development of the Covered Property is intended to conform to the requirements of the PCD for Sienna Hills, as such PCD may be amended or changed from time to time. All Owners, by acceptance of a deed to any portion of the Covered Property, are deemed to be fully advised as to the content of the PCD. Should this Declaration be more restrictive than the PCD, this Declaration shall control.

**11.3 Rules and  
Regulations**

In addition to the right to adopt, amend and repeal rules and regulations (the "Rules") on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations, as a part of the Rules, with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of the Governing Documents. Upon adoption, the Association's Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

**11.4 Association's  
Rights of Enforcement**

The Association shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Additional Covenants that shall have been executed pursuant to or subject to the provisions of this Declaration.

**11.5 Enforcement  
Methods and Means**

The Association, after affording such notice and opportunity for a hearing, or to be heard, as may be required by law (including by the Utah Non-Profit Corporation Act and the Utah Community Association Act), may enforce the provisions hereof at law or in equity, including, but not limited to:

11.5.1 Imposing reasonable monetary penalties, which penalties shall be the obligation and liability of the offending Owner to pay, with each Owner being further liable for the acts of his or her guests, invitees and Tenants or residents.

11.5.2 Suspending an Owner's right to vote after notice and opportunity to be heard, as required hereby.

11.5.3 Suspending any services provided by the Association to an Owner or the Owner's property if the

Owner is more than 15 days delinquent in paying any Assessment or other charge owed to the Association.

11.5.4 Exercising self-help or taking action to abate any violation of the provisions hereof.

11.5.5 Requiring an Owner at the Owner's expense to remove any offending condition, structure or improvement on the Owner's property, and further requiring the said Owner to restore his or her property to the condition in which it previously existed, without such action being a trespass.

11.5.6 Without liability to the Association or to any Person, prohibiting any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Declaration from continuing to perform and further activities on the Covered Property.

11.5.7 Towing vehicles which are parked in violation of the provisions hereof.

11.5.8 Filing suit at law or in equity to enjoin a violation of the provisions hereof, or to recover fines or Assessments or such other relief as may be appropriate.

The Board may weigh financial and other factors, such as possible defenses, legal merit and other factors, in determining whether to pursue legal action, and the Board's discretion in such matters shall be final. The rights and remedies of the Association are cumulative, and the Association may pursue any or all remedies without waiver, and any failure by the Association to take legal action shall not limit or waive the right of any Owner to pursue proper action, nor the right of the Association to pursue action at a future time should it so desire.

**11.6 Contracts with  
Others; Bulk Service  
Agreements**

Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Utah, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other

members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association shall be for a term not exceeding the maximum term permitted by law.

The Association may, without limitation, provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities. The costs of services and facilities provided by the Association may be funded by the Association as a Common Expense or may be funded as otherwise determined by the Board in accordance with this Declaration. In addition, the Board shall be authorized to charge additional use and consumption fees for services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, internet and other communications services, security, caretaker, fire protection, utilities, and similar services and facilities. The Board shall be permitted to modify or cancel existing services or facilities, if any, or to provide additional services and facilities. Nothing contained herein shall be relied upon as a representation as to what services and facilities, if any, will be provided by the Association. If all Lots within the Covered Property are to be served by a particular bulk service agreement, the Board shall have the option either to (a) include the Association's costs under such bulk service agreement in the budget for each applicable fiscal year and thereby include such costs in the Assessments for each such applicable year, or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such bulk service agreement (as reasonably determined by the Board, and with such frequency as may be determined by the Board but no more often than monthly). If not all Lots within the Covered Property will be served by a particular bulk service agreement, the Board shall include the Association's costs under such bulk service agreement in a District Assessment assessed solely against the Lots or Parcels served for each applicable fiscal year.

**11.7 Limited Common Area**

**11.7.1 Purpose.** Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular District or Districts. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs and other portions of the Common Area within a particular District or Districts. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a District Expense allocated among the Owners in the District(s) to which the Limited Common Areas are assigned.

**Designation.** Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Districts, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 13.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Voting Members representing a majority of the total Class A votes in the Association, including a majority of the Class A votes within the District(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 13.1, any such assignment or reassignment shall also require Declarant's written consent.

**11.7.2 Use by Others.** Upon approval of a majority of Owners of Lots within the District to which any Limited Common Area is assigned, the Association may permit Owners of Lots in other Districts to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the District Expenses attributable to such Limited Common Area.

**ARTICLE XII****EMINENT DOMAIN AND INSURANCE INVOLVING  
THE COMMON AREA****12.1 Eminent Domain**

In the event of a threatened taking of all or any portion of the Common Area, the owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action.

Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, (taking into account a reduction in the distribution to those Owners paying reduced amounts for Assessments pursuant thereto), and all holders of liens and encumbrances, as their interest may appear of record.

The term "taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation.

**12.2 Authority to  
Purchase Insurance**

The Association shall as a Common Expense purchase and maintain such property damage and liability insurance upon the Common Area and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Utah at a reasonable cost and on other reasonable terms and conditions.

Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers, liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the DRC, Declarant, and,

to the extent such insurance is reasonably available, any property manager under contract with the Association, all in amounts and on terms adequate to permit the Association to indemnify such persons pursuant to the provisions hereof and pursuant to the provisions of the Articles and Bylaws. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.3 Individual Responsibility**

It shall be the responsibility of each Owner or Occupant to provide insurance for real or personal property or interests owned or held by such Owners within the Covered Property, including, but not limited to, homeowners insurance, hazard, fire and casualty insurance, liability insurance, and property damage insurance covering all additions and improvements to Lots or Parcels, furnishings and personal property therein, and personal liability.

Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Area. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

**12.4 Insurance Claims**

The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association covering Common Area and improvements thereon, property or interests of the Association, liability of the Association, and other such insurance.

Each Owner shall execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing.

The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter



into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

Any Owner who causes any damage or destruction of any areas for which the Association maintains insurance, is responsible for the payment of any deductible portion of the insurance, which will become a Maintenance Assessment against the Owner and the Lot or Parcel

### ARTICLE XIII

#### ANNEXATION, DECLARATION OF ANNEXATION AND DE-ANNEXATION

##### 13.1 Annexation of Annexable Property

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, annex to the Covered Property any Annexable Property and any land adjacent or near to the Covered Property. To effect such annexation, a Declaration of Annexation covering the Annexable Property (or the applicable portion or portions thereof) shall be executed and recorded by Declarant.

