

AFTER RECORDING RETURN TO:

Nathan W. Pugsley
39 East Eagleridge Drive, Suite 100
North Salt Lake, UT 84054

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
06/27/2007 08:39 AM
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DEP RT REC'D FOR WOODSIDE HOMES CO
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Parcel ID Nos. (APN's)

06-268-0201 to 06-268-0211
06-269-0301 to 06-269-0344

06-271-0401 to 06-271-0444
06-278-0601 to 06-278-0625

**MASTER DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR FOXBORO NORTH**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS (the "Declaration") is made this 26th day of June, 2007 by WOODSIDE AMBERLY, LLC, a Utah limited liability company, WOODSIDE BERKELEY, LLC, a Utah limited liability company, WOODSIDE CAMBRIA, LLC, a Utah limited liability company, WOODSIDE STONEHAVEN, LLC, a Utah limited liability company, and WOODSIDE CASTLETON, LLC, a Utah limited liability company (collectively herein referred to as "Declarant").

RECITALS

A. Declarant owns or in the future may own certain real property in the City of North Salt Lake, Davis County, Utah, and a portion of said property, as more particularly described in **Exhibit A** attached hereto, shall constitute the property initially covered by this Declaration ("Original Property");

B. Declarant further reserves the right pursuant to the terms of this Declaration from time to time to add all or any portion of certain other real property, more particularly described in **Exhibit B** attached hereto (the "Annexable Property") to the Property.

C. In order to efficiently manage and to preserve the value and appearance of the Community, it is necessary and desirable to create a nonprofit corporation to maintain Common Areas in the Community; to collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Community and the Homeowners. The Foxboro North Homeowners Association, a homeowners association and nonprofit corporation, has or will be organized for the purpose of exercising the aforementioned powers and functions.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Property annexed pursuant to Section 20.1 and 20.2 shall be

held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties (as defined in Article 1 hereof). The protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, and each Owner and their respective heirs, executors and administrators, and successive owners and assigns pursuant to the terms of this Declaration. All Units within the Properties shall be used, improved, devoted, and limited exclusively to single Family residential use.

1. DEFINITIONS

1.1 “Annual Assessment” shall mean the charge levied and assessed each year against each Unit pursuant to Article 7 hereof. The Board, in its sole discretion from time to time, may change the Assessment Period by Recording with the County an instrument specifying the new Assessment Period.

1.2 “Annexable Property” shall mean all real property described in Exhibit B of this Declaration, as amended.

1.3 “Area of Common Responsibility” shall mean all of the properties and facilities owned by Association, for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility (including any maintenance obligations) regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way, trails, parks, and open spaces and areas that the Association is required to maintain pursuant to that certain Conditional Use Permit Agreement for Foxboro North, with the City of North Salt Lake, Utah, dated August 22, 2006, and all addenda thereto.

1.4 “Assessment Period” shall mean each twelve month period after January 1, 2007.

1.5 “Association” shall mean the Foxboro North Homeowners Association, a Utah nonprofit corporation or limited liability company (or such similar name determined by Declarant) organized or to be organized to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

1.6 “Berkeley Neighborhood” shall mean all real, personal or mixed property which is or may at any time become subject to the Berkeley Supplemental Declaration.

1.7 "Berkeley Sub-Association" shall mean the homeowners association, created by the Berkeley Supplemental Declaration, having subordinate, concurrent jurisdiction with the Association over the Berkeley Neighborhood. Nothing in this Declaration shall require the creation of the Berkeley Sub-Association.

1.8 "Berkeley Supplemental Declaration" shall mean the declaration of covenants, conditions and restrictions and reservation of easements or other instrument recorded by Declarant or with the express written consent of the Declarant, which shall be supplemental to this Declaration, and which may create the Berkeley Sub-Association and/or impose supplemental obligations, covenants, conditions, restrictions, or reservations of easements with respect to the Berkeley Neighborhood or other land described in such instrument.

1.9 "Board" shall mean the Board of Trustees of the Association.

1.10 "Builders" shall mean those Persons who purchase one or more unimproved or improved lots or parcels of land within the Community for further subdivision or development and resale in the ordinary course of their business.

1.11 "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

1.12 "Cambria/Amberly Neighborhood" shall mean all Units within the Property except those that are included in the Berkeley Neighborhood, Castleton Neighborhood and Stonehaven Neighborhood.

1.13 "Castleton Neighborhood" shall mean all real, personal, or mixed property which is or may at any time become subject to the Castleton Supplemental Declaration.

1.14 "Castleton Sub-Association" shall mean the condominium association, created by the Castleton Supplemental Declaration, having subordinate, concurrent jurisdiction with the Association over the Castleton Neighborhood. Nothing in this Declaration shall require the creation of the Castleton Sub-Association.

1.15 "Castleton Supplemental Declaration" shall mean the declaration of condominium or other instrument recorded by Declarant or with the express written consent of the Declarant, which shall be supplemental to this Declaration, and which may create the Castleton Sub-Association and/or impose supplemental obligations, covenants, conditions, restrictions, or reservations of easements with respect to the Castleton Neighborhood or other land described in such instrument.

1.16 "Common Area" shall mean all real property or interests therein (and any personal property) owned or leased by the Association, but shall exclude Units. The Common Area shall include all of that real property designated on the Plat as a "Common Area," "Limited Common Area", "Common Element", "Common

Space”, “Open Space” or such similar term, including, but not necessarily limited to, any public access easement, landscape easement, and any Improvements respectively thereon, and shall constitute Common Area as to the Properties. Without limiting the generality of the foregoing, Common Areas shall include any entry statements, any park, perimeter walls, fencing along the public walking trails, and certain designated drainage and sewer easement areas.

1.17 “Common Expenses” shall mean all expenses for maintenance, repairs, landscaping, utilities and taxes incurred on or in connection with Areas of Common Responsibility within the Community, including snow removal and regular garbage collection, all insurance premiums for all insurance that the Association is required or permitted to maintain, all expenses incurred in connection with enforcement of this Declaration, expenses of management; utility charges, including charges for utility services to the Units to the extent not separately metered or billed; all amounts which the Association agrees to pay by written agreement for services or amenities benefiting the Community; legal and accounting fees; any deficit remaining from a previous period; creation or an adequate contingency reserve, major maintenance reserve; creation of an adequate reserve fund for maintenance repairs, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws.

1.18 “Community” shall mean the collective reference to all real, personal and mixed property shown on the Plat and governed by this Declaration.

1.19 “City” shall mean North Salt Lake City.

1.20 “County” shall mean Davis County.

1.21 “Design Review Committee” or “DRC” shall mean the design review committee created pursuant to Section 10.3(c) hereof.

1.22 “Development and Sale Period” means the period of time during which the Declarant or any Declarant Affiliate owns real property in the Community or has an unexpired option to expand the Community pursuant to Section 19.1.

1.23 “Emergency Assessment” shall have the meaning set forth in Section 7.4 below.

1.24 “Family” means one individual, or two or more persons related by blood, marriage, or adoption, living together in a single dwelling unit and maintaining a common household. A family may include four, but not more than four, non-related persons living with the residing Family. The term “family” shall not be construed to mean a group of non-related individuals, a fraternity, club or institutional group.

1.25 "Declarant" shall mean WOODSIDE AMBERLY, LLC, a Utah limited liability company, WOODSIDE BERKELEY, LLC, a Utah limited liability company, WOODSIDE CAMBRIA, LLC, a Utah limited liability company, WOODSIDE CASTLETON, LLC, a Utah limited liability company, and WOODSIDE STONEHAVEN, LLC, a Utah limited liability company, and any Person(s) to which it shall have assigned any rights hereunder of a Declarant by an express written and Recorded assignment executed by WOODSIDE AMBERLY, LLC, a Utah limited liability company, WOODSIDE BERKELEY, LLC, a Utah limited liability company, WOODSIDE CAMBRIA, LLC, a Utah limited liability company, WOODSIDE CASTLETON, LLC, a Utah limited liability company, and WOODSIDE STONEHAVEN, LLC, a Utah limited liability company.

1.26 "Declarant Affiliate" means any Person that is owned or controlled by the Declarant or is otherwise affiliated with Declarant through direct or indirect common ownership or control.

1.27 "Declarant Control Period" means the period of time that is described in Section 2.2 of this Declaration.

1.28 "Governing Documents" shall mean the Declaration, Articles of Incorporation and Bylaws for the Association, as well as the Plat and Rules.

1.29 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above, on, or below the land surface, placed in the Community, including but not limited to Residences and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, walls, private roads, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softener fixtures or equipment.

