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NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
BACKMAN-STEWART TITLE SERVICES  
BY: ZJM, DEPUTY - WI 25 P.

**DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
WILLOW VIEW COVE SUBDIVISION**

7653488

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this 1st day of June, 2000, by Sandy Willows, L.C., a Utah limited liability company (the "Declarant").

Declarant desires to impose upon the properties which are made subject to this Declaration mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of such properties. In furtherance of such plan, Declarant has caused the Willow View Cove Homeowners Association, Inc., to be formed as a Utah non-profit corporation with the intent that it would own, operate and maintain the Common Areas and administer and enforce the provisions of this Declaration.

In consideration of the premises, the Declarant does hereby submit and subject the real properties which are described or referenced herein to the covenants, conditions, restrictions and assessments contained in the following declaration:

**Article I**  
**DECLARATION**

Declarant is the owner of the real property described on Exhibit "A", which is attached hereto and incorporated into this Declaration by reference. Declarant hereby declares that all of the property described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the Properties. It is intended that the provisions of the Declaration be consistent with law. Should any provision in this Declaration be less restrictive than any statute, law, ordinance or other applicable legal standard, then the more restrictive legal standard (or such portion thereof as so conflicts with the Declaration's provision) shall supersede and control.

NO ATTACHMENT RECORDED  
CO. RECORDER

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**Article II**  
**DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. The following terms shall be defined for purposes of this Declaration and any related documents as set forth below.

2.1. "Articles of Incorporation" or "Articles": The Articles of Incorporation of The Willow View Cove Homeowners Association, Inc., as filed with the Secretary of State of the State of Utah.

2.2. "Association": The Willow View Cove Homeowners Association, Inc., a Utah non-profit corporation, its successors or assigns.

2.3. "Board of Trustees" or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the role as set forth in the Bylaws and defined for a board of trustees or directors under Utah law pertaining to non-profit corporations. .

2.4. "Business day": Any week-day during the calendar year which is not an official federal or state holiday in the state of Utah.

2.5. "Bylaws": The Bylaws of the Willow View Cove Homeowners Association, Inc.

2.6. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors pursuant to 3.3.

2.7. "Common Area": All real and personal property, including without intending limitation, community open space, amenities, and easements, in respect to which the Association owns, leases or otherwise holds rights of possession or use for the common use and enjoyment of the Owners.

2.8. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to its authorities under this Declaration, the Bylaws, and the Articles of Incorporation. Common Expenses shall not include any expenses incurred by the Declarant for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.

2.9. "Design Guidelines": The design and construction guidelines and application and review procedures (if any) which are promulgated and administered by the Board of Trustees.

2.10. "General Assessment": Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots.

2.11. "Lot": A subdivided portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and

occupancy as a residence for a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered lot shown on a subdivision plat filed in the Public Records with respect to any portion of the Properties, together with the structures, if any, constructed thereon, as well as vacant land intended for further subdivision, but shall not include Common areas or property dedicated to the public. [In the case of a portion of the Properties intended and suitable for subdivision into single-family lots but as to which no subdivision plat has been filed, such property shall be deemed to be a single Lot until such time as a subdivision plat is filed of record with respect to all or a portion of the property. Thereafter, the portion encompassed by such plat shall contain the number of Lots determined as set forth in the preceding paragraph and any portion not platted shall continue to be treated as a single Lot.]

2.12. "Master Plan": The land use plan for the development of Willow View Cove Subdivision, including but not limited to the official plat thereof, as approved by the City of Sandy, Utah, as it may be amended from time to time. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to the Declaration, nor shall the exclusion of property from the Master Plan bar its later annexation in accordance with Article VII.

2.13. "Member": A Person subject to membership in the Association pursuant to Section 3.2.

2.14. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

2.15. "Mortgagee": A beneficiary or holder of a Mortgage.

2.16. "Mortgagor": Any Person who gives a Mortgage.

2.17. "Owner": One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

2.18. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

2.19. "Properties": The real property described on Exhibit "A", together with such additional property as is subjected to this Declaration in accordance with Article VII.

2.20. "Special Assessment": An assessment levied in accordance with Section 8.5.

2.21. "Specific Assessment": An assessment levied in accordance with Section 8.6.

2.22. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article VII which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

**Article III**  
**ASSOCIATION MEMBERSHIP, RIGHTS, DUTIES, POWERS, ETC.**

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area. The Association shall be the primary entity responsible for enforcement of this Declaration and any Use Rules and Restrictions or Design Guidelines which may be adopted by the Board or the membership of the Association. The Association shall hold title to and, through its Board, administer the properties, Common Areas and amenities which are vested in the Association and/or charged to the Association. The Association shall keep proper records and accounts of all things pertaining to its rights and obligations, as well as the exercise of its powers. The Association, through its Building and Design Committee, shall be responsible for reviewing the plans for all proposed new construction, additions or modifications to the improvements within the subdivision. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and the laws of the State of Utah.