The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property (or the applicable portion or portions thereof) described therein as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation, making such Annexable Property (or the applicable portion or portions thereof) and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association as of the date of recordation or such later date, if any, as may be set forth in such Declaration of Annexation. In addition to the foregoing, and notwithstanding any decision not to annex the Additional Property or any portion thereof, Declarant may grant easements for ingress, egress, utilities, and other purposes for the benefit of such Annexable Property, all on terms deemed by Declarant to be reasonable, and easements shall be deemed reserved over and across all streets and roads in favor of any land not annexed.

##### 13.2 Declarations of Annexation

The annexations authorized under Section 13.1 shall be made by recording a Declaration of Annexation, which instrument may contain additional covenants, conditions, restrictions, easements or other terms. The portions of Annexable Property annexed in accordance with

Section 13.1 hereof shall thereupon become fully a part of the Covered Property subject to all provisions of this Declaration (including, but not limited to, provisions hereof regarding Assessments, except with respect to Parcels as provided herein).

A Declaration of Annexation may contain such complementary additions to and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Annexable Property (or the applicable portion or portions thereof). In no event, however, shall any such Declaration of Annexation revoke or conflict with this Declaration or any Tract Declaration except to the extent specifically permitted hereby.

**13.3 Annexation by Owners**

The Association may, from time to time, annex to the Covered Property additional Annexable Property provided that such annexation has been approved by the Voting Members representing at least seventy-five percent (75%) of the total votes then entitled to be cast by Class A Members, with or without a meeting, subject to the right of the Class B Member to disapprove the action.

To effect such annexation, a Declaration of Annexation covering the Annexable Property shall be executed by the President or Vice-President of the Association and attested to by the Secretary of the Association, and executed by the owner of the Annexable Property. The recordation of such Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property described therein, making such Annexable Property and the Owners and Occupants thereof subject to this Declaration and the jurisdiction of the Association.

Any annexation during the period of the Class B Membership shall have the written approval of the Class B Member. Absent such approval, any such annexation shall be deemed void.

**13.4 De-Annexation of Covered Property**

Declarant may, in its sole discretion, at any time and from time to time up to the date which is twenty-five (25) years after the date this Declaration is recorded, de-annex or withdraw from the Covered Property any portion or portions thereof (subject to the written consent of the owner of the portion or portions to be de-annexed or withdrawn, if

other than Declarant).

To effect such de-annexation or withdrawal, Declarant shall execute and record a Declaration of De-Annexation setting forth the legal description of the portion or portions of the Covered Property to be de-annexed or withdrawn, and such Declaration shall be executed by Declarant and the Owner of the land to be withdrawn. The land to be withdrawn may include any portion of the Covered Property, including Lots, Parcels and Common Area. Recording such Declaration of De-Annexation shall constitute and effectuate the de-annexation and withdrawal of the applicable portion or portions of the Covered Property described therein, and such property and the Owners and Occupants thereof shall no longer be subject to this Declaration or the jurisdiction of the Association. Notwithstanding the preceding sentence, except as otherwise provided in the applicable Declaration of De-Annexation, de-annexation or withdrawal of any portion or portions of the Covered Property will not be effective until the owner of the property to be de-annexed or withdrawn has paid all unpaid Assessments applicable to such property (unless exempt), prorated to the date of de-annexation or withdrawal.

It is specifically understood that this right of de-annexation or withdrawal may be exercised in Declarant's sole and absolute discretion, and that once de-annexed or withdrawn, none of the provisions hereof shall apply to or encumber the land. Further, the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land de-annexed or withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

**13.5 Protection of Declarant**

The provisions of this Article may not be amended without the written approval of Declarant.

**ARTICLE XIV**

**TERM; AMENDMENTS; TERMINATION**

**14.1 Term; Method of Termination**

This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect unless and until there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes

entitled to be cast by the entire Membership. Upon the recording of a Certificate of Termination executed by the President and Secretary of the Association confirming such vote, this Declaration shall have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Utah. No such termination shall be effective unless approved in writing by Declarant so long as Declarant owns any portion of the Covered Property or Annexable Property. In addition, should any Development Agreement then in effect with the City prohibit or otherwise limit termination of this Declaration, then any termination shall meet the requirements set forth in such Development Agreement and shall require the written approval of the City.

#### **14.2 Amendments**

##### ***Broad Power of Declarant***

14.2.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, Declarant may amend this Declaration for any purpose whatsoever, and without the consent or approval of any Owners or Members, or any other Person, regardless of whether any such amendment is uniform in nature.

In addition to the foregoing, even after termination of the Declarant Control Period, and for so long as Declarant owns any portion of the Covered Property or Annexable Property, Declarant may of its own volition, and without the consent or approval of any Owners or Members, or any other Person, amend this Declaration for the following purposes: (a) to bring any provision hereof into compliance with applicable law; (b) to satisfy the requirements of any Agencies pertaining to lending criteria, or established as conditions for the acceptability or approval of mortgages, mortgage insurance, loan guarantees or other factors; or (c) to correct any error or ambiguity or to further the intent or purposes hereof by expanding upon the existing provisions hereof.

Any amendment during such time as Declarant is a Class B Member or a Class A Member of the Association shall require the written approval of Declarant. Further, so long as Declarant owns any land from within the Covered Property or the Annexable Property, Declarant may, without any other consent or approval, amend this Declaration to clarify the application of the provisions hereof to any land which may be annexed, or for any other

reasonable purpose in connection with any land which may be annexed.

***Power of Association***

14.2.2 By the Association. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members which in the aggregate represent at least two-thirds (2/3) of the total Class A votes allocable to Lots and Parcels, and Declarant's consent, as well, so long Declarant owns any portion of the Covered Property or Annexable Property.

***Tract Declarations***

14.2.3 Amendment of Tract Declarations. A Tract Declaration may be amended as provided in such Tract Declaration, but only with the consent of Declarant so long as Declarant owns a single Lot or Parcel in the Covered Property, or so long as Declarant owns any portion of the Annexable Property. Thereafter, a Tract Declaration may be amended as provided therein, and with the approval of the Board.

