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ERNEST D ROWLEY, WEBER COUNTY RECORDER
29-JAN-08 1050 AM FEE \$73.00 DEP SC
REC FOR: LINCOLN TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF**

08-496-0001-0046

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WHISPERWOOD SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by H&A Development LLC, a Utah Limited Liability Company, hereinafter referred to as a "Declarant."

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in West Haven City, County of Weber, State of Utah, which is more particularly described as

SEE ATTACHED

NOW THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Project or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE 1
DEFINITIONS**

Section 1. "Association" shall mean and refer to **WHISPERWOOD HOMEOWNERS ASSOCIATION OF WHISPERWOOD SUBDIVISION**, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is part of the Project, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Project" shall mean and refer to the certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvement thereto) owned by the Association for the common use and enjoyment of the Owner.

The common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Cont. Article 1,

- (a) All of the Detention Basin.
- (b) All drainage easements, dams, flood easements and rights of way or easements as may be necessary for water, sewage or other utility from time to time.
- (c) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management except public roadways and easements in effect from time to time.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Project with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to H&A Development LLC, a Utah Limited Liability Company, its successors and assigns if such successors or assigns should acquire all of declarants remaining interest in the Project.

ARTICLE II PROPERTY RIGHTS

Section 1. Owner Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment (including late fees and interest, if any) against his Lot remains unpaid.
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner May delegate, in accordance with the By Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot; provided however, that

such right to delegate shall not allow an Owner to separate the right to use the Common Area from his Lot, it being understood that such right is appurtenant to each Lot.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot who is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, which is subject to assessment.

Section 2. The Association shall have two classes of voting membership.

Class A. Class A member(s) shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to a Class A membership on the happening of the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Project, hereby covenants, and each Owner of each Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Project and for the improvement and maintenance of the Common Area.

Cont. Article IV

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be One Hundred Twenty Dollars (\$120.00).

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) of each class of members who have voting rights in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not to exceed the maximum.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who have voting rights in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4, shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis,

when such Lot has been both fully improved with all utilities installed and occupied for the first time as a residence.

Cont. Article IV

Section 7. Date of commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the assessments in a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within (30) days after the due date shall be interest from such date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien of Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments, which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE V ARCHITECTURAL CONTROL

Section 1. Each home shall have a minimum of two-car garage and the exterior wall cover must be at least seventy percent (70%) brick. No home shall be less than 1200 square feet. All homes will be allowed to have a maximum size of 10x12 storage shed and can install a patio cover approved by the Board of Directors. No building, wall, dog run, or other structure shall be commenced, erected or maintained upon any Lot or the project, nor shall any exterior addition to, or change, or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant, or the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Directors (the "Architectural Committee".)

Failure of the Board or Architectural Committee to act within 30 days after submission shall be deemed to constitute approval by the Association.

Cont. Article V

Section 2. The Association will maintain all fencing around the perimeter of said Project. The Homeowner will maintain each interior fencing themselves.

Section 3. Any perimeter Lot will have a landscaped buffer area maintained by the Owner of such Lot.

**ARTICLE VI
USE RESTRICTIONS**

Section 1. All Lots in the Project shall be known and described as single-family residential units and shall be used for no purpose other than single-family residential purposes.

Section 2. There shall be no obstruction of the Common Areas by the Owner, their tenants; guests or invitees without prior written consent of the Board of Directors. The Board of Directors may by rules and regulation, prohibit or limit the use of the Common Areas as may be reasonable, necessary for protecting the interest of all the Owner, or protecting the units or the Common Areas. Nothing shall be altered on, constructed in, or removed from the Common Areas except upon the prior written consent of the Board of Directors.

Section 3. Nothing shall be done or kept in any unit or in the Common Areas, or any part thereof, which would result in the cancellation of the insurance on the project or any part thereof or increase the rate of the insurance on the Project or any part hereof over what the Board of Directors would pay for such activity without the prior written consent of the Board of Directors. Nothing shall be done or kept in any unit or in the Common Areas or in any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validity imposed requirement of any government body. No damage to, or waste of, the Common Areas or any part thereof, shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owner harmless against all loss resulting from any such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not under any circumstances, be deemed to be an invitee of any other Owner. No noxious, destructive, or offensive activity shall be carried on in any unit or in the Common Areas or any part thereof, not shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project.

Cont. Article VI

Section 4. No sign or billboard of any kind shall be displayed to the public view on any portion of the Project or any Lot, except one sign for each building site, or not more than eighteen (18) inches by twenty four (24) inches, advertising any portion of the Project for sale or sale or rent except signs used by Declarant, its successors or assigns, to advertise the Project during the construction and sales period.