3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership as one Member applicable to that Lot, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or other individuals designated from time to time by the Owner in a written instrument provided to the officers of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B".

(a) Class "A": Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one vote for each Lot in which they hold the interest required for membership under Section 3.2; provided, there shall be only one vote per Lot and no vote shall be exercised for any Property which is exempt from assessment. In any situation where there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one of the co-Owners seeks to exercise the vote.

(b) Class "B": The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws and the Articles, are specified in the relevant sections of this Declaration, the Bylaws and the Articles. The Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control period, as specified in the Bylaws. The Class "B" Control Period shall terminate at such time as seventy-five (75%) percent of the total number of Lots proposed for all phases of the Subdivision have been granted certificates of occupancy and have been conveyed to Owners who intend to occupy them as primary residences, unless the Declarant voluntarily terminates such Control Period earlier by filing a written notice of termination in the Public Records. Upon termination of the Class "B" Control Period, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which the Declarant owns.

3.4. Construction, Additions or Modifications. A Building and Design Committee shall be formed to assist Owners in achieving compliance with the building restrictions and guidelines. Within the framework provided, the Association shall allow reasonable latitude and flexibility in the design of homes to be built on the Lots and/or modifications or additions thereto. Any Owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of any existing home, shall comply with the standards, restrictions and procedures, as provided in Article IV, and obtain prior approval by the Building and Design Committee. It is expressly understood that modifications of the home exterior include decks, hot tubs, patios, pools and similar alterations. Further, construction of new structures include equipment and material housing, screening structures, dog runs, gazebos, and other similar construction. No such construction, change, modification or alteration shall be commenced until the plans and specifications shall have been submitted to and approved in writing.

3.5. General Powers and Duties of the Association. In addition to the powers and duties provided to the Association elsewhere in this Declaration, or in the Bylaws or the Articles; the Association shall have the following powers and duties which it may exercise and perform whenever in its discretion it may deem them necessary and desirable:

3.5.1. To enforce, either in its own name or in the name of any Owner within the Subdivision, any and all building and land use restrictions which may be lawfully imposed on or against any of the Lots in the Subdivision. The expenses and costs of any enforcement proceedings, including reasonable attorneys' fees, shall be paid out of the assessments levied by the Association. Nothing contained in this paragraph shall be deemed or construed to prevent any Owner from enforcing any of their restrictions in his or her own name.

3.5.2. To manage and control all Common Areas and the improvements located thereon in the Subdivision, provided that such management and control shall at all times be subject to the applicable laws, regulations and ordinances.

3.5.3. To provide for necessary or desired services, such as but not necessarily limited to snow removal, collection and disposal of garbage, etc., when adequate services of that type are not available from any public source.

3.5.4. To care for, spray, trim, protect and replant trees on all streets and in Common Areas where trees have once been planted, when such services are not available from any public source, and to care for, protect and replant shrubbery and re-sow grass and replace sod in the open spaces set aside for general use of the Owners of the Subdivision.

3.5.5. To erect and maintain signs for the marking of streets and for safety for the protection of children and other persons, when such signs are not available from any public source.

3.5.6. To employ duly qualified security personnel for the purpose of providing such security protection as the Association may deem necessary or advisable in addition to that rendered by public sources. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken.

3.5.7. To acquire by lease or purchase such real estate as may be reasonably necessary in order to carry out the purposes of the Association and to pay taxes on such real estate as may be owned or leased by it, and to pay such taxes as may be assessed against land in Common Areas within the Subdivision.

3.5.8. To exercise control over such easements as it may determine to be in the best interests of the Association from time to time.

3.5.9. To exercise such rights and powers as are implied in respect to any of the provisions of this Declaration.

3.5.10. To acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of this Declaration, its Articles, Bylaws, and applicable law.

3.5.11. To exercise any right or privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate such right or privilege.

3.6. Exercise of Powers by Board. Except as otherwise specifically provided in this Declaration, the Bylaws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

3.7. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the Bylaws, or Association rules in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote. In addition, in accordance with the Bylaws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Lot of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the Bylaws shall be cumulative with and in addition to any remedies available at law or in equity. In any action pursuant to any of the foregoing, the prevailing party shall be entitled to recover all costs incurred, including, without limitation, reasonable attorneys fees and court costs.