**14.3 Termination of Association; Condemnation Proceeds etc.**

14.3.1 Termination of Association. Any actions to terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property shall require, in addition to the approval of Declarant so long as Declarant owns any portion of the Covered Property or Annexable Property, and in addition to such approval as is required by law, the approval of Eligible Mortgage Holders whose First Mortgages encumber Lots whose Owners represent at least sixty-seven percent (67%) of the total Class A votes in the Association allocable to Single Family Residential Use, Cluster Residential Use, or Condominium Use properties which are encumbered by First Mortgages held by such Eligible Mortgage Holders.

14.3.2 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Area.

14.3.3 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Area, and may

pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Area in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

**14.3.4 Right of Inspection of Records.** Any Owner, First Mortgagee, or Eligible Mortgage Holder shall be entitled to: (a) inspect current copies of the Governing Documents, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

## ARTICLE XV

### MISCELLANEOUS

#### **15.1 Additional Covenants**

In furtherance of the orderly sale and development of the Covered Property, and of the protection and enhancement of the value of the Covered Property, Declarant shall have the right, power and authority (but not the obligation), where in Declarant's discretion the circumstances so warrant, to execute prior to, with or after the sale of any portion of the Covered Property by any purchaser, a supplement to this Declaration adding additional covenants or restrictions, qualifying or limiting the application of this Declaration to such land, or entirely excepting such land from the coverage hereof any from all of the restrictions, limitations or other provisions included herein.

Such additional covenants or restrictions may be referred to herein as the "Additional Covenants." No such Additional Covenants shall exempt any such land or the respective owners thereof from the obligations to pay Assessments hereunder or from the Assessment Lien in regard thereto or deprive such land or its Owner of membership and voting rights otherwise established by this Declaration, except that Declarant at all time shall have the right record a Declaration of De-Annexation with respect to any land.

Such Additional Covenants shall be recorded and shall be binding upon Declarant, the Association, the DRC

and each Owner and Occupant. Declarant shall deliver a true and complete copy of any such Additional Covenants to the Association within a reasonable time after recordation thereof. After conveyance of a Lot or Parcel to an Owner thereof, de-annexation of such land or the imposition of Additional Covenants thereon shall require the consent of such Owner.

**15.2 Communications Services Agreement**

The Association has entered into and is bound by that certain Community Association Communications Services Agreement (the "Communications Agreement") by and between the Association and Broadweave Networks of St. George, LLC ("Broadweave"), which provides that, to the extent permitted by law, Broadweave shall be the exclusive provider of certain communications services to Residential Owners and Occupants within the Covered Property. Pursuant to the Communications Agreement, Broadweave shall provide certain "Basic Services," as defined in the Communications Agreement, including cable, internet and telephone service, to each Residential Owner within the Covered Property, and each Residential Owner shall be obligated to pay Broadweave for such services, regardless of whether such Owner actually uses or subscribes to such services. Broadweave shall bill each Residential Owner directly for the costs of the Basic Services. Should a Residential Owner fail to pay Broadweave for the Basic Services, such charges shall be assessed against such Owner's Lot, subject to the lien rights of the Association pursuant to Section 8.1 of this Declaration.

Each Residential Owner shall have the option, but not the obligation to contract with Broadweave to provide additional communications and/or media services.

Residential Owners may, to the extent available, obtain any services, including the "Basic Services," from a provider other than Broadweave, provided that such Owner shall not thereby be relieved of its obligation pursuant to the Communications Agreement and this Declaration to pay the Basic Services charges to Broadweave.

The provisions of the Communications Agreement shall control in the event of any conflict with the terms hereof, and each Owner is deemed to be fully aware, advised and cognizant of the terms and provisions of the Communications Agreement, a copy of which is available

from the Association upon request.

**15.3 Enforcement Rights**

Each Owner (including Declarant, so long as Declarant is an Owner) shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

**15.4 Interpretation of the Covenants**

Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions in Article V hereof and in any Tract Declaration or District Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

**15.5 View Impairment**

Neither Declarant, nor the Association nor any Developer Owner guarantees or represents that any view or passage of light and air over and across any portion of the Covered Property, including any Lot, from adjacent Lots or Common Area will be preserved without impairment. Neither Declarant, nor the Association nor any Developer Owner shall have the obligation to prune or thin trees or other landscaping except as required by the DRC or DRC Guidelines. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any view which exists at any point in time for a Lot may be impaired or obstructed by further construction, including, without limitation, by construction of improvements (including without limitation, landscaping) by Declarant, any Developer Owner or by any third person (including, without limitation, other Owners and Occupants) and by the natural growth of landscaping. No third party, including, without limitation, any broker or salesperson, has any right to bind Declarant, the Association or any Developer Owner with respect to the preservation of any view from any Lot or any view of a Lot from any other property.

**15.6 Assumption of Risk**

Neither the Association, the members of the Board, the officers of the Association, the management company of the Association, nor Declarant nor any Developer Owner, shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any



Owner or Occupant of any Lot or any tenant, guest or invitee of any Owner or Occupant or for any property of any such persons. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risks associated with the use and enjoyment of the Covered Property, including all Common Area.

Neither the Association, the members of the Board, the officers of the Association, the Association's management company nor Declarant nor any Developer Owner shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of utility lines or utility sub-stations adjacent to, near, over, or on the Covered Property. Each Owner and Occupant of a Lot and each tenant, guest, and invitee of any Owner or Occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines or utility sub-stations and further acknowledges that neither the Association, the members of the Board, the officers of the Association, the Association's management company nor Declarant nor any Developer Owner have made any representations or warranties, nor has any Owner or Occupant, or any tenant, guest, or invitee of any Owner or Occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision hereof, or of the articles of incorporation or bylaws of the Association, or of the DRC Guidelines, shall be interpreted as creating a duty of the Association, the members of the Board, the officers of the Association, the management company of the Association or Declarant or any Developer Owner to protect or further the health, safety, or welfare of any Person, even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Covered Property (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands, and causes of action against the Association, the Board, the Association's management company, and Declarant and all Developer Owners, their directors, officers, committee and board members,

employees, agents, contractors, subcontractors, successors, and assigns arising from or connected with any matter for which the liability has been disclaimed.