1.30 "Individual Assessment" shall have the meaning set forth in Section 7.5 below.

1.31 "Limited Common Area" shall mean certain portions of the Common Area that are designated as "Limited Common Area" and assigned for the exclusive use or primary benefit of less than all Units. Limited Common Areas might include such things as entry features, recreational facilities, green space, green courts, parking spaces, driveways, streets, alleyways, sidewalks, landscaped medians and cul-de-sacs, among other things. The Declarant may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, in the Neighborhood Association documents, or in the Supplement by which the property is submitted to the terms of this Declaration.

At any time during the Development and Sale Period, the Declarant may assign use of the same Limited Common Area to additional Units.

1.32 "Mortgage" means an instrument securing performance of an obligation or repayment of a debt (e.g. a mortgage or deed of trust).

1.33 "Mortgagee" means the holder or beneficiary of a Mortgage.

1.34 "Neighborhood" shall have the meaning set forth in Section 3.1.

1.35 "Neighborhood Common Areas" shall mean a portion of the Common Areas which shall be allocated for the primary or exclusive use of and benefit of a particular Neighborhood Sub-Association, and as may be described in an applicable Supplemental Declaration for the Neighborhood. The Common Expenses related to the Neighborhood Common Areas shall be borne primarily by the Neighborhood Sub-Association which is allocated the Primary or exclusive use and benefit of each Neighborhood Common Area.

1.36 "Neighborhood Sub-Association" shall mean the Berkeley Sub-Association, Castleton Sub-Association, and/or Stonehaven Sub-Association.

1.37 "Original Property" shall mean all real property described in Exhibit A of this Declaration as amended.

1.38 "Owner" means the Person or Persons, including Declarant, holding fee simple interest of record to any Unit. Except as expressly provided in Section 2.7, the term "Owner" includes a seller under an executory contract of sale but excludes Mortgagees.

1.39 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

1.40 "Plat" shall mean the final plat map(s) for:

1.40(a) Foxboro North Plat 1 recorded at the office of the Davis County Recorder as Entry Number 2224271, in Book 4171, at Page 304, on December 4, 2006, less and excepting therefrom lots 101 and 102;

1.40(b) Foxboro North Plat 2 recorded at the office of the Davis County Recorder as Entry Number 2224956, in Book 4172, at Page 1006, on December 5, 2006;

1.40(c) Foxboro North Plat 3 recorded at the office of the Davis County Recorder as Entry Number 2225732, in Book 4174, at Page 642, on December 7, 2006;

1.40(d) Foxboro North Plat 4 recorded at the office of the Davis County Recorder as Entry Number 2226459, in Book 4176, at Page 795, on December 11, 2006;

1.40(e) Foxboro North Plat 6 recorded at the office of the Davis County Recorder as Entry Number 2279192, in Book 4302, at Page 637, on June 12, 2007; and

1.40(f) Any other plat map(s) for the Original Property subsequently Recorded, as said plat map(s) from time to time maybe amended or supplemented of record by Declarant, together with any map which may, in the future, be Recorded with respect to the Annexable Property.

1.41 "Property" or "Properties" shall mean the real, personal, or mixed property described in Recital A above which is subject to this Declaration, and all property as may be brought within this Declaration pursuant to Section 19.1 and 19.2 and **Exhibit B** of this Declaration.

1.42 "Record," "Recorded," "Recorder," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the county recorder of the County.

1.43 "Residence" means a building located on a Unit designed and intended for use and occupancy as a residence by a single Family.

1.44 "Resident" shall mean any person physically dwelling in a Residence on a Unit.

1.45 "Rules" shall mean any rules or regulations adopted by the Association pursuant to this Declaration.

1.46 "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 7.3 and other sections of this Declaration.

1.47 "Stonehaven Neighborhood" shall mean all real, personal, or mixed property which is or may at any time become subject to the Stonehaven Supplemental Declaration.

1.48 "Stonehaven Sub-Association" shall mean the homeowners association, created by the Stonehaven Supplemental Declaration, having subordinate, concurrent jurisdiction with the Association over the Stonehaven Neighborhood. Nothing in this Declaration shall require the creation of the Stonehaven Sub-Association.

1.49 "Stonehaven Supplemental Declaration" shall mean the declaration of covenants, conditions and restrictions and reservation of easements or other instrument recorded by Declarant or with the express written consent of the Declarant, which shall be supplemental to this Declaration, and which may create

the Stonehaven Sub-Association and/or impose supplemental obligations, covenants, conditions, restrictions, or reservations of easements with respect to the Stonehaven Neighborhood or other land described in such instrument.

1.50 “Supplement” shall mean any document recorded by Declarant or a Declarant Affiliate that is meant to supplement the provisions of this Declaration.

1.51 “Unit” shall mean a subdivided lot or condominium unit within the Community depicted as a separately identified parcel on a recorded subdivision plat, survey, or condominium instrument, which may be independently owned and conveyed and is zoned or otherwise intended for development, use, and occupancy as an attached or detached residence for a single family and is sometimes referred to as a “Residential Unit.” The term “Unit” refers to the land, if any, which is part of the Unit, as well as to any structures or other Improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit. The term does not include Common Areas, common property of any Neighborhood Association, or property dedicated to the public.

2. COMMUNITY ADMINISTRATION

2.1 Declarant. The Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Declarant may exercise certain of these rights throughout the Development and Sale Period.

2.2 Declarant Control Period. The Declarant has reserved other rights that may be exercised during the Declarant Control Period. The Declarant Control Period begins on the date of the Association’s incorporation and terminates upon the first of the following to occur:

2.2(a) when 75% of the total number of Units permitted by applicable zoning for the property described in the Declarant’s or the Declarant Affiliate’s master plan for the Community have certificates of occupancy issued thereon and have been conveyed to persons other than Builders holding title for purposes of construction and resale;

2.2(b) December 31, 2036; or

2.2(c) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

2.3 Declarant Approval Rights. The Declarant has certain approval rights for a limited period as provided in the Bylaws after the termination of the Declarant Control Period.

2.4 Assignment of Declarant Rights. The Declarant may assign its status and rights as the Declarant under the Governing Documents to any Declarant Affiliate or any person who takes title to any portion of the property described in **Exhibit A or Exhibit B** for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties, and shall not prevent Declarant from assigning its status and rights for any other property subject to this Declaration.

2.5 The Association. The Declarant has established or will establish the Association as the primary entity responsible for administering the Community in accordance with the Governing Documents. The Association may exercise all rights and powers that the Governing Documents and Utah law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

2.6 The Board. On most matters, the Association acts through the Board. However, in some instances the Governing Documents or applicable law limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Utah law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

2.6(a) Subject to the terms of Section 9.3 below, the Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

2.6(b) In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the Bylaws.

2.7 The Owners. Each Person that holds fee simple interest of record to a Unit is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage, deed of trust or similar security instrument), a church or religious organization that holds title to property used for religious or worship services and any governmental or public entity who holds title shall not be considered an "Owner." If a Unit is sold under a recorded contract of sale, and the contract specifically so states, the purchaser (rather than

the holder of fee simple title) will be considered the Owner. If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

2.7(a) Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in this Declaration. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in the Bylaws.

2.8 Builders. Much of the responsibility and credit for helping to create the Community rests with the Builders. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Declarant may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

2.9 Neighborhood Associations. Portions of the Community may be developed under a condominium form of ownership, may have special requirements, or in the Declarant's discretion may lead the Declarant to establish a separate condominium or homeowners association to administer additional covenants applicable to that particular area. However, nothing in this Declaration requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

2.9(a) Any Neighborhood Association shall be responsible for administering the additional covenants applicable to the property within its jurisdiction and for maintaining any property which it owns or which its covenants designate as being for the common benefit of its members.

3. COMMUNITY STRUCTURE AND ORGANIZATION

3.1 Neighborhoods. Units maybe grouped into "Neighborhoods" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another.

3.1(a) The Declarant initially may assign Units to a specific Neighborhood (by name or other identifying designation) in a Supplement. During the Development and Sale Period, the Declarant may unilaterally record a Supplement, or an amendment to this Declaration or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Declaration or any Supplement to re-designate Neighborhood boundaries; however, the Board

may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

3.2 Election Districts. The Declarant or the Board may designate "Election Districts," consisting of the Units within one or more Neighborhoods, for the purpose of electing directors to the Board. The Bylaws set forth the method of establishing Election Districts. The number of Election Districts shall not exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

3.3 Service Areas. Units may also be part of one or more "Service Areas" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

3.3(a) The Declarant may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area in a Supplement. During the Development and Sale Period, the Declarant may unilaterally amend this Declaration or any Supplement to change Service Area boundaries.