3.8. Indemnification. The Association shall indemnify every officer, director, and Committee member, including members of the committees established under Article IX, against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Trustees) to which he or she may be a party solely by reason of being or having been a officer, director, or Committee member; except that such obligation to indemnify shall not extend or apply to those actions for which the person would have separate liability due to their own individual willful misfeasance, malfeasance, misconduct, or bad faith under this Section and Utah Law. The officers, directors, and Committee members shall not be liable for any good faith mistake of judgment, negligent or otherwise. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association and have personal liability in that capacity.) The Association shall indemnify and forever hold each such officer, director and Committee member harmless from any and all liability

to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or Committee member may be entitled. The Association may, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

**Article IV**  
**STANDARDS AND RESTRICTIONS**

4.1. General Standards and Restrictions. The Subdivision shall be a single-family residential subdivision and shall be used solely for residential purposes. The Master Plan details building envelopes for each Lot within which the primary residential structure must be located. Detached garages and/or other "out" buildings may be located outside of the building envelope of a Lot if the proposed location, etc., is approved by the Building and Design Committee (which approval may be granted or denied in its sole discretion). No Lot shall be further subdivided, even if zoning laws would allow Subdivision. Any proposed boundary adjustment must be approved by the Board of Trustees of the Association. The following standards and restrictions shall govern the improvement, maintenance and use of each Lot:

4.1.1. No structure shall be erected, placed or altered on any Lot in the Subdivision until the buildings plans, specifications, and plot plan showing the location of such structure have been approved in writing by the Building and Design Committee or, in its stead, the Board of Trustees on behalf of the Association. In the event that Design Guidelines have been adopted by the Board of Trustees for the Association, each structure shall comply with the Design Guidelines as well as these provisions and applicable law. The plans and specifications shall show the nature, kind, shape, height, materials and location of the proposed construction or modification. The Building and Design Committee shall consider the covenants, conditions and restrictions set forth in this Declaration, as well as the harmony of the proposed external design and location in relation to surrounding structures, typography, size, and other factors which are relevant to the maintenance of property values of nearby properties. The visual aesthetic appearance of Willow View Cove Subdivision is paramount in its development. It is intended that the Subdivision shall capture and reflect the appearance associated with traditional architectural styles. Although designs and floor plans are expected to make full use of the benefits of current construction standards and "know-how" certain architectural styles will not be allowed because they would distract from the aesthetic appearance intended for the Subdivision. Generally, it is intended that "contemporary", "ultramodern", all-glass type homes and experimental or radical building designs that are not in keeping with the more traditional character of the surrounding area will not be approved. Structures with flat roofs will not be allowed. No duplication or repetition of the structure or exterior architectural design of any approved structure within the Subdivision shall be permitted.

4.1.2. The exterior construction of structures shall generally blend in and be compatible with the surrounding area and shall utilize materials such as (but not necessarily limited to) brick, wood, stucco, or stone in a manner approved by the Building and Design Committee. No aluminum or vinyl siding shall be permitted. Exterior colors shall be approved by the Building and Design Committee, and shall primarily be colors which are

compatible with the surrounding area, including grays, browns, greens, tans, and other earth tones. Bright colors shall be limited to window casings, doors, caves and other trim areas.

4.1.3. Any home constructed on a building site shall have a minimum main floor area, exclusive of open porches, patios, decks and garages, of not less than Two Thousand Two Hundred (2,200) square feet above grade for a one-story dwelling, and, in the case of a multiple story (above grade) dwelling, such minimum main floor area shall be not less than One Thousand Seven Hundred Fifty (1,750) square feet above grade, and the combined minimum square footage for all floors (again, exclusive of open porches, patios, decks, balconies and garages) shall be Two Thousand Eight Hundred (2,800) square feet above grade.

4.1.4. Each structure shall have an enclosed garage of size sufficient for at least three (3) vehicles and an additional parking area sufficient for at least two (2) guest parking spaces, totally within the building envelope.

4.1.5. Each structure shall be set back from the curb a minimum of forty-five (45') feet, except where the building envelope indicated on the recorded and approved Master Plan indicates a closer set back for a particular Lot. (Certain Lots, due to their shape and location, have been pre-approved for a closer set back.) All structures shall be in compliance with applicable zoning ordinances regarding side yard and height limitations. The height and location of any structure, including accessory buildings, shall be designed and located so as to assist in the preservation of views of others.