**15.7 Severability**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**15.8 Change of Circumstances**

Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**15.9 Declarant's Disclaimer of Representations**

Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Sienna Hills can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect.

No provision or content of the Master Development Plan shall be deemed a representation that any facility, land or feature shall be included either in the Covered Property or the Common Area.

While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot or Parcel in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot or Parcel agrees to hold Declarant harmless therefrom.

**15.10 Successors and Assigns**

Any reference in this Declaration to Declarant shall include any successors or assignees of all or a specified portion of Declarant's rights and powers hereunder. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successor or

assignee whereby such rights and powers (or any specified portion thereof) are specifically assigned.


**15.11 No Waiver of Governmental Immunity**

Although land which is: a) owned by Declarant or by the State of Utah or any agency or instrumentality of the State of Utah, or by any trust under which the State of Utah or any agency or instrumentality thereof is a beneficiary, including Utah School and Institutional Trust Lands Administration; or b) owned, either beneficially or in fee, by the State of Utah or any agency or instrumentality thereof, including Utah School and Institutional Trust Lands Administration, is exempt from any Assessment Lien pursuant to the provisions hereof, this Declaration shall be a valid restriction binding on the Covered Property. Notwithstanding the foregoing and any other provisions of this Declaration, no provision hereof shall be construed to waive, limit or modify Declarant's governmental immunity from suit.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

**DECLARANT:**

THE STATE OF UTAH, ACTING  
THROUGH THE UTAH SCHOOL AND  
INSTITUTIONAL TRUST LANDS  
ADMINISTRATION

By:   
\_\_\_\_\_  
KEVIN S. CARTER  
DIRECTOR

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

On the 24<sup>th</sup> day of January, 2006, personally appeared before me KEVIN S. CARTER, who being by me duly sworn did say that he is the Director of the Utah School and Institutional Trust Lands Administration of the State of Utah, and the signer of the above instrument, who duly acknowledged that he executed the same.

Given under my hand and seal this 24<sup>th</sup> day of January, 2006.

Michelle L. Barndt  
Notary Public

My commission expires:

6-2-2009

Residing at:

SLC, UT



**EXHIBIT "A"**

**Legal Description of "Sienna Hills"  
(Annexable Property)**

(See Attached)

### Legal Description of Sienna Hills

Beginning at the Northeast Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian, thence along the East Section line of said Section 12 South 01° 01' 55" West 1334.15 feet to the South line of sectional Lot 1 of Section 7, Township 42 South, Range 14 West; thence along said South line of said Lot 1 South 88° 56' 32" East 1279.07 feet to the East line of said Lot 1; thence along the East line of said Lot 1 North 00° 20' 40" East 1336.06 feet to the North line of said Section 7; thence along said section line South 89° 01' 27" East 718.11 feet to a point on the Westerly boundary line of the Coral Canyon Development Lease Boundary as described in Development Lease No. 610, date d June 30, 1999, between SunCor Development and The State of Utah, as to which a Memorandum of Lease was recorded July 2, 1999, as Entry No. 00653936, in Book 1339, beginning at page 1451 in the office of the Washington County Recorder, in said county, in the State of Utah; thence along said boundary line in the following eighteen (18) courses: South 13° 27' 52" East 860.98 feet; thence South 13° 25' 06" East 477.18 feet; thence South 04° 14' 38" East 576.08 feet; thence South 46° 25' 46" East 171.31 feet; South 40° 28' 45" East 327.21 feet; thence South 22° 11' 51" East 213.85 feet; thence South 07° 08' 12" West 258.29 feet; thence South 37° 11' 51" West 162.48 feet; thence South 21° 32' 45" West 243.06 feet; thence South 36° 08' 23" West 220.08 feet; thence South 29° 42' 15" West 384.05 feet; thence South 38° 36' 53" West 411.12 feet; thence South 20° 53' 13" West 539.79 feet; thence South 21° 28' 02" West 447.91 feet; thence South 07° 20' 31" West 477.09 feet; thence South 14° 28' 10" West 304.43 feet; thence South 23° 37' 27" West 360.25 feet; thence South 07° 27' 02" West 362.75 feet to a point on the arc of a curve concave to the left, said curve having a radius of 918.02 feet, from which the radius point bears South 43° 36' 41" East; said point also being on the northerly right-of-way line of Telegraph Road, thence along said Telegraph Road right-of-way in the following nine (9) courses: Southwesterly 18.10 feet along the arc of said curve through a central angle of 01° 07' 46"; thence North 44° 44' 27" West 35.00 feet, thence South 45° 15' 33" West 212.75 feet to the point of curvature of a curve concave to the right, said curve having a radius of 966.29 feet, thence Southwesterly 519.06 feet along the arc of said curve through a central angle of 30° 46' 38" to the point of tangency; thence South 76° 02' 12" West 471.30 feet to the point of curvature of a curve concave to the left, said curve having a radius of 953.02 feet, thence Southwesterly 682.74 feet along the arc of said curve through a central angle of 41° 02' 47" to the point of tangency; thence South 34° 59' 24" West 528.62 feet to the point of curvature of a curve concave to the right, said curve having a radius of 1786.48 feet, thence Southwesterly 649.44 feet along the arc of said curve through a central angle of 20° 49' 43" to a point from which the radius point bears North 34° 10' 53" West, said point also being on the East Line of the West Half of the Northwest Quarter of the Northeast Quarter of the Southeast Quarter (W1/2NW1/4NE1/4SE1/4), said line also being the West East East 256th line of Section 13 Township 42 South, Range 15 West; thence along said East line South 00° 53' 32" West 886.75 feet to North line of the South Half of the Southwest Quarter of the Northeast Quarter of the Southeast Quarter (S1/2SW1/4NE1/4SE1/4), said line also being the South North South 256th line of said Section 13; thence along said North line North 89° 14' 49" West 331.40 feet to the West line of the East Half of the Southeast Quarter (E1/2SE1/4), said line also being the East 16th line of said Section 13; thence along said West line South 00° 53' 41" West 666.89 feet to the North line of the South Half of the Northeast Quarter of the Southwest Quarter of the Southeast Quarter (S1/2NE1/4SW1/4SE1/4) said line also being the North South South 256th line of said Section 13; thence along said North line North 89° 20' 57" West 1325.72 feet to the Center Section Line of Section 13 Township 42 South, range 15 West; thence along said center section North 00° 54' 18" East 4301.17 feet to the South Quarter Corner of said Section 12; thence along the Center Section line of said Section 12 North 01° 05' 21" East 1348.50 feet to the South 1/16th line of said Section 12, thence North 88° 00' 59" West 565.95 feet to a point of non-tangent of a