3.3(b) In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation.

3.3(c) The Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the Bylaws to represent and act on behalf of the Owners with respect to the services and benefits that the Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

3.3(d) The Board may assess the Owners in a Service Area with Special Assessments to cover the costs associated with the special benefits or services received by the Owners in the Service Area.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Declarant membership, which consists solely of the Declarant.

4.1(a) **Owner Membership.** Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the Bylaws. The rights and obligations of a member of the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and any such transfer shall automatically transfer the membership appurtenant to such Unit to the new Owner thereof. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Association's Secretary, except that only the individuals residing in the Unit shall be entitled to use any Common Areas available for use by Owners.

4.1(b) **Declarant Membership.** The Declarant holds the sole "Declarant Membership". The Declarant Membership shall terminate two years after expiration of the Declarant Control Period, or on such earlier date as the Declarant determines and declares in a recorded document.

4.1(c) The Declarant may, by Supplement, create additional classes of membership comprised of the owners of Units within any portion of the additional property submitted to this Declaration. The Declarant shall specify in any such Supplement the rights, privileges, and obligations of the members of any class of membership created by that Supplement.

4.2 **Voting.** Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 6.2. Further, during such time as there is a Declarant Membership, no vote shall be exercised for Units that the Declarant or a Declarant Affiliate owns; rather, the Declarant's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

4.2(a) Due to the number of Units that may be developed in the Community, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood shall elect a "Voting Delegate" and an alternative Voting Delegate, in the manner provided in the Bylaws, to cast the votes of all Units in the Neighborhood on matters pertaining to the Association which require a vote of the Owners, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any

issue requiring a vote of the Voting Delegates under the Governing Documents.

4.2(b) The Voting Delegate or, in his or her absence, the alternative Voting Delegate, attends Association meetings and casts all votes allocated to Units in the Neighborhood that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate may vote all votes it is entitled to cast in its discretion and may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting. On any matter, other than election of directors, for which a Voting Delegate is entitled to cast more than one vote, the Voting Delegate may cast all such votes as a block or split them but shall not be entitled to fractionalize any single vote.

4.2(c) Voting Delegates are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

4.2(d) In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, the vote for such Unit may be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves. Any co-Owner may cast the vote for the Unit and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, or if two or more co-Owners seek to exercise it independently, the Unit's vote shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

4.3 Quorum for Meeting of Owners. A quorum for any such meeting shall be the presence in person or by proxy of no fewer than twenty-five percent (25%) of all Owners or Voting Delegates representing twenty-five percent (25%) of all Owners. Absent a quorum, the Voting Delegates who are present at the noticed meeting may adjourn the meeting to a date, time and place specified prior to adjournment which is no less than five (5) and no more than thirty (30) days after the time of the noticed meeting. A quorum at such later "adjourned meeting" shall be the presence in person or by proxy of no fewer than Ten percent (10%) of all Voting Delegates.

4.4 Conduct of Meeting. If a quorum is present at any meeting or adjourned meeting, the first item of business thereat shall be the selection of a Director of Election, who shall preside over the conduct of the meeting. The Owners shall act by majority vote of a quorum, except that members of the Board shall be elected by plurality such that the individual receiving the highest number of votes

shall be elected to fill one vacancy, the individual receiving the next highest number of votes shall be elected to fill a second vacancy (if any), and the individual receiving the next highest number of votes shall be elected to fill a third vacancy (if any).

4.5 Lists of Owners. The Association shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit which is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Davis County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Davis County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Association is otherwise advised.

5. ASSOCIATION

5.1 Formation of Association. The Association shall be a nonprofit Utah corporation or limited liability company charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws and the Association. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

5.2 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of five (5) natural persons, who need not be members of the Association. The Board may also appoint various committees and may appoint and hire at Association expense a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association. Until the end of the Declarant Control Period, the Declarant shall have the right to appoint and substitute all members of the Board.

5.3 Board Composition. Except for the initial Board and substitute Board members appointed by Declarant during the Declarant Control Period, all members of the Board must be Owners at the time of their election. Should any member move his or her residence outside of the Community, such member shall automatically be deemed to have resigned and the Board shall declare a vacancy. Upon expiration of the Declarant Control Period, all Board members appointed by the Declarant then serving shall be released from responsibility. The

reorganization of the Board shall be by a vote of the then current Owners or Voting Delegates, as applicable, within the Community present at a duly called meeting of the Owners or Voting Delegates, as applicable.

5.4 Term of Office. The term of office of each Board member elected following the termination of Declarant Control Period shall be as follows: each such Board member shall serve for terms of two (2) years beginning immediately upon their election by the Association; provided however that two (2) of the Board members elected at the first annual meeting at which Trustees are chosen by a vote of the Owners or Voting Delegates shall serve for an initial term of one (1) year, and thereafter, all trustees elected shall serve for two (2) years, commencing on the date of election and extending until a successor is elected pursuant to the Bylaws of the Association. Any such Board member may succeed himself, and there shall be no limit to the number of terms of any such member.

5.5 No Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Owner, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature related to his or her involvement in the affairs of the Association, except for acts of fraud or theft, or acts performed intentionally and with malice. The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers, managers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, including any decision to not institute Proceedings except for their own individual acts performed intentionally and with malice and any acts that are *ultra vires*. The officers, managers and members of the Board shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Owners), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. After the Declarant Control Period and the first election of members of the Board by Owners, the Association shall, as a Common Expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation.

6. ASSOCIATION FINANCES

6.1 Obligation for Assessments. By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner except Declarant and the Declarant Affiliates, covenants and agrees to pay all assessments authorized in the Governing Documents. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

6.1(a) The Board's failure 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 Annual Assessments and Special Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

6.1(b) No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. 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 of repairs or improvements, or from any other action it takes.

6.1(c) Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate 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.

6.1(d) Notwithstanding anything to the contrary herein, Declarant shall be exempt from the payment of Annual Assessments and Special Assessments.

6.2 Exempt Property. The following property shall be exempt from payment of Annual Assessments and Special Assessments:

6.2(a) All Common Area and such portions of the property owned by the Declarant or any Declarant Affiliate as are included in the Area of Common Responsibility;

6.2(b) All Units or portions of the Property owned by Declarant and the Declarant Affiliates;

6.2(c) Any property dedicated to and accepted by any governmental authority, public school, public utility;

6.2(d) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and

6.2(e) Any property owned by any religious organization or house of worship.

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c) of the Internal Revenue Code.

6.3 Use and Consumption Fees. The Association may offer services or facilities for which it does not recover its costs through assessments under this Declaration. The Board may charge use, consumption, and activity fees to any Person using Association services or facilities or participating in Association-sponsored activities. The Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

6.4 Assessment of Neighborhood Sub-Associations. The Association and the Board may elect, in their sole discretion, to assess Neighborhood Sub-Associations for the lump sum of all Annual Assessments and Special Assessments owing from Owners within a Neighborhood Association instead of separately assessing and collecting the Annual Assessments and Special Assessments directly from Owners. If any such assessment is made by the Association or Board, then the Neighborhood Sub-Association being assessed shall be obligated to remit the total amount assessed within the time frames set forth in the assessment notice.

6.5 Budget Deficits During Declarant Control Period. During the Declarant Control Period, Declarant or an affiliate of Declarant may (a) advance funds to the Association sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the Annual Assessments and Special Assessments collected by the Association in any fiscal year, and such advances shall be evidenced by promissory notes from the Association in favor of Declarant or an affiliate of Declarant, or (b) cause the Association to borrow such amount from a commercial lending institution at the then prevailing rates for such a loan in the local area of the Community. Declarant or a Declarant affiliate, in Declarant's sole discretion may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Property or any of the improvements maintained by the Association shall be given in connection with such loan.

7. ASSESSMENTS

7.1 Annual Assessments. Commencing on January 1, 2007, an Annual Assessment shall be made against each Unit, except any Unit owned by Declarant, for the purpose of paying (or creating a reserve for) Common Expenses. Each Neighborhood Association may impose additional assessments on Units in such Neighborhood pursuant to the Supplemental Declaration forth that Neighborhood. Prior to January 1, 2007, Declarant shall be responsible for all necessary expenses related to the Common Areas.

7.2 Amount of Initial Annual Assessments and Subsequent Increases.

The initial Annual Assessment for the Assessment Period beginning on January 1, 2007 shall be \$240.00 per Unit. Annual Assessments for each Assessment Period thereafter shall continue at the rate of \$240.00 per Unit unless and until increased or decreased in accordance with this Declaration.