4.1.6. No fences shall be constructed in the "front" of the structure, meaning the area between the structure and the street. No fences shall be constructed except after approval and review by the Building and Design Committee. All fences shall be designed and constructed so as to be compatible with the Subdivision neighborhood. No chain-link fences shall be allowed within the Subdivision. Notwithstanding the foregoing, the Building and Design Committee, in its sole discretion, may approve chain-link fences for animal containment purposes, with proper screening from neighbors and public view.

4.1.7. Any construction commenced on any structure as provided in this Declaration shall be substantially completed, including, but not limited to, all painting, within three hundred sixty-five (365) days from the date upon which such construction is commenced.

4.1.8. Storage of any vehicle in the front set back area is prohibited; whether such vehicle is motorized or not and whether such vehicle is operable or not. The foregoing shall apply to (but not be limited to) all automobiles, trucks, motor homes, trailers of any kind, boats, or other recreational vehicles, or any part thereof, and all related equipment (generally referred to as "vehicles"). Unless such vehicle is at least partially screened from roadway view in a manner approved by the Building and Design Committee, such vehicles shall be allowed only within enclosed garages. No such vehicle shall be stored or permitted to remain in the front set back area on any Lot, or on the street adjacent to any Lot. Storage shall mean any amount of time in excess of four (4) days during any one-week period. No such vehicle or equipment shall at any time be parked on a driveway in such a manner as to block the sidewalk.



4.1.9. No trash, garbage, ashes or other refuse, junk, vehicles which are inoperable or in disrepair, underbrush or other unsightly growths or objects, shall be maintained or allowed on any Lot. All fences and buildings shall be kept in a good state of repair consistent with the Subdivision neighborhood standard. All structures, garages and accessory buildings shall be painted or stained, from time to time, so as to maintain a reasonable state of repair.

4.1.10. No noxious, illegal or offensive use of property shall be carried on on any Lot, nor shall anything be done thereon that may be, or become, an annoyance or nuisance to the Subdivision neighborhood.

4.1.11. No sign of any kind shall be displayed to public view on any structure or any Lot, except for a sign, limited to one, advertising the property for sale, which sign shall be not larger than eight (8) square feet.

4.1.12. No large animals or livestock (such as, without limitation, horses, cattle, sheep, pigs, goats, etc.) or poultry shall be raised, bred or kept on any Lot of the Subdivision, for commercial purposes. Notwithstanding the zoning ordinances which might actually apply from time to time, no animals shall be kept on any Lot of the Subdivision, other than animals which are allowed in a Sandy City R-1-10 Zone, or, by reference to the year 2000, its then equivalent.

4.1.13. Any Owner may remodel, paint or redecorate the interior of structures on his or her Lot without approval. However, modifications to the interior of porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

4.2 Building and Design Review. No building, except a single-family residential building together with such detached garage and/or other accessory buildings as may be permitted by applicable zoning ordinances, shall be permitted. Such accessory buildings shall not be used for or in connection with multi-family living, and each building site shall be used for no more than one family.

4.2.1. Administration of the Standards and Restrictions set forth herein and of the Design Guidelines and review of all applications for construction and modifications under this Article shall be the responsibility of the Building and Design Committee.

4.2.2. The Building and Design Committee (the "Committee") shall consist of at least two, but not more than five, persons and shall have exclusive jurisdiction over all construction on any portion of the Properties. Until 100% of the Properties have been developed, been granted certificates of occupancy, and conveyed to Owners who intend to use the subject Properties for residential (as opposed to investment or inventory) purposes, the Declarant retains the right to appoint all members of the Committee, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board may appoint the members of the Committee, who shall thereafter serve

and may be removed in the Board's discretion. The members of the Committee need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

4.2.3. The Board may establish and charge reasonable fees for Committee review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Committees in having any application reviewed by architects, engineers or other professionals.

4.2.4. In reviewing each application, the Committee may consider (but shall not be restricted to consideration of) the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other things. Decisions of the Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Committee members change over time.

4.2.5. In the event that the Committee fails to approve or to disapprove in writing any application within fifteen (15) business days after submission of all information and materials reasonably requested, the applicant may notify the Committee by certified mail, return receipt requested, stating that no response has been received and that unless a written response is given at the address set forth in such notice within fifteen (15) days of the committee's receipt of the Owner's notice, as evidenced by the return receipt, the application shall be deemed approved. A response shall be deemed given when deposited in the U.S. Mail, certified mail, return receipt requested, properly addressed to the applicant at the address stated in such applicant's notice, or upon receipt if given by any other means. Notwithstanding anything in the foregoing, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing.

4.2.6. If construction does not commence on a project for which approval has been granted within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to re-submit the Plans for reconsideration.