1500.00 foot radius curve to the left, of which the radius point bears South 29°21'57" East; thence Southwesterly 337.36 feet along said curve through a central angle of 12°53'10", from which the radius point bears South 42°15'07" East; thence North 88°00'59" West 653.04 feet; thence North 08°55'05" West 210.09 feet to a point on the said North property line of said property, said point also being on the South 1/16th line of said Section 12, thence North 88°00'59" West 528.39 feet to a point being on the Southerly right-of-way line of Interstate 15; thence along said right-of-way line in the following ten(10) courses: North 68°08'24" East 649.09 feet to an existing right-of-way monument; thence North 68°12'09" East 305.40 feet to an existing right-of-way monument; thence North 64°21'52" East 706.98 feet to an existing right-of-way monument; thence North 59°19'21" East 520.88 feet to an existing right-of-way monument; thence North 53°42'03" East 517.13 feet to an existing right-of-way monument; thence North 48°43'20" East 517.03 feet to an existing right-of-way monument; thence North 43°58'18" East 512.61 feet to an existing right-of-way monument; thence North 39°46'41" East 233.39 feet to an existing right-of-way monument; thence North 39°02'42" East 912.72 feet to an existing right-of-way monument; thence North 39°02'55" East 1351.82 feet to the North Section Line of said Section 12; thence along said section line South 88°43'57" East 67.05 feet to the point of beginning.

Contains 742.28 acres .

Less and Excepting:

1. A parcel of land in fee for the Interstate 15 Northbound Mile Post 13 ramps, known as Project No. \*SP-15-1(20)13, described in State of Utah Patent No. 19639 with Exhibit A labeled as Parcel No. 15-1:1:A. Encloses 5.992 acres.
2. The area inside Washington Parkway Right-of-Way boundary as described in State of Utah Patent No. 19661 with Exhibit A. Encloses 16.07 acres.
3. The area inside the Telegraph Road Right-of-Way boundary, a 200 foot wide public roadway. Encloses 7.9 acres.

**EXHIBIT "B"**

**Initial Covered Property  
(Neighborhoods 1, 11A, 11B, and 15B and associated open space)**

(See Attached)



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reverse curvature of a 115.00 foot radius curve concave to the left, the radius point of which bears North 21°35'12" West; thence Northeasterly 124.99 feet along the arc of said curve through a central angle of 62°16'31" to the point of non tangency the radius point of which bears North 83°51'43" West; thence North 72°04'41" East 43.94 feet; thence North 34°43'35" East 45.25 feet; thence North 12°34'22" East 21.57 feet; thence North 03°47'52" East 28.59 feet to the point of curvature of a 55.00 foot radius curve concave to the right; thence Northeasterly 68.36 feet along the arc of said curve through a central angle of 71°12'44" to the point of non tangency, the radius point of which bears South 14°59'24" East; thence North 53°26'55" East 68.92 feet; thence North 41°47'03" East 77.01 feet; thence North 28°20'42" East 34.20 feet to the point of curvature of a 15.00 foot radius curve concave to the right, thence Northeasterly 20.61 feet along the arc of said curve through a central angle of 78°43'54" to the point of tangency; thence South 72°55'24" East 34.25 feet; thence South 44°52'58" East 15.62 feet; thence South 16°51'31" East 27.78 feet; thence South 36°43'21" East 41.44 feet; thence South 60°59'45" East 21.91 feet; thence South 37°36'11" East 21.76 feet; thence South 06°23'21" East 40.59 feet; thence South 13°05'09" West 42.80 feet to the point of curvature of a 50.00 foot radius curve concave to the left; thence Southeasterly 18.50 feet along the arc of said curve through a central angle of 21°12'01" to the point of tangency; thence South 08°06'52" East 161.09 feet; thence South 39°25'32" West 82.43 feet; thence South 04°58'23" West 44.24 feet to the point of curvature of a 85.00 foot radius curve concave to the left; thence Southeasterly 48.18 feet along the arc of said curve through a central angle of 32°28'45" to the point of reverse curvature of a 25.00 foot radius curve concave to the right, the radius point of which bears South 62°29'38" West; thence Southwesterly 27.62 feet along the arc of said curve through a central angle of 63°18'24" to the point of tangency; thence South 35°48'02" West 93.42 feet to the point of curvature of a 75.00 foot radius curve concave to the left; thence Southeasterly 50.33 feet along the arc of said curve through a central angle of 38°27'00" to the point of tangency; thence South 02°38'58" East 54.31 feet; thence South 10°45'18" East 86.20 feet; thence South 09°36'47" West 156.63 feet to the Northerly Right-of-Way of Grapevine Crossing road; thence along said Northerly Right-of-Way for the following four (4) courses: said point being the point of curvature of a 740.00 foot radius curve concave to the left, the radius point of which bears South 00°45'52" West; thence Southeasterly 762.32 feet along the arc of said curve through a central angle 59°01'26" to a point of reverse curvature of a 960.00 foot radius curve concave to the right, the radius point of which bears North 58°15'33" West; thence Southwesterly 291.94 feet along the arc of said curve through a central angle of 17°25'25" to the point of reverse curvature of a 540.00 foot radius curve concave to the left, the radius point of which bears South 40°50'08" East; thence Southeasterly 315.07 feet along the arc of said curve through a central angle of 33°25'46" to the point of reverse curvature of a 460.00 foot radius curve concave to the right, the radius point of which bears North 74°15'54" West; thence Southwesterly 48.37 feet along the arc of said curve through a central angle of 06°01'29" the radius point of which bears North 68°14'25" West said point also being the point of beginning.