7.2(a) DeclarantDeclarantAfter January 1, 2007, the Annual Assessment may be increased each year in the discretion of the Board by not more than twenty-five percent (25%) of the Annual Assessment for the previous year.

7.2(b) From and after January 1, 2007, the Annual Assessment may be increased above twenty-five percent (25%) limit by a vote of sixty-six and two-thirds percent (66.66%) of the Owners (voting in person or by proxy) or Voting Delegates, as applicable, at a meeting duly called for that purpose.

7.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Units owned by Declarant or a Declarant Affiliate, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall have the assent of a majority of the total number of votes held by the Owners (voting in person or by proxy) at a meeting duly called for such purpose. Such Special Assessments shall be collected in monthly payments over a twelve-month period (or longer) unless the possibility of a more accelerated collection plan is duly noted in the notice for the Owners or Voting Delegate meeting for which the Special Assessment is held, and the more accelerated collection plan is separately approved by the assent of a majority of the total number of votes held by the Owners (voting in person or by proxy) or Voting Delegates, as applicable, at a meeting duly called for the passage of the Special Assessment. Fines against individual Owners may also be levied as Special Assessments pursuant to this Section 7.3.

7.4 Emergency Assessments. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

Any Emergency Assessment in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the members other than the Declarant voting in person or by proxy, at a meeting duly called for such purpose and the written consent of Declarant.

7.5 Individual Assessments. Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots benefited ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

7.5(a) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration of the Rules and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws any of the Rules.

7.5(b) Expenses related to the costs of maintenance, repair, replacement and reserves of the Units.

7.6 Reserve Funds. The Association shall establish and maintain a reserve fund for repairs and replacement of the landscaping or other Improvements by the allocation and payment monthly to such reserve fund in an amount to be designated from time to time by the Board. The fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary and appropriate.

Members of the Board shall not be personally liable for failure to adequately fund reserves absent evidence of gross mismanagement or willful conduct.

7.7 Failure of Notification. Written notice of the Annual Assessment shall be sent to each Owner or Neighborhood Sub-Association, as applicable. Failure of the Association to send a bill to any Owner of Neighborhood Sub-Association, as

applicable, shall not relieve such Person of liability for payment of any assessment or charge. The due dates shall be established by the Board.

7.8 Effect of Nonpayment. Each Assessment, together with such interest, collection charges, violation fees, and maintenance reimbursement (as deemed by the Board of Directors), and attorneys' fees, lien reimbursement and collection costs shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and shall bear interest from fifteen (15) days after the due date until paid at the legal rate of interest or other reasonable rate not to exceed the legal rate, and the Owner or Neighborhood Sub-Association, as applicable, shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also Record a Notice of Delinquent Assessment or Charge against any Unit as to which an assessment or charge is delinquent. The Notice shall be executed by an agent or officer of the Association or a member of the Board, set forth the amount of the unpaid assessment, the name of the delinquent Owner, and a description of the Unit. The Board may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency, and Recording a release of such lien, which fixed fee shall be treated as part of the Assessment of the Association secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against such Owner's Unit in the same manner as mortgages or non-judicial foreclosure of deeds of trust. In the event a non-judicial lien foreclosure is initiated, the Owner, by acceptance of a deed, irrevocably appoints the Association's attorney to act as Trustee for any such foreclosure.

7.9 Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with a Unit as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Unit. Sale or transfer of any Unit shall not affect the Assessment Lien.

7.10 Initial Special Assessment. Upon the transfer of any Unit from Declarant or a Declarant Affiliate to a new Owner (including a Builder), the Association shall charge a one-time Special Assessment against the new Owner, and his or her Unit, in an amount equal to one-half (1/2) of the then-current Annual Assessment, to cover the costs of capitalizing the Association, to fund working capital needs of the Association, to perpetuate the reserve funds of the Association and to reduce the Common Expenses of the Project. Subject to the terms of this Declaration, the use of any funds generated by the Special Assessment described in this Section shall be at the sole discretion of the Association.

7.11 Transfer Fee. Upon any transfer, pledge, or alienation of a Unit, the Association shall charge a transfer fee against any new Owner, and his or her Unit, in an amount equal to one-sixth (1/6) the then-current Annual Assessment, to cover the costs to the Association of effectuating any such transfer of membership upon the books of the Association, to fund working capital needs of the Association, to perpetuate the reserve funds of the Association and or to reduce the Common Expenses of the Project. Subject to the terms of this Declaration, the use of any funds generated by the transfer fee shall be at the sole discretion of the Association.

8. MAINTENANCE, REPAIR AND REPLACEMENT

8.1 Maintenance of Units. Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, and the City and any Special Service District created by the City ("SSD") shall maintain any property within the Community that it owns or controls in a manner consistent with the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Declaration, any Supplement, or by law.

8.1(a) Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common Area or public or private right-of-way within 12 feet of the Unit boundary; provided, trees within the area may be maintained with the City, the SSD, or the Association's irrigation system, if one is provided. However, Owners may not remove or replace trees, shrubs, or similar vegetation from this area without prior written approval from the City, SSD or Association, as applicable.

8.2 Maintenance of Neighborhood Association Property. A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, and all applicable covenants.

8.2(a) Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 12 feet of its boundary. A Neighborhood Association shall not remove or replace trees, shrubs, or similar vegetation from this area without prior written approval from the City, SSD or the Association, as applicable.

8.3 Maintenance by the Association. The Association shall maintain the Area of Common Responsibility in a manner consistent with the Governing Documents.

8.4 Common Areas. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas in the Community. This maintenance will include the mowing, watering, sweeping, and appropriate upkeep and repair of any designated Common Areas. Subject to the obligations of the Board to the Declarant in this Section below, the Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative. The Board shall develop and observe a regular, periodic maintenance schedule for all Common Areas, and shall no less than annually submit to Declarant a report specifying in detail the regular maintenance conducted on the Common Areas in the previous year or such shorter period since the last report was submitted to the Declarant.

8.4(a) The Association may assume maintenance responsibility for property in any Neighborhood Association, either upon designation of the Neighborhood Association as a Service Area or upon the Board's determination that the level and quality of maintenance then being provided is not consistent with the Governing Documents. The Association need not treat all similarly situated Neighborhood Associations the same.

8.5 Responsibility for Repair and Replacement. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Governing Documents.

8.5(a) Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

8.5(b) Within 90 days after damage to or destruction of a structure on a Unit, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Board, unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped

condition consistent with the Governing Documents. The Owner shall pay any costs that insurance proceeds do not cover.

8.5(c) Additional recorded covenants applicable to any Neighborhood Association or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

8.5(d) This Section shall apply to a Neighborhood Association with respect to common property of the Neighborhood Association in the same manner as if the Neighborhood Association was an Owner and the common property was a Unit.

8.6 Maintenance and Repair of Party Walls and Similar Structures. Except as may otherwise be provided by law, a written agreement between Owners of adjacent Units, or other recorded documents applicable to adjacent Units:

8.6(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

8.6(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

8.6(c) The right and the obligation of contribution for party walls and similar structures between Owners, as provided in this Section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

8.6(d) To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure.

8.7 Maintenance of Alleys. Access to certain Units within the Community shall be provided by shared alleys located adjacent to the boundaries of the Units so served. The alleys may or may not be dedicated to the City as public streets under the jurisdiction and control of the City. If the alleys are dedicated to the City and the City fails to maintain the alleys in a manner consistent with the

Governing documents, the Association may maintain the alleys in a manner consistent with the Governing Documents.

8.7(a) All costs associated with the routine maintenance, repair, and replacement of alleys shall be allocated among the Units served by such alley and assessed against such Units as a Special Assessment. An alley serves a Unit if the alley provides access to the Unit.

8.7(b) Notwithstanding the above, the Association may be responsible for maintaining portions or components of an alley. In such case, the Association shall perform such maintenance and may assess all or any Owners for costs incurred.

8.8 Improper Maintenance. In the event any portion of any Unit, except Units owned by Declarant or a Declarant Affiliate, is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Units or other areas of the Community which are substantially affected thereby or related thereto; or in the event any portion of a Unit, except Units owned by Declarant or a Declarant Affiliate, is being used in a manner which violates this Declaration; or in the event any Owner, except Declarant or a Declarant Affiliate, is failing to perform any of its obligation under this Declaration or the architectural guidelines and standards of the Design Review Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at such Owner's cost. If at the expiration of such fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be a Special Assessment and shall be secured by the Assessment Lien. No strict or absolute liability shall be imposed on an Owner for damage to the Common Areas or other Units in the Community caused by such Owner. Declarant is exempt any obligations under this Section.