4.2.7. Approval of proposals, plans and specification, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

4.2.8. Subject to a companion approval by the city, where such approval is required, the Committee may authorize, in its reasonable discretion, variances from compliance with any of the General Standards and Restrictions set forth in 4.1, above, or of the Design Guidelines and/or applicable procedures. No variance shall (a) be effective unless in writing; (b) be contrary to provisions of the other Articles of this Declaration; or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.2.9. So long as the Committee has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of or compliance with the Design Guidelines and this Declaration shall be final.

4.3. Guidelines and Procedures.

4.3.1. The Association, by vote of two-thirds (2/3) of the total number of Lots within the Properties, or the Board of Trustees by unanimous vote shall have authority, but shall have no duty or obligation, to adopt Design Guidelines for the Properties to supplement the General Standards and Restrictions. If adopted, the Design Guidelines shall be consistent with the foregoing Standards and Restrictions. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. Compliance with the Design Guidelines shall not guarantee approval of any application. All structures and improvements constructed upon a Lot shall be constructed in compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the Committee, unless a variance has been granted in writing.

4.3.2. The Members of the Association and/or the Board of Trustees shall likewise have authority to amend the Design Guidelines (if any have been adopted) from time to time. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines.

4.3.3. The Committee shall make the Design Guidelines (if any) available to Owners and others who seek to engage in development or construction within the Properties. Such Design Guidelines may, but need not necessarily, be recorded in the Public Records.

4.4. Limitation of Liability. The standards and procedures established by this Declaration are intended to enhance the overall aesthetics of the Properties and shall not create any duty to any Person. Neither the Board nor the Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring the appropriateness of soils, drainage and general site work. Neither the Declarant, the Association, the Board, any Committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, each such Person shall be defended and indemnified by the Association.

4.5. Authority to Promulgate Use Restrictions and Rules. Subject to the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt Use Restrictions and Rules which shall be consistent with the Standards and Restrictions set forth above. The Board shall send notice by mail to all Owners concerning any such proposed action at least ten (10) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Such action shall become effective unless disapproved at a duly-

convened meeting for which notice of that purpose has expressly been given, by Members representing at least 51% of the total Class "A" votes and/or by the Class "B" Member, if any. Alternatively, the Members, at a meeting duly called for such purpose as provided in the Bylaws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted. Such action may be taken only by a vote of Members representing at least 51% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

4.6 Enforcement. Any structure or improvement placed, or use made, in violation of this Declaration or the Design Guidelines or any Use Restrictions or Rules shall be deemed to be nonconforming, except to the extent that a variance has been granted. (The foregoing shall not imply that a variance may be granted in respect to any use restriction or rule.) Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, cease the non-conformance which is the subject of the notice. If applicable, the Owners shall remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to comply, the Board or its designees shall have the right to take appropriate action, including self help, to establish compliance. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Specific Assessment. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available.

4.7. Owner's Acknowledgment. All Owners and occupants of Lots are hereby given notice that use of their Lots may be limited by the Declaration, Design Guidelines and/or Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed or entering into a recording a contract of sale, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by such restrictions, rules, standards, guidelines, etc.

## **Article V**

### **COMMON AREA; COMMUNITY OPEN SPACE; AND AMENITIES**

5.1 Common Areas. There are and shall be created, as shown on the face of the plat and Master Plan of the Subdivision, such open space and other Common Area tracts as the Declarant shall create. By way of example, but without limitation intended, it is acknowledged that the Common Area shall include but not necessarily be limited to (a) an entryway/gateway with stone pylon pillars with decorative lights and decorative iron gate at the entry from 1700 East Street adjacent to Lot 10, in Phase II; (b) the northeast designated area upon Lot 10, where the project monument sign, a stone pylon and vinyl fence, and a landscaped open space area shall be located; (c) an entryway/gateway with stone pillars and pylons with iron gates designating an entrance on Prescott Drive at the south entrance to Phase III (adjacent to Lots 302 and 305); (d) a park strip on the north and east side of Prescott Drive; (e) the stone pillars at the entrance of the private drive for the benefit of Lot 305 of Phase III at its intersection with Prescott Drive; (f) a park strip between the dedicated street and the Lots which shall be maintained with a sidewalk and a lawn with a row of trees (all of the same species) as indicated on the Master Plan; and (g) a visual aesthetic water scape park/open space feature located at the elbow of the Subdivision roadway as indicated on the Master Plan. The open space tracts and Common Area shall be for the aesthetic presentation of the Subdivision, and shall be for the benefit and use of all properties in the Subdivision. Except as

otherwise provided in this Declaration, the Common Area and amenities shall accordingly be maintained by the Association, as provided in this Declaration.