Containing: 16.93 acres

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feet along the arc of said curve through a central angle of  $78^{\circ}43'54''$  to the point of tangency; thence South  $28^{\circ}20'42''$  West 34.20 feet; thence South  $41^{\circ}47'03''$  West 77.01 feet; thence South  $53^{\circ}26'55''$  West 68.92 feet to the point of curvature of a 55.00 foot radius curve concave to the left, the radius point of which bears South  $14^{\circ}59'24''$  East; thence Southwesterly 68.36 feet along the arc of said curve through a central angle of  $71^{\circ}12'44''$  to the point of tangency; thence South  $03^{\circ}47'52''$  West 28.59 feet; thence South  $12^{\circ}34'22''$  West 21.57 feet; thence South  $34^{\circ}43'35''$  West 45.25 feet; thence South  $72^{\circ}04'41''$  West 43.94 feet to the point of curvature of a 115.00 foot radius curve concave to the right, the radius point of which bears North  $83^{\circ}51'43''$  West; thence Southwesterly 124.99 feet along the arc of said curve through a central angle of  $62^{\circ}16'31''$  to the point of reverse curvature of a 90.00 foot radius curve concave to the left, the radius point of which bears South  $21^{\circ}35'12''$  East; thence Southwesterly 30.34 feet along the arc of said curve through a central angle of  $19^{\circ}18'52''$  to the point of tangency; thence South  $49^{\circ}05'57''$  West 46.07 feet; thence South  $37^{\circ}34'27''$  East 133.10 feet; thence South  $43^{\circ}03'56''$  West 14.42 feet to the point of curvature of a 110.00 foot radius curve concave to the right, the radius point of which bears South  $86^{\circ}56'28''$  West; thence Southwesterly 122.41 feet along the arc of said curve through a central angle of  $63^{\circ}45'36''$  to the point of reverse curvature of a 350.00 foot radius curve concave to the left, the radius point of which bears South  $29^{\circ}17'55''$  East; thence Southwesterly 99.01 feet along the arc of said curve through a central angle of  $16^{\circ}12'27''$  to the point of reverse curvature of a 130.00 foot radius curve concave to the right, the radius point of which bears North  $45^{\circ}30'23''$  West; thence Southwesterly 88.83 feet along the arc of said curve through a central angle of  $39^{\circ}09'02''$  to the point of reverse curvature of a 65.00 foot radius curve concave to the left, the radius point of which bears South  $06^{\circ}21'21''$  East; thence Southwesterly 48.58 feet along the arc of said curve through a central angle of  $42^{\circ}49'26''$  to the point of tangency; thence South  $40^{\circ}49'14''$  West 79.84 feet to the point of curvature of a 135.00 foot radius curve concave to the right; thence Southwesterly 81.62 feet along the arc of said curve through a central angle of  $34^{\circ}38'24''$  to the point of reverse curvature of a 35.00 foot radius curve concave to the left, the radius point of which bears South  $14^{\circ}32'22''$  East; thence Southwesterly 32.59 feet along the arc of said curve through a central angle of  $53^{\circ}21'09''$  to the point of reverse curvature of a 75.00 foot radius curve concave to the right, the radius point of which bears North  $67^{\circ}53'31''$  West; thence Southwesterly 87.16 feet along the arc of said curve through a central angle of  $66^{\circ}35'01''$  to the point of tangency; thence South  $88^{\circ}41'30''$  West 49.37 feet to the point of curvature of a 150.00 foot radius curve concave to the left; thence Southwesterly 156.11 feet along the arc of said curve through a central angle of  $59^{\circ}37'49''$  to the point of reverse curvature of a 125.00 foot radius curve concave to the right, the radius point of which bears North  $60^{\circ}56'19''$  West; thence Southwesterly 52.89 feet along the arc of said curve through a central angle of  $24^{\circ}14'41''$  to the point of tangency; thence South  $53^{\circ}18'22''$  West 111.85 feet to the point of curvature of a 55.00 foot radius curve concave to the left; thence Southwesterly 36.13 feet along the arc of said curve through a central angle of  $37^{\circ}38'06''$  to the point of reverse curvature of a 115.00 foot radius curve concave to the right, the radius point of which bears North  $74^{\circ}19'44''$  West; thence Southwesterly 35.46 feet along the arc of said curve through a central angle of  $17^{\circ}39'58''$  to the point of tangency; thence South  $33^{\circ}20'13''$  West 37.11 feet to the point of curvature of a 50.00 foot radius curve concave to the right, thence Southwesterly 50.00 feet along the arc of said curve through a central angle of  $57^{\circ}17'45''$  to the point of reverse curvature of a 15.00 foot radius curve concave to the left, the radius point of which bears South  $00^{\circ}37'58''$  West; thence Southeasterly 30.00 feet along the arc of said curve through a central angle of  $114^{\circ}35'30''$  to the point of tangency; thence South  $23^{\circ}57'32''$  East 80.92 feet; thence South  $38^{\circ}52'21''$  East 156.17 feet to the point of curvature of a 10.00 foot radius curve concave to the right, thence Southwesterly 15.44 feet along the arc of

said curve through a central angle of  $88^{\circ}28'26''$  to the point of reverse curvature of a 55.00 foot radius curve concave to the left, the radius point of which bears South  $40^{\circ}23'55''$  East; thence Southeasterly 48.08 feet along the arc of said curve through a central angle of  $50^{\circ}05'18''$  to the point of tangency; thence South  $00^{\circ}29'13''$  East 22.93 feet; thence South  $49^{\circ}15'57''$  East 89.95 feet; thence South  $05^{\circ}47'17''$  West 82.47 feet; thence South  $13^{\circ}26'12''$  East 110.13 feet; thence South  $23^{\circ}52'07''$  West 61.53 feet to the point of beginning.