8.9 Assessment of Certain Costs. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Owner (except Declarant or a Declarant Affiliate), his or her family, guests or invitees, the cost of such maintenance or repairs shall be a Special Assessment to which such Owner's Unit is subject and shall be secured by the Assessment Lien.

9. RIGHTS AND POWERS OF ASSOCIATION

9.1 Association's Rights. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws.

9.2 Levy and Collection Assessments. The Association shall have right to levy assessments and collect such assessments as provided herein.

9.3 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively referred to herein as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Areas and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

9.3(a) Operational Proceedings. Any Proceeding commenced by the Association to: (i) enforce the payment of an assessment or an Assessment Lien or other lien against an Owner as provided for in this Declaration, (ii) otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, (iii) protect against any matter which imminently and substantially threatens the health, safety and welfare of the Owners, (iv) pursue a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) recover money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding". The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization;

9.3(b) Non-Operational Controversy. Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies". To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Board and individual members of the Board or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board; and

9.3(c) Dispute Resolution. The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse

party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand and No/100 Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Owners or Voting Delegates, as applicable, for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(i) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Utah attorney regularly residing in Salt Lake or Davis Counties, Utah, with a Martindale – Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand and No/100 Dollars (\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefore, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said Five Thousand and No/100 Dollars (\$5,000.00) limit, with the express consent of more than fifty percent (50%) of all of the Owners or Voting Delegates of the Association, at a special meeting called for such purpose;

(ii) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert

witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(iii) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Owners or Voting Delegates, as applicable. The written notice to each Owner or Voting Delegate of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Owner ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Owners or Voting Delegates, as applicable, whereupon: (a) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (b) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Owners or Voting Delegates, as applicable, of the

Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Owners in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees, costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Owners, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of the attorney's fees and costs incurred to date in connection therewith.

(iv) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Owners or Voting Delegates, as applicable, of the Association.

(a) In no event shall any Association working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy).

(b) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section, the Association shall have no power

whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the Association or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 9.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 9.3 may not be amended or deleted at any time without the express prior written approval of both: (1) Owners or Voting Delegates, as applicable, representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board; and any purported amendment or deletion of this Section, or any portion hereof, without both of such express prior written approvals shall be void.

9.4 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and reserve study and reserve fund obligations). After the end of the Declarant Control Period, and throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and meetings of the Owners and Voting Delegates, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondences to Owners and Voting Delegates, all inspection reports, any reserve studies prepared, maintenance reports, and audited or reviewed annual reports. Such notices and information shall be delivered to Declarant at its most recently designated address.

10. ARCHITECTURE, LANDSCAPING, AND AESTHETIC STANDARDS

10.1 General. All site work, landscaping, structures, improvements, additions and other items placed on a Unit in a manner or location visible from outside of any existing structures on the Unit ("Improvements") are subject to standards for design, landscaping and aesthetics adopted pursuant to Article 11 ("Design Guidelines") and the approval procedures set forth in this Article, except as this Article or the Design Guidelines may otherwise specify.

10.1(a) No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.

10.1(b) Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Declarant or its designee in its sole discretion otherwise approves.

10.1(c) Approval under this Article is not a substitute for any approvals, inspections, or reviews required by the County, the City, or any governmental agency or entity having jurisdiction over architectural or construction matters.

10.1(d) This Article shall not apply to the Declarant's or any Declarant Affiliate's design and construction activities or to the Association's activities during the Declarant Control Period.

10.2 Exterior Structural and/or Aesthetic Alterations. No Improvement shall be commenced, erected, placed or altered on any Unit until an application and construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of Improvements or changes have been submitted to and approved in writing by the Board. It is the intent of this Declaration to ensure quality of workmanship and materials, to ensure harmony of exterior design with the existing Improvements and landscaping and as to location with respect to topography and finished grade elevation. The Board may promulgate Rules regarding specific procedures, process, and guidelines for any proposed exterior alterations or modifications of any kind.

10.3 Design Review Authority.

10.3(a) Declarant. The Declarant shall have exclusive authority to review and act upon all applications for review of proposed Improvements until

the later of (i) the expiration of the Development and Sale Period, or (ii) such time as all Units planned for the property described in Exhibit A and Exhibit B have been improved with dwellings for which a certificate of occupancy has been issued. The Declarant may designate one or more persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Declarant and its designee act solely in the Declarant's interest and owe no duty to any other Person.

10.3(b) Delegation. From time to time, the Declarant may delegate any or all of its rights under this Article to other Persons or committees. Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to (i) the Declarant's right to revoke such delegation at any time and reassume its prior control, and (ii) the Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Declarant has any rights under this Article, the jurisdiction of others shall be limited to such matters as the Declarant specifically delegates.

10.3(c) Design Review Committee. Upon the Declarant's delegation of authority pursuant to Section 10.3(b), or upon expiration or termination of the Declarant's rights under this Article, the Board shall appoint a Design Review Committee ("Design Review Committee" or "DRC") to assume jurisdiction over matters within the scope of the delegated authority or this Article, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. The DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers or similar professionals. The Association may compensate the DRC members in such manner and amount, if any, as the Board may determine appropriate.

10.3(d) Notice to Declarant. Until expiration of the Declarant's rights under this Article, the DRC shall notify the Declarant in writing within three business days of any action (i.e., approval, partial approval, or disapproval) it takes under this Article. A copy of the application and any additional information the Declarant may require shall accompany the notice. The Declarant shall have 10 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

10.3(e) Exclusive Jurisdiction of Declarant. Unless and until such time as the Declarant delegates all or a portion of its reserved rights to the DRC or the Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

10.3(f) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer."

10.3(g) Fees; Assistance. The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such persons in the Association's annual operating budget.

11. GUIDELINES AND PROCEDURES.

11.1 Design Guidelines. The Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Community as well as specific provisions that vary among uses, housing types, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners, Builders, and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

11.1(a) The Declarant shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 10.3. The Declarant's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Declarant also delegates the power to amend to the DRC. Upon termination or delegation of the Declarant's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

11.1(b) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.

11.1(c) The Reviewer shall make the Design Guidelines available to Builders, Owners, and their contractors upon request. In the Declarant's discretion, such Design Guidelines may be recorded, in which even the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

11.1(d) Unless the Design Guidelines provide otherwise, no activities within the scope of this Article may begin on any property within the Community until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications, which shall show, as applicable, site layout, structural

design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and such other information as the Reviewer or the Design Guidelines require.

11.1(e) In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

11.1(f) The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Article 16 or judicial review so long as they are made in good faith and in accordance with required procedures.

11.1(g) The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

11.1(h) The Reviewer shall notify the applicant in writing of the final determination on any application no later than thirty (30) business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Declarant's veto right, the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

11.1(i) If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 11.3.

11.1(j) As part of any approval, the Reviewer may require that construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire,

and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. The Reviewer may exempt certain activities from the application and approval requirements of this Article if such activities are undertaken in compliance with the Design Guidelines and the Governing Documents.

11.1(k) Appeals Process. After the Board's appointment of the DRC, an applicant may appeal any disapproval of its application to the Board. To request an appeal, the applicant must submit to the Association's Secretary, no later than 15 days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may (i) affirm the DRC's decision, (ii) affirm a portion and overturn a portion of the DRC's decision, or (iii) overturn the DRC's entire decision. The Board shall notify the applicant and the DRC in writing of its decision no later than 30 days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the DRC's decision. During the appeal process the Owner shall not commence any work requiring approval hereunder.

(i) No Waiver of Future Approvals. The people reviewing applications under this Article will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. It may not always be possible to identify objectionable features until work is completed. In such cases, the Reviewer may elect not to require changes to objectionable features. However, the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

11.2 Variances. The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when it determines that circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations justify such a variance; however, the Reviewer shall under no circumstances be obligated to grant variances. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance in other circumstances. A

variance requires the Declarant's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

11.3 Limitation of Liability. This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications; for compliance with building codes and other governmental requirements; or for ensuring that all dwellings are of comparable quality, value, size, or design or are aesthetically pleasing or otherwise acceptable to other Owners.

11.3(a) The Declarant, Declarant Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Declarant has approved or featured such contractor as a Builder; (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit; or (e) any injury, damage, or loss arising out of an earthquake, Act of God, or any other natural disaster. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the Bylaws.