5.2. Ownership. The open space and Common Areas as well as associated amenities may be conveyed to and if so conveyed, accepted by the Association.

5.3. Association Duties. The Association, subject to the rights and duties of the Owners set forth in this Declaration, shall manage, maintain and control the Common Area and all improvements thereon (including, without limitation, landscaping, gateway pillars and fencing, equipment, and other personal property of the Association used in connection with the Common Areas), and shall make reasonable efforts to keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration and the Bylaws, the cost of which shall be a Common Expense. Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense to be allocated among all Lots as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Common Area pursuant to this Declaration, other recorded covenants, or agreements with the Owners(s) thereof.

5.4. Owners' Responsibility. Each Owner shall be responsible (without regard to cause or fault) for maintaining the parking strip lawn and the tree(s) thereon in the Common Area which is adjacent to his or her Lot. Such Common Area shall be maintained in a manner which is consistent with the Subdivision neighborhood standard. By way of example, but not limitation upon the generality of the foregoing, in the event that a tree in the park strip area in front of a Lot dies or is substantially damaged, it shall be the responsibility of the Owner of the Lot to replace the tree with another of the same species and reasonably comparable size. Should an Owner fail to properly maintain the Common Area for which such Owner bears responsibility according to the foregoing, the Association may exercise its enforcement powers and levy a Specific Assessment against the subject Lot and its Owner pursuant to Section 8.6 hereof for the costs and expenses, without limitation, which are reasonably incurred.

5.5. Each Owner and their contractors, employees, servants, invitees, etc., shall hold the Association harmless from any damage which may result from or be associated in any way with the activities of the Owner or such others involving risks to the Common Area, including the various improvements and amenities. The Owner shall, at the Owner's expense, make repairs to any damages incurred as a result of or in any way related to such use.

5.6. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property which is subject to this Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice prior to disbursement of any award or proceeds. The award made for such taking or proceeds of such conveyance shall be payable to the Association to be disbursed to the Association and used for such purposes as the Board shall determine.

**Article VI**  
**DEDICATION, EASEMENTS, ETC.**

6.1. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the City of Sandy, Utah or to any other local, state or federal governmental or quasi-governmental entity.

6.2. Easement of Access. The Declarant does hereby reserve to the Association a general easement of access over the Properties to the extent which is reasonably necessary under all of the circumstances to enable the Association to fulfill the responsibilities which are reserved to it under this Declaration.

6.3. Reservation of Easement for Shared Driveway. Pursuant to the Master Plan, a circular driveway shall be constructed, around the Common Area water feature, for ingress and egress to and from Lots 3 and 4 of the Subdivision. A mutual easement for ingress and egress is reserved to the Owners of Lots 3 and 4 upon such driveway. The driveway is not a general Common Area. The responsibility for maintenance and repair of the driveway shall be shared equally by the Owners of Lots 3 and 4. Each shall have a duty to the other to refrain from blocking or in any way restricting access to either of the Lots. The Owners of Lots 3 and 4 may agree to such other rules, restrictions or covenants in respect to the use and/or sharing of responsibilities in respect to the said driveway as they may determine, in their reasonable discretion, consistent with the foregoing.

6.4. Easements for Utilities, Etc.

6.4.1. There are hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; drainage systems; street lights and signage; and all utilities, including, but not limited to water, sewers, telephone, gas, and electricity, and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plat of the Properties. Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable, according to the designations on the official plat of the Subdivision.

6.4.2. There is hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any Property which is subject to this Declaration.

6.4.3. Any damage to a Lot resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense

of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot; and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

6.5. Owners' Rights. Every Owner shall have a right and nonexclusive easement of reasonable use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association; and
- (c) The right of the Board and the membership of the Association to adopt rules regulating the use and enjoyment of the Common Area. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot.

6.6. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

## **Article VII**

### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

7.1. Annexation Without Approval of Membership. Until all property described on the Master Plan has been subjected to this Declaration or the date which is ten years after the recording of this Declaration in the Public Records, whichever is earlier, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in the Master Plan. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in such Master Plan and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the Owner of such annexed property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any property in any manner whatsoever.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the Owner of such property, the affirmative vote of members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as

Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 7.1. Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the Owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon filing unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1., for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

7.4. Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements by filing a Supplemental Declaration in the Public Records, concurrent with or after the annexation of the subject property, setting forth such additional covenants and easements. Any such Supplemental Declaration shall require the written consent of the Owner(s) of the subject property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property which is or may become subject to this Declaration.