Containing: 10.86 Acres

**SIENNA HILLS NEIGHBORHOOD 11A**

Beginning at a point which is South  $89^{\circ}14'27''$  East 355.99 feet along the South Section line and South  $00^{\circ}00'00''$  West 67.42 feet from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point also being on Washington Parkway Right-of-Way; running thence North  $87^{\circ}13'55''$  East 43.12 feet to the point of curvature of a 150.00 foot radius curve concave to the right, the radius point of which bears South  $29^{\circ}19'00''$  East; thence Northeasterly 97.81 feet along the arc of said curve through a central angle of  $37^{\circ}21'39''$  to the point of reverse curvature of a 135.00 foot radius curve concave to the left, the radius point of which bears North  $08^{\circ}02'38''$  East; thence Northeasterly 68.04 feet along the arc of said curve through a central angle of  $28^{\circ}52'32''$  to the point of a compound curvature of a 80.00 foot radius curve concave to the left, the radius point of which bears North  $20^{\circ}49'54''$  West; thence Northwesterly 77.22 feet along the arc of said curve through a central angle of  $55^{\circ}18'07''$  to the point of reverse curvature of a 42.50 foot radius curve concave to the right, the radius point of which bears South  $76^{\circ}08'01''$  East; thence Northeasterly 71.57 feet along the arc of said curve through a central angle of  $96^{\circ}29'28''$  to the point of reverse curvature of a 220.00 foot radius curve concave to the left, the radius point of which bears North  $20^{\circ}21'28''$  East; thence Northeasterly 208.97 feet along the arc of said curve through a central angle of  $54^{\circ}25'23''$  the radius point of which bears North  $34^{\circ}03'55''$  West, said point also being a point of non-tangency; thence along the radial line North  $11^{\circ}34'24''$  West 67.40 feet to the point of curvature of a 105.00 foot radius curve concave to the left, the radius point of which bears North  $11^{\circ}34'24''$  West; thence Northeasterly 134.40 feet along the arc of said curve through a central angle of  $73^{\circ}20'23''$  the radius point of which bears North  $84^{\circ}54'47''$  West, said point also being the Easterly Right-of-Way of Red Stone Road; thence along the said Right-of-Way for the following six (6) courses: South  $34^{\circ}14'48''$  East 173.72 feet to the point of curvature of a 765.00 foot radius curve concave to the right; thence Southwesterly 876.86 feet along the arc of said curve through a central angle of  $65^{\circ}40'24''$  to the point of tangency; thence South  $31^{\circ}25'36''$  West 108.66 feet to the point of curvature of a 25.00 foot radius curve concave to the right; thence Southwesterly 24.06 feet along the arc of said curve through a central angle of  $55^{\circ}09'00''$  to the point of reverse curvature of a 80.00 foot radius curve concave to the left, the radius point of which bears South  $03^{\circ}25'24''$  East; thence Southeasterly 66.06 feet along the arc of said curve through a central angle of  $47^{\circ}18'40''$  to the point of reverse curvature of a 25.00 foot radius curve concave to the right, the radius point of which bears North  $50^{\circ}44'04''$  West; thence Southwesterly 22.58 feet along the arc of said curve through a central angle of  $51^{\circ}45'12''$  to the point of tangency, said point being on the Northerly Right-of-Way of Ridge View Drive; thence along said Northerly Right-of-Way North  $88^{\circ}58'52''$  West 373.52 feet; thence North  $01^{\circ}00'46''$  East 328.00 feet; thence North  $88^{\circ}58'52''$  West 209.05 feet to the point on the Easterly Right-of-Way of said Washington Parkway Right-of-Way, thence along said Washington Parkway Right-of-Way for the following two (2) courses: North  $04^{\circ}41'30''$  West 85.57 feet to the point of curvature of a 2442.00 foot radius curve concave to the right, the radius point of which bears South  $88^{\circ}58'52''$  East; thence Northeasterly 398.67 feet along the arc of said curve through a central angle of  $9^{\circ}21'14''$  the radius point of which bears South  $79^{\circ}37'38''$  East, said point also being the point of beginning.

Containing: 14.98 Acres

**SIENNA HILLS NEIGHBORHOOD 11B**

Beginning at a point which is South 00°54'18" West 856.93 feet along the Center Section line and North 90°00'00" East 342.07 feet from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian, said point also being on Washington Parkway Right-of-Way; running thence along said Right-of-Way line for the following two (2) courses: North 01°01'08" East 198.15 feet; thence North 04°41'30" West 105.38 feet to the point on Sienna Hills Parcel 11A boundary line; thence along said boundary line for the following three (3) courses: South 88°58'52" East 209.05 feet; thence South 01°00'46" West 328.00 feet to the Northerly Right-of-Way of Ridge View Drive; thence along said Right-of-Way North 88°58'52" West 173.60 feet to the point on the said Washington Parkway Right-of-Way, thence along said Right-of-way, said point being a point on the arc of a 25.00 foot radius curve concave to the right; thence Northwesterly 39.27 feet along the arc of said curve through a central angle of 90°00'00", the radius point of which bears South 88°58'52" East, said point also being the point of beginning.