Section 5. No noxious or offensive trade or activity shall be carried on in any Lot or any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owner of his respective Lot or which shall in any way increase the rate of insurance.

Section 6. No structure of a temporary character, trailer, basement, tent shack, garage, barn, or other out building shall be used in connection with any Lot at any time as a residence, either temporarily or permanently. No trailer, camper, boat, truck larger than ¾ ton, or similar equipment shall be permitted to remain upon any property within the Project, unless placed on designated hard surfaced, off-street parking area which cannot be in front of house.

Section 7. No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept in or around any Lot or the Common Area, except usual and ordinary dogs, cats, birds and other household pets may be kept in or around any Lots subject to the rules and regulations adopted by the Association, provided, that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household, provided however, that the Association (or the architectural committee or such other person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association shall have the right to prohibit maintenance of any animal, which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owner, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure, an enclosed patio or on a leash being held by a person capable of controlling the animal. The enclosure must be so maintained that the animal cannot escape wherefrom and shall be subject to the approval of the Architectural Committee. Should any animal belonging to an Owner be found unattended out of the enclosure and not being held on a leash by a person capable of controlling the animal, such animal may be removed by Declarant (for so long as it owns any interest in the Project) or person designated by Declarant to do so, or the Board of Directors, to a pound under the jurisdiction of the local municipality in which the Project is situated and subject to the laws and rules governing said pound, or to a comparable animal shelter. Furthermore, any Owner shall be absolutely liable to each and all remaining Owner, their

families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by animals brought or kept upon such Lot by an Owner or by members of his family, his tenants, or his guests; and it shall be the absolute duty and responsibility of each such Owner to clean up after such animals which have used any portion of the Common Area.

Cont. Article VI

Section 8. No rubbish, trash or garbage or other waste material shall be kept or permitted upon or around any Lot or Common Areas unless screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefore and fire pits in the patios designed in such a way on any lot as to be visible to other Lots or the Common Area, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of any Lot except within an enclosed structure or appropriately screened from view.

Section 9. No fence, hedge, wall or other dividing instrumentality shall be constructed, planted or maintained except those that are approved by the Architectural control committee. The Committee may allow such as are compatible with its architectural plans, and total development of the Project.

Section 10. No television, radio, or other electronic antenna or device or any type shall be erected, constructed, placed or permitted to remain on any of the Lots or structures in said Lots unless and until the same have been approved in writing by the Architectural Committee of the Association.

Section 11. All exterior colors of the Project shall be earth tone in nature. Future maintenance, upkeep, etc. shall be of the same type quality and color.

Section 12. Residents shall be restricted from erecting any buildings, structures or landscaping which shall interfere in such manner with contiguous Lot Owner.

ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restriction, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Cont. Article VII

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90) percent of the Lot Owner, and thereafter by an instrument signed by not less than seventy-five (75) percent of the Lot Owner. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and common area may be annexed to the Project with the consent of two-thirds (2/3) of each class of members of **WHISPERWOOD SUBDIVISION**, or may be annexed by the Declarant without the consent of members within 5 years of the date of this instrument.

Section 5. Maintenance. Each Owner of a Lot and/or home shall be charged with the responsibility of maintenance and upkeep of same. Each home and/or Lot will be maintained in a manner acceptable to the Architectural Committee and the Association at all times.

Sections 6. Creations of Maintenance Lien. In the event that a home and/or Lot is not maintained in an acceptable manner, as determined by the Architectural Committee and/or Association, the Architectural Committee or Association shall contact the Owner (by certified mail) and stating the nature(s) of the maintenance in question and allowing a reasonable time for correction. In the event that maintenance corrections are not satisfactorily completed within the reasonable time period allowed, the Architectural Committee or the Association may contract for the work to be completed and pay for such work. The Architectural Committee or Association shall file a lien on said Lot and provisions of Article IV, Section 8 and Section 9 of this Declaration shall apply.

Section 7. Easements for City and County Use. In addition to the foregoing easements over the Common Area, there shall be, and Declarant hereby reserves the covenants for itself and all future Owner, within **WHISPERWOOD SUBDIVISION**, easements for city, county, and federal public services, including but not limited to, the right of the police to enter upon any part of the Common Area for the purpose of enforcing the laws. Cities shall also have the easement and right-of-way on the Common Areas and facilities for the purpose of repairing and replacing facilities therein and thereon at its option in the event the Association fails and neglects to do so and to have a lien therefore to guarantee replacement of the costs thereof against all Lots in the Project.