## **Article VIII** **ASSESSMENTS**

### 8.1. Creation of Assessments.

8.1.1. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments: (a) General Assessments to fund Common Expenses for the general benefit of all Lots; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments to the Association.

8.1.2. All assessments, together with interest (at a rate not to exceed 18% or the highest rate allowed by Utah law, if less than 18%) as computed from the date the delinquency first occurs, a late charge equal to the greater of \$10.00 or 5% of the principal amount past due, costs, and reasonable attorneys fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs, and reasonable attorneys fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the



grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

8.1.3. The Association or its designee shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.1.4. Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments, and in such case, may include a time-price differential charge, in the Board's discretion. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year and shall be considered delinquent if not paid within the time specified by the Board. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Association shall have the right to reject partial payments of an unpaid assessment or other monetary obligation and demand the full payment thereof. The Board may further prescribe: (a) procedures for collecting General Assessments or installments thereof in advance from new Owners out of "closing transactions"; and (b) different procedures for collecting assessments from Owners who have had a history of being untimely in the payment of assessments.

8.1.5. No Owner may exempt himself or herself from liability for assessments by non-use of the Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

8.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay General and Special Assessments on any of its unsold Lots which are subject to assessment in the same manner as any other Owner, or to pay the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Such obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other Personnel for payment of Common Expenses.

8.3. Computation of General Assessment. As soon as reasonably practical, the Board shall prepare a budget covering the estimated Common Expenses for the coming year, including a

capital contribution to establish a reserve fund in accordance with a budget separately prepared pursuant to Section 8.4. General Assessments shall be levied equally on all Lots subject to assessment under Section 8.8, and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board may take into account the number of Lots subject to assessment under Section 8.8 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. So long as the Declarant owns any property subject to this Declaration, the Declarant may, but shall not be obligated to reduce the General Assessment for any fiscal year by payment of a subsidy, which may be treated as either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least 30 days prior to the date upon which the assessment would become payable. Such budget and assessment shall become effective unless disapproved at a meeting by at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting to consider the budget unless the Members petition the Board as provided in the Bylaws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments. If the Board fails for any reason to determine the budget for any year, or the budget is disapproved, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Reserve Budget and Capital Contribution. The Board may annually prepare a reserve budget which takes into account the number and nature of the Association's replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by General Assessments over the budget period.

8.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any Special Assessment which would exceed \$300.00 in any one fiscal year shall require the affirmative vote or written consent of Class "A" Members representing at least 51% of the total Class "A" votes, and the written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and if so determined by the Board, may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.6. Specific Assessments. The Board shall have the power to levy a Specific Assessment against any Lot or Lots for monetary fines authorized by this Declaration or the Bylaws, and for expenses of the Association incurred in providing benefits, items, or services not provided to all Lots within the Properties, whether such expenses are incurred (a) upon request of the Owner of a Lot for specific items or services relating to the Lot, or (b) as a consequence of the conduct of less than all Owners, their tenants, invitees, or guests. The Association may also levy a Specific Assessment

against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the Bylaws, and Rules, provided the Board gives prior notice to the Lot Owner and an opportunity for a hearing.

8.7. Lien for Assessments; Remedies for Nonpayment. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, the late charges, and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value, and (c) the lien for assessments or other charges of the Master Association. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure. The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; (c) each other Lot shall be charged, in addition to its usual assessment, its prorata share of the assessment that would have been charged against such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the *first* Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment including such acquirer, its successors and assigns.

8.8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the first month following the conveyance of the Lot by the Declarant. The first annual General Assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time the obligation for assessments commences on the Lot.

8.9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

8.10. Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area of the Association; and

(b) Any property dedicated to and accepted by an governmental authority or public utility (except that utility easements across Lots shall not affect the Lot's liability for assessments).

8.11. Joined Lots. In the event that any number of the Lots are joined for purposes of development, into a single Lot or parcel (a "Joined Lot"), assessments shall be made for the Joined Lot on the basis of the number of lots originally contained in that Joined Lot. By way of example, but not limitation, in the event that two (2) of the original numbered Lots are combined into one parcel for purposes of development, the resulting Joined Lot shall receive a disproportionate assessment, as if the Owner held two separate Lots. Accordingly, the total number of Lots which shall share the assessments shall be based upon the original recorded plat. Joined Lots shall be treated as multiple Lots, for purposes of assessments according to the foregoing.

## **Article IX** **INSURANCE AND CASUALTY LOSSES**

### 9.1. Association Insurance.

9.1.1. Required Coverages. The Association, acting through its Board or its duly authorized agent, may elect, in its reasonable discretion, to obtain and continue in effect any up to all of the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available;

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Common Area to the extent of a casualty. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of insured improvements;

(ii) Commercial general liability insurance on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable, which may include, without limitation, flood insurance, insurance, and building ordinance coverage.