11.4 Certificate of Compliance. Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.

11.4(a) In the event of violation of any of the provisions of this Declaration, the Board and the DRC are authorized and empowered to take such action as may be necessary to restrain or enjoin the violations of applicable governmental codes and regulations and these covenants. All costs, including attorneys' fees, of such enforcement shall be borne by the Owners who are in violation of this Declaration.

11.5 Nuisances; Construction Activities. The Association may require that an Owner, prior to commencing construction on a Unit, to provide the Association with a cash deposit of one thousand dollars (\$1,000.00) as security to cover any damage done by Owner or their contractors, subcontracts and materialmen to streets, sidewalks, curbs and utilities lines and pipes, or any clean-up expense

caused by such construction activities. The obligation under this paragraph includes construction activities related to the installation of a swimming pool by an Owner or the Owner's contractor. If no damage is done, and no repairs or clean up is required from such Owners construction activities, the bond, or the remaining portion thereof shall be refunded to Owner within sixty days of completion of construction activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection with the building of improvements on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be piled only in such areas as may be approved by the Committee. In addition, any construction equipment and building materials stored or kept on any Unit during construction of improvements may be kept only in areas approved by the Committee, which may require screening of the storage areas.

11.6 Compliance with Governmental Requirements. During construction on a Unit, the Owner of the Unit and its contractor shall comply with all local, county, state, federal, and Environmental Protection Agency ("EPA") laws, codes, rules, and regulations during all stages of construction, including but not limited to performing all inspections that are required under any applicable local, state, federal, or EPA law, code, rule, and/or regulation and regularly maintaining all erosion control devices and best management practices. In particular, Owner shall require its contractor to prepare, implement, and comply with a Storm Water Pollution Prevention Plan (the "Plan") which includes elements necessary for compliance with the nationwide general permit for construction activities administered by the EPA, or other government agency under the National Pollutant Discharge Elimination System, and shall keep copies of all inspections and provide the Declarant (and on new construction after the Declarant Control Period, the Association) with copies of all inspections that are required by the EPA, or other governmental agency. The Owner of the Unit is responsible to confirm compliance with the requirements of this Section. In the event of any alleged claims, demands, expenses, or liabilities (each, a "Claim") made or asserted by any governmental body relating to any violation of this Section, Owner shall indemnify, defend and hold harmless Declarant, the Association, and their affiliates from any such Claims.

12. USE AND CONDUCT

12.1 Use, Occupancy, and Transfer of Interests in Units. In addition to any prohibitions set forth in an ordinance of the City, the following activities are specifically not permitted in a Unit: cafes or restaurants; retail discount, or thrift shops; tanning parlors, message parlors, and any establishment which offers entertainment or service by nude or partially dressed male or female persons; "adult entertainment uses," which terms shall mean, for the purposes of this Declaration, any establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) which is rated "X" by the movie production industry (or any successor rating established by the movie production industry) or is otherwise of a pornographic or obscene nature; or (ii) sexually explicit games, toys, devices, or similar merchandise; or commercial overnight lodging. The Board reserves the right, from time to time, to designate other activities, which shall not be permitted.

12.1(a) Clarification of term "Business". Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this Section, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure.

12.1(b) Leasing. For purposes of this Declaration, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any detached "in-law suite" or "guest house" approved pursuant to Article 11 may be leased separate from the main dwelling.

(v) All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

(vi) Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this Section,

the Association or the Board may adopt Rules governing leasing and subleasing.

12.1(c) Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven 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 Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

12.1(d) Subdivision and Combination of Units. No Person other than the Declarant and Builders whom the Declarant may authorize shall subdivide or change the boundary lines of any Unit or combine Units without the Board's prior written approval. Any such action that the Board approves shall be effective only upon recording a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling.

12.1(e) Timesharing. No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by the Declarant or with the Declarant's prior written approval.

12.2 Rulemaking Authority and Procedures. The Governing Documents establish a framework of covenants and conditions that govern the Community. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 12.3.

12.2(a) Board Authority. Subject to the notice requirements in Section 12.2(c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and the Owners, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting.

12.2(b) Voting Delegate/Owner Authority. Subject to the notice requirements in Section 12.2(c) below, the Owners or the Voting Delegates representing a majority of the votes in the Association may also adopt new Rules and modify or rescind existing Rules at any meeting of

the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. However, as long as the Declarant membership exists, any such action shall also be subject to the Declarant's approval.

12.2(c) Notice. The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board, Voting Delegates or Owners, as applicable, at which such action is to be considered. The notice must provide reasonably specific detail of the Rule(s) being considered to be changed and the proposed change. At any such meeting, the Voting Delegates or Owners, as applicable, shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

(vii) This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

12.2(d) Effective Date. A Rules change adopted under this Section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

12.2(e) Conflicts. No action taken under this Section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Declaration other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control. Notwithstanding, neither this Declaration nor the Rules or Design Guidelines shall have limit or lessen the application or effect of any ordinance or regulation of the City.

12.3 Protection of Owners and Others. Except as may be set forth in this Declaration (either initially or by amendment), all Rules shall comply with the following provisions:

12.3(a) Similar Treatment. Similarly situated Units shall be treated similarly; however, the Rules may vary by location, use, or other distinct characteristics of areas with the Community.

12.3(b) Displays. No Rule shall prohibit an Owner or occupant from displaying political, religious, or holiday symbols and decorations on his

or her Unit of the kinds normally displayed in single family residential neighborhoods, nor shall any Rule regulate the content of political signs. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

(viii) Notwithstanding the above regulation, an Owner or occupant may display one portable and removable United States flag on his or her Unit by a bracket or other device mounted to the dwelling, so long as the flag is displayed in a respectful manner, provided, the Association may adopt reasonable time, place, and manner restrictions with respect to the display of the United States Flag, including a reasonable limitation on size.

12.3(c) Household Composition. No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

12.3(d) Activities Within Dwellings. No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance. The Association's authority to impose such Rules shall in no way lessen the effect of any ordinances or regulations of the City.

12.3(e) Allocation of Burdens and Benefits. No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents.

12.3(f) Leasing and Transfer of Units. No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term of up to 12 months. Minimum lease terms may vary by location, use, or housing type. The Rules may also require that Owners use Board-approved lease forms

(or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

12.3(g) Abridging Existing Rights. No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

12.3(h) Reasonable Rights to Develop. No Rule may unreasonably interfere with the ability of the Declarant any Declarant Affiliate to develop, market, and sell property in the Community.

12.3(i) Interference with Easements. No Rule may unreasonably interfere with the exercise of any easement.

12.4 Owners' Acknowledgment and Notice to Purchasers. By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

13. COMPLIANCE AND ENFORCEMENT

13.1 Compliance. Every Owner, tenant, occupant and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Article. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units and for any damage to the Area of Common Responsibility that such Persons may cause.

13.2 Remedies for Non-Compliance. The Association, the Declarant, any Declarant Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

13.2(a) Sanctions Requiring Prior Notice and Hearing. After written notice and an opportunity for a hearing in accordance with the Bylaws, the Board may:

- (ix) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that

any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board; unpaid fines shall be collected as an Individual Assessment with all available remedies applicable thereto;

(x) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 90 days delinquent in paying any Annual Assessment or Special Assessment);

(xi) suspend any Person's right to use any Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(xii) suspend services the Association provides (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(xiii) exercise self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing personal property that violates the Governing Documents);

(xiv) require an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, with all charges and fees associated with such action being charged to the Owner as an Individual Assessment, and any such action shall not be deemed a trespass;

(xv) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Governing Documents, including the Design Guidelines, from continuing or performing any further activities in the Community;

(xvi) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the requirements under the Governing Documents; and

(xvii) record a notice of violation with respect to any Unit on which a violation exists.

13.2(b) Other Sanctions. The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(xviii) exercise self-help or take action to abate a violation on a Unit in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(xix) exercise self-help or take action to abate a violation on the Common Area under any circumstances;

(xx) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Governing Documents and to restore the property to its previous condition;

(xxi) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to Section 13.2(b)(iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(xxii) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

13.2(c) Additional Powers Relating to Neighborhood Associations. In addition to the foregoing sanctions, the Association shall have the power

to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its the Owners or inconsistent with the Governing Documents. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore.

(xxiii) A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Special Assessments to cover the costs, as well as an administrative charge and sanctions.

13.3 Board Decision to Pursue Enforcement Action. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

13.3(a) the Association's position is not strong enough to justify taking any or further action;

13.3(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

13.3(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

13.3(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

(xxiv) A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

13.4 Attorneys Fees and Costs. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

13.5 Enforcement of Ordinances. The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the County or the City may enforce ordinances within the Community.