Containing: 1.51 Acres

**SIENNA HILLS NEIGHBORHOOD 15B**

Beginning at a point which is South 89°14'27" East 1008.17 feet along the South Section line and North 00°00'00" East 255.01 feet to the Easterly Right-of-Way of Red Stone Road, from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian, said point being the point of curvature of a 80.00 foot radius curve concave to the left, the radius point of which bears North 26°04'01" East; thence Northeasterly 88.55 feet along the arc of said curve through a central angle of 63°25'07" to the point of reverse curvature of a 95.00 foot radius curve concave to the right, the radius point of which bears South 37°21'06" East; thence Northeasterly 49.46 feet along the arc of said curve through a central angle of 29°49'45" to the point of reverse curvature of a 105.00 foot radius curve concave to the left, the radius point of which bears North 07°31'20" West; thence Northeasterly 253.16 feet along the arc of said curve through a central angle of 138°08'28" the radius point of which bears South 34°20'12" West, said point also being the point of non-tangency; thence North 40°05'34" East 5.79 feet to the point of curvature of a 140.00 foot radius curve concave to the left, the radius point of which bears North 40°05'34" East; thence Southeasterly 68.54 feet along the arc of said curve through a central angle of 28°02'57" to the point of tangency; thence South 77°57'23" East 81.45 feet to the point of curvature of a 80.00 foot radius curve concave to the right; thence Southeasterly 36.12 feet along the arc of said curve through a central angle of 25°51'56" to the point of tangency; thence South 52°05'27" East 176.05 feet; thence South 44°44'59" East 65.36 feet; thence South 30°51'19" East 30.80 feet to the point of curvature of a 95.00 foot radius curve concave to the right; thence Southwesterly 118.63 feet along the arc of said curve through a central angle of 71°32'56" to the point of reverse curvature of a 50.00 foot radius curve concave to the left, the radius point of which bears South 49°18'22" East; thence Southwesterly 35.41 feet along the arc of said curve through a central angle of 40°34'35" to the point of tangency; thence South 00°07'02" West 10.67 feet to the point of curvature of a 12.00 foot radius curve concave to the right; thence Southwesterly 10.53 feet along the arc of said curve through a central angle of 50°17'55" to the point of reverse curvature of a 20.00 foot radius curve concave to the left, the radius point of which bears South 39°35'03" East; thence Southwesterly 14.96 feet along the arc of said curve through a central angle of 42°51'08" to the point of tangency; thence South 07°33'49" West 65.30 feet to the point of curvature of a 150.00 foot radius curve concave to the right; thence Southwesterly 71.42 feet along the arc of said curve through a central angle of 27°16'45" to the point of reverse curvature of a 75.00 foot radius curve concave to the left, the radius point of which bears South 55°09'26" East; thence Southwesterly 47.80 feet along the arc of said curve through a central angle of 36°31'06" the radius point of which bears North 88°19'28" East, said point also being the point of non-tangency; thence South 79°55'36" West 265.69 feet to the said Easterly Right-of-Way of Red Stone Road; said point also a point of curvature of a 835.00 foot radius curve concave to the left, the radius point of which bears South 78°02'59" West; thence Northwesterly 324.94 feet along the arc of said curve through a central angle of 22°17'47" to the point of tangency; thence North 34°14'48" West 147.38 feet to the point of beginning.

Containing: 4.72 Acres



**SIENNA HILLS OPEN SPACE "E"**

Beginning at a point which is South 89°14'27" East 355.99 feet along the South Section line and South 00°00'00" West 67.42 feet from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point also being on Washington Parkway boundary recorded on May 19, 2004 as Entry No. 880228 in Book 1639, Page 712, in the office of the Washington County Recorder, in said County, State of Utah; running thence along said Washington Parkway boundary North 10°22'22" East 222.89 feet to Southerly Right-of-Way boundary of Grapevine Crossing Road, thence along said Right-of-Way line for the following three (3) courses: said point being the point of curvature of a 25.00 foot radius curve concave to the right, the radius point of which bears South 79°37'38" East; thence Northeasterly 34.91 feet along the arc of said curve through a central angle of 80°00'00" to the point of tangency; thence South 89°37'38" East 225.23 feet to the point of curvature of a 540.00 foot radius curve concave to the left; thence Northeasterly 291.21 feet along the arc of said curve through a central angle of 30°53'56" to the point on the Westerly Right-of-Way Red Stone Road; said point also being Parcel 11A boundary thence along said boundary for the following nine (9) courses: South 34°14'48" East 20.49 feet to the point of curvature of a 105.00 foot radius curve concave to the right, the radius point of which bears North 84°54'47" West; thence Southwesterly 134.40 feet along the arc of said curve through a central angle of 73°20'23" to the radial line South 11°34'24" East 67.40 feet along the radial line to the point of curvature of a 220.00 foot radius curve concave to the right, the radius point of which bears North 34°03'55" West; thence Northwesterly 208.97 feet along the arc of said curve through a central angle of 54°25'23" to the point of reverse curvature of a 42.50 foot radius curve concave to the left, the radius point of which bears South 20°21'28" West; thence Southwesterly 71.57 feet along the arc of said curve through a central angle of 96°29'28" to the point of reverse curvature of a 80.00 foot radius curve concave to the right, the radius point of which bears North 76°08'01" West; thence Southwesterly 77.22 feet along the arc of said curve through a central angle of 55°18'07" to the point of compound curvature of a 135.00 foot radius curve concave to the right, the radius point of which bears North 20°49'54" West; thence Northwesterly 68.04 feet along the arc of said curve through a central angle of 28°52'32" to the point of reverse curvature of a 150.00 foot radius curve concave to the left, the radius point of which bears South 08°02'38" West; thence Southwesterly 97.81 feet along the arc of said curve through a central angle of 37°21'39" the radius point of which bears South 29°19'00" East, thence South 87°13'55" West 43.12 feet to the point of beginning.

Containing: 2.08 Acres

**SIENNA HILLS OPEN SPACE "F"**

Beginning at a point which is South  $89^{\circ}14'27''$  East 1008.17 feet along the South Section line and North  $00^{\circ}00'00''$  East 255.01 feet from the South Quarter Corner of Section 12, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point also being on Parcel 11A boundary; running thence along boundary line North  $34^{\circ}14'48''$  West 46.83 feet to Grapevine Crossing Right-of-Way; thence along said Grapevine Crossing Right-of-Way, said point also being the point of curvature of a 540.00 foot radius curve concave to the left, the radius point of which bears North  $37^{\circ}57'31''$  West; thence Northeasterly 261.43 feet along the arc of said curve through a central angle of  $27^{\circ}44'21''$ ; thence South  $65^{\circ}41'51''$  East 48.78 feet to the said Parcel 11A boundary; thence along said boundary line for the following four (4) courses: South  $40^{\circ}05'34''$  West 5.79 feet to the point of curvature of a 105.00 foot radius curve concave to the right, the radius point of which bears South  $34^{\circ}20'12''$  West; thence Southwesterly 253.16 feet along the arc of said curve through a central angle of  $138^{\circ}08'28''$  to the point of reverse curvature of a 95.00 foot radius curve concave to the left, the radius point of which bears South  $07^{\circ}31'20''$  East; thence Southwesterly 49.46 feet along the arc of said curve through a central angle of  $29^{\circ}49'45''$  to the point of reverse curvature of a 80.00 foot radius curve concave to the right, the radius point of which bears North  $37^{\circ}21'06''$  West; thence Northwesterly 88.55 feet along the arc of said curve through a central angle of  $63^{\circ}25'07''$  the radius point of which bears North  $26^{\circ}04'01''$  East said point also being the point of beginning.

Containing: 0.74 Acres