9.2 Administration. The Board is encouraged, but not required, to arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Salt Lake County, Utah area. In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.6.

9.3 Policy Requirements. All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate; and

(ii) be written in the name of the Association as trustee for the benefitted parties, provided that policies on the Common Area shall be for the benefit of the Association and its Members; and

(iii) contain a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

9.4. Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If it is determined that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Subdivision neighborhood standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

9.5 Owners' Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with the prevailing Subdivision neighborhood standard. The Owner shall pay all costs which are not covered by insurance proceeds.

## **Article X** **GENERAL PROVISIONS**

### 10.1. Duration.

10.1.1. Unless terminated as provided in Section 10.1.2, this Declaration shall have perpetual duration. If it is determined that applicable law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall have an initial term of fifty (50) years and shall automatically be extended thereafter at the expiration of each such period for successive periods of thirty (30) years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

10.1.2. Unless otherwise provided by law, this Declaration may not be terminated within the first 20 years after the date of recording without the consent of all Owners. Thereafter, it may be terminated only by an instrument signed by Owners of at least 75% of the total Lots within the Properties and the Declarant, if the Declarant owns any portion of the Properties, which instrument is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

10.2. Amendment. The Declarant may amend this Declaration during the Class "B" Control Period if such amendment is specifically required to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Lots. 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 Owners of not less than 75% of the total number of Lots within the Properties and the consent of the Declarant, so long as the Declarant has an option to subject additional property to this Declaration pursuant to Section 7.1. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, (respectively or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or

the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. A procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

10.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

10.4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article VIII; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

10.5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable Supplemental Declaration. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

10.6. Use of the Words "Willow View Cove". All rights to the words and trade name, "Willow View Cove", are reserved. No Person shall use the words "Willow View Cove" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Willow View Cove" in printed or promotional matter where such terms are used solely to specify that particular property is located within the Subdivision and the Association shall be entitled to use the words "Willow View Cove" in its name.

10.7. Compliance. Every Owner and occupant of any Lot shall comply with this Declaration, any applicable Supplemental Declaration, the Bylaws, and the Use Restrictions and Rules promulgated pursuant to Article X. Subject to the terms of Article XIV, failure to comply shall be grounds for an action by the Association or, in a proper case, by an aggrieved Lot Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association.

10.8. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least three (3) business days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including

assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

10.9 Special Rights of Declarant. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

1st IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this day of June, 2000.

SANDY WILLOWS, L.C.

Christina M. Cavalluzzi, Pres.

By: CW MANAGEMENT CORPORATION

Its: MANAGING MEMBER

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

On this \_\_\_ day of \_\_\_\_\_, in the year 2000, before me \_\_\_\_\_ personally appeared known or identified to me to be the \_\_\_\_\_ a duly authorized manager of Sandy Willows, L.C., that executed the above instrument on behalf of Sandy Willows, L.C., and acknowledged that Sandy Willows, L.C., executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

CW050200-102(i)

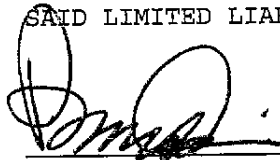
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STATE OF UTAH)

COUNTY OF SALT LAKE)

ON THE 1st DAY OF June, 2000, PERSONALLY APPEARED BEFORE ME, CHRISTOPHER K. MCCANDLESS, KNOWN TO ME TO BE THE PRESIDENT OF CW MANAGEMENT CORPORATION, WHO BEING BY ME DULY SWORN DID SAY, THAT HE, THE SAID CHRISTOPHER K. MCCANDLESS, AS PRESIDENT OF CW MANAGEMENT CORPORATION, IS THE SAID MANAGING MEMBER OF SANDY WILLOWS L.L.C., A UTAH LIMITED LIABILITY COMPANY AND THAT THE WITHIN AND FOREGOING INSTRUMENT WAS SIGNED ON BEHALF OF SAID LIMITED LIABILITY COMPANY BY AUTHORITY OF ITS OPERATING AGREEMENT, AND ACKNOWLEDGED TO ME THAT SAID LIMITED LIABILITY COMPANY EXECUTED THE SAME.

  
NOTARY PUBLIC

  
**NOTARY PUBLIC**  
**PAMELA M. MILLER**  
167 East 6100 South  
Murray, Utah 84101  
Commission Expires  
February 14, 2004  
**STATE OF UTAH**

  
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BK 8366 PG 2476