14. TERMINATION AND AMENDMENT OF COMMUNITY DECLARATION

14.1 Term and Termination. This Declaration shall be effective for a minimum of 30 years from the date it is recorded. After 30 years, this Declaration shall be extended automatically for successive 10-year periods unless at least 67% of the then Owners sign a document stating that this Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall terminate on the date specified in the termination document.

14.1(a) If any provision of this Declaration would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

14.1(b) This Section shall not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2 Amendment.

14.2(a) By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Declarant Control Period, the Declarant may unilaterally amend this Declaration for any purpose.

(xxv) Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

14.2(b) By Owners. 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 the Owner or Voting Delegates representing 67% of the total votes in the Association, including 67% of the total votes held by Owners other than the Declarant and the Declarant Affiliates. In addition, during the Development and Sale Period, any such amendment shall also require the Declarant's written consent.

(xxvi) 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.

14.2(c) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant (or the assignee of such right or privilege).

(xxvii) 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.

14.2(d) Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any 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.

14.2(e) Exhibits. Exhibits A, B, C and D are incorporated by this reference, and this Article shall govern amendment of those exhibits. All other exhibits, if any, are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Declaration that refer to such exhibits.

15. RIGHTS OF LENDERS

15.1 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

15.1(a) Any condemnation loss or any casualty loss that affects a material portion of the Community or that affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

15.1(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days.

15.1(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

15.1(d) Any proposed action, which would require the consent of a specified percentage of Eligible Holders.

15.2 Special FHLMC Provision. If a condominium has been established in the Community, then so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least 67% of the first Mortgagees or Voting Delegates representing at least 67% of the total votes in the Association consent, the Association shall not:

15.2(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this Section);

15.2(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Community regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration);

15.2(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Common Area (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

15.2(d) Fail to maintain insurance, as required by this Declaration; or

15.2(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

(xxviii) First Mortgagees may, jointly or singly, pay taxes or other charges that are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

15.3 Other Provisions for First Lien Holders. To the extent not inconsistent with Utah law, if a condominium has been established in the Community, then:

15.3(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by Eligible Holders are allocated.

15.3(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

15.4 Amendments to Documents. The following provisions do not apply to amendments to the Governing Documents or termination of the Association as a result of destruction, damage or condemnation pursuant to Section 15.3(a) and (b), or to the addition of land in accordance with Article 20. If a condominium has been established in the Community, then:

15.4(a) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Declarant, so long as it or a Declarant Affiliate owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which at least 67% of the votes subject to a Mortgage appertain, shall be required to terminate the Association.

15.4(b) The consent of Voting Delegates representing at least 67% of the total votes in the Association and of the Declarant, so long as it or a Declarant Affiliate owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which more than 50% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or

Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (xxix) voting;
- (xxx) assessments, assessment liens, or subordination of such liens;
- (xxxi) reserves for maintenance, repair, and replacement of the Common Area;
- (xxxii) insurance or fidelity bonds;
- (xxxiii) rights to use the Common Area;
- (xxxiv) responsibility for maintenance and repair of property in the Community;
- (xxxv) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Association's jurisdiction;
- (xxxvi) boundaries of any Unit;
- (xxxvii) leasing of Units;
- (xxxviii) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xxxix) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or
- (xl) any provisions included in the Governing Documents, which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

15.5 No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

15.6 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

15.7 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

15.8 Construction of Article 15. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws, or Utah law for any of the acts set out in this Article.

15.9 HUD/VA Approval. The following actions shall require the prior approval of the U.S. Department of Housing and Urban Development ("HUD") or the U.S. Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in **Exhibit B**; dedication, conveyance (other than to correct errors on property descriptions or other inconsequential or immaterial conveyances), or mortgaging of Common Area; or material amendment of this Declaration of the Bylaws.

15.9(a) Notwithstanding anything to the contrary in this Article, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership, or HUD or VA.

16. LIMITED WARRANTY; MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT OR A DECLARANT AFFILIATE

16.1 Each Owner, and the Association, by taking title to a Unit and/or any portion of the Common Areas, acknowledges and agrees as follows:

16.1(a) **Limited Warranty by Declarant.** For Units on which Declarant or a Declarant Affiliate sells a completed Residence, Declarant may issue a "Home Builder's Limited Warranty" (the "Limited Warranty") regarding the Units to each initial third-party Owner upon the close of escrow, and regarding the Common Areas to the Association. The Limited Warranty is currently administered by Professional Warranty Service Corporation, or its successor ("PWC"). The actual terms of the Limited Warranty are defined by the Limited Warranty documents themselves, as may be issued to the original Unit Owner, or the Association. If issued, a copy of the Limited Warranty will be provided to each initial third-party Owner, and may be obtained from PWC at its current address of P.O. Box 800, Annandale, VA 22003-0800, or from Declarant or the Declarant Affiliate

that sold the Unit. Each Owner whether they are an initial purchaser of a Unit or a subsequent purchaser, and the Association, as concerns the Common Areas, are hereby advised and agree that:

16.1(b) the Limited Warranty is the only warranty provided by the Declarant;

16.1(c) that all allegations of "Construction Defects," as that term is defined in the Limited Warranty documents provided to the initial third-party Owner and to the Association, will be resolved under and in accordance with, the Limited Warranty;

16.1(d) that final, binding arbitration is the sole remedy for resolving disputes involving alleged Construction Defects;

16.1(e) that by taking title to a Unit or the Common Areas, each Owner (whether an initial purchaser of a Unit or a subsequent purchaser) and the Association agree to be bound by the terms of the Limited Warranty;

16.1(f) the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

16.2 Mandatory Binding Arbitration for Matters Involving Declarant. To the fullest extent permitted by law, all claims and disputes of any kind that an Owner or the Association may have arising from or in any way related to a Unit or Units or the Common Areas involving the Declarant, any Declarant Affiliate or any affiliate, agent, employee, executing officer, manager, or owner of Declarant or the Declarant Affiliates (a "Dispute") shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving disputes between the Declarant and any Owner and/or the Association. Disputes subject to binding arbitration include but are not limited to:

16.2(a) Any disagreement that a condition in the Unit or in the Common Areas is a Construction Defect (as defined in the Limited Warranty) and is therefore covered by the Limited Warranty;

16.2(b) Any disagreement as to whether a Construction Defect has been corrected in compliance with the Limited Warranty;

16.2(c) Any alleged breach of the Limited Warranty;

16.2(d) Any alleged violations of consumer protection, unfair trade practice, or other statutes;

16.2(e) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

16.2(f) Any disputes concerning the issues that should be submitted to binding arbitration;

16.2(g) Any disputes concerning timeliness of performance and our Buyer's notifications under the Limited Warranty;

16.2(h) Any dispute as to the payment or reimbursement of the arbitration filing fee;

16.2(i) Any dispute as to whether the Limited Warranty, or any provision thereof, including, but not limited to any waiver under the Limited Warranty, is unenforceable; and

16.2(j) Any other claim arising out of or relating to the sale, design, or construction of the Unit or the Common Areas, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by the Limited Warranty.

16.2(k) The arbitration shall be conducted by DeMars and Associates, LTD. or such other reputable arbitration service that PWC shall select, at its sole discretion, at the time the request for arbitration is submitted. The rules and procedures of the designated arbitration organization that are in effect at the time the request for arbitration is submitted will be followed.

16.2(l) The arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16) to the exclusion of any inconsistent state law, regulation, or judicial decision. The award of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

16.2(m) Each party shall bear its own attorneys fees and costs (including expert costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. This filing fee shall be no more than the amount charged by the arbitration service to PWC for arbitration. Owners may contact PWC to determine the arbitration filing fee in effect at the time arbitration is being requested. The arbitrator shall, as part of any decision, award to the party prevailing at the arbitration any applicable filing fees or other arbitration fees paid by that party.

16.2(n) If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Dispute be arbitrated in accordance therewith.

16.2(o) The obligations of Section 16.2 to submit all disputes to final, binding arbitration is wholly independent and separate from the rights and obligations under the Limited Warranty provisions of Section 16.1(a). In the event any Unit is not issued a Home Builder's Limited Warranty as described in Section 16.1(a), all Disputes shall be resolved by final, binding arbitration conducted by DeMars and Associates, LTD., or such other organization as the parties to the Dispute may agree upon, pursuant to the terms of Section 16.2.

16.2(p) **Obligation of Owners to Provide Copies of Limited Warranty Documents to Subsequent Purchasers.** Each Owner that transfers his or her interest in a Unit shall provide a copy of the Limited Warranty to the subsequent owner and shall thereby transfer to the subsequent owner all remaining coverage for the Unit under the Limited Warranty, if any.

16.2(q) **Amendment Requires Consent of Declarant.** Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the written consent of the Declarant.

17. INSURANCE

17.1 **Insurance by Association.** Commencing not later than the date a Unit is conveyed to a Person other than Declarant, the Association shall have the authority to and shall obtain and maintain, to the extent reasonably available, the insurance specified below.

17.1(a) The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for Owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners. The Association shall obtain the following insurance coverages ("The Association Master Policy"):

- (i) **Public Liability.** Public liability for the Common Areas and Facilities;
- (ii) **Common Area.** Property, fire and extended hazard for all Common Areas;
- (iii) **Buildings and Units.** To the extent necessary, special form property, fire and extended hazard for all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building such as cabinets, floor and wall coverings, built-in appliances, and attached fixtures. However, Neighborhood Sub-Associations shall be required to procure and maintain in full force and effect adequate insurance specific to its own Neighborhood Sub-Association's needs and requirements,

as set forth in the said sub-association's governing documents. Any such costs shall be a common expense of the members of the Neighborhood Sub-Association;

(iv) D&O. Directors and officers in not less than \$1,000,000;

(v) Fidelity Bond. Fidelity bond, in an amount not less than the reserves and operating capital of the association; and

(vi) Workmen's Compensation Insurance. The Board shall purchase and maintain in effect workmen's compensation insurance for all employees of the Association to the extent that such insurance is required by law.

17.1(b) Insurance Company. The Association shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

17.1(c) Minimum Amount of Insurance Coverage. The limits of each liability insurance policy purchased for the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate for bodily injury, death, and property damage. This amount may be increased by resolution of the Board of Directors.

17.1(d) Name Association as Additional Insured. Any insurance policy obtained independently by a Neighborhood Association, if any, shall name the Association as a certificate holder, additional insured.

17.1(e) Premium as a Common Expense. The premium for the Association's insurance; including but not limited to: general liability, property coverage, directors and officers, and fidelity bond coverage is to be a Common Expense.

17.2 Insurance by Owner. Each Owner shall obtain and maintain adequate homeowners insurance for the full replacement of his/her dwelling Unit, as well as other coverage necessary for the Owners individual situation:

17.3 Damages. Each Unit Owner shall obtain and maintain homeowners insurance for the full replacement of her/her dwelling, as well as other coverages necessary for the Owners individual situation. Each Unit Owner is responsible for the maintenance of his Unit and for the repair of any damage he causes to another Unit or the Common Area and Improvements. In the event that a Unit Owner causes damage to the Common Areas, it is presumed that the Unit Owner

is responsible to pay the Association's deductible; provided, however, the deductible on a claim made against the Association's Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair of the absence of insurance of (ii) from whose Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party(s) responsible bears to the total cost. If a loss to the Common Areas is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Unit Owner(s) shall be responsible for the deductible. Each Unit Owners is encouraged to purchase insurance to cover the cost of the deductible as referenced above, the amount of which shall be determined by the Declarant/Board.

17.4 Validity of Document. If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

18. ADDITIONAL RIGHTS RESERVED TO THE DECLARANT

18.1 Withdrawal of Property. During Development and Sale Period, the Declarant may amend this Declaration to remove any unimproved portion of the Community from the coverage of this Declaration, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10%. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

18.2 Marketing and Sales Activities. Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Declarant and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units. Such permitted facilities and activities shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas.

18.3 Right to Make Improvements, Replat. During the Development and Sale Period, the Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, construction, and installing improvements, including cellular

towers, on the Common Area and to the **Exhibit B** property as it deems appropriate.

18.3(a) In addition, during the Development and Sale Period, the Declarant may replat property that it or a Declarant Affiliate owns and convert Units it or a Declarant affiliate owns into Common Area.

18.4 Right to Approve Changes in the Community Standards. During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Declarant.

18.5 Additional Covenants and Restrictions. During the Development and Sale Period, no one other than the Declarant or a Declarant Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Declarant's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

18.6 Exclusive Rights to Use Name of Development. No Person shall use the name of the Community or any derivative of such name or in any logo or depiction associated with the Community in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the name of the Community in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Association shall be entitled to use the word "Foxboro" in its name.

18.7 Community Systems. The Declarant reserves for itself, Declarant Affiliates, and its respective successors and assigns, a perpetual right and easement over all property in the Community to install and operate such Community Systems as the Declarant, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Declarant also has the right to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

18.7(a) Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

18.8 Easement to Inspect and Right to Correct. The Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition that may exist on any portion of the property within the Community, including Units, and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in an emergency,

entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes.

18.8(a) Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

18.9 Right to Notice of Design or Construction Claims. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Declarant and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

18.10 Development of Open Space. Plans for the Community identify or may identify certain areas as "Open Space." Declarant shall have the right, in its discretion, to determine appropriate uses for, or improvements that may be constructed on, such Open Space areas. In addition, for any Open Space owned by the City, the County, or an SSD, such entity shall have the right, with the approval of Declarant, to determine appropriate uses for, or improvements that may be constructed on such Open Space. Appropriate uses or improvements may include, without limitation, signage, walls, landscaping, conservation, drainage, parks, green areas, pathways, or cellular towers. Open Space areas may be owned and maintained by the Association, the City, the County, the SSD, or the Council.

18.11 Right to Use Common Area for Special Events. As long as Declarant or a Declarant Affiliate owns any property described in Exhibits A or B, Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

18.11(a) the availability of the facilities at the time requested;

18.11(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event;

18.11(c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events; and

18.11(d) Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by

injunction, by any other remedy in law or equity, and by the terms of this Declaration.

18.12 Right to Stormwater Runoff. Declarant reserves for itself and its designees and its assigns all rights to ground water, surface water, and stormwater runoff located within the Community, and each Owner agrees, by acceptance of a deed to a Unit, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Community for access, and for installation and maintenance of facilities and equipment to capture and transport such water, and runoff. All such water shall be available for use by Declarant, the Association, the Council, the City, and/or an SSD for irrigation, fire protection, and similar purposes, as such right of use may be designated by the Declarant from time to time. Declarant may establish programs for reclamation of stormwater runoff and wastewater for appropriate uses within or outside the Community and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant of a Unit shall have any right to be compensated for water claimed or reclaimed from his or her Unit.

18.12(a) This Section may not be amended without Declarant's consent, and the rights created in this Section shall survive termination of this Declaration.

18.13 Right to Transfer or Assign the Declarant's Rights. Any or all of the Declarant's special rights and obligations set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Declarant signs. The foregoing sentence shall not preclude the Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it shall not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

18.14 Snow Storage Easement. The Association hereby reserves a snow storage easement for itself and its agents across the front portion of the front yards of each Lot in the Community as may be reasonably required to store snow in the normal course of street snow removal.

18.15 Termination of Rights. The rights contained in this Article shall not terminate until the earlier of (a) termination of the Development and Sale Period; or (b) the Declarant's recording of a written statement that all sales activity has ceased.

19. RESERVATION OF RIGHTS

19.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

19.1(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements in the Community and an easement over the Community for such purpose; provided, however, that if Declarant still owns any property in the Community on such fifteenth (15th) anniversary date, then such rights and reservations shall continue for one additional successive period of sixty (60) months thereafter. Any damage to any Unit or the Common Areas caused by Declarant or its agents in the use or exercise of said right and/or easement shall be repaired by and at the expense of Declarant.

19.1(b) Exercise of Developmental Rights. Declarant reserves the right to add or withdraw real property from the Community.

19.1(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Community, and anywhere on the Common Areas or within the Improvements thereon, for so long as Declarant owns or leases any Unit.

19.2 Appointment and Removal of Directors. Declarant reserves the right to appoint and remove the members of the Board as set forth in this Declaration.

19.3 Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail, above, during the time periods set forth therein.

19.4 Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

19.5 Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration.

19.6 Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Community, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Community, in Declarant's sole discretion, to accommodate Declarant's construction activities and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Community.

19.7 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

19.7(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Community, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Community, for so long as any Unit owned by Declarant remains unsold.

19.7(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.

19.7(c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Areas for access to the sales facilities of Declarant and for placement of Declarant's signs.

19.7(d) Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

19.7(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

19.7(f) The prior written approval (which shall not be unreasonably withheld) of Declarant, as developer of the Community, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article) can be effective.

19.8 Additional Disclosures, Disclaimers and Releases of Certain Matters.

Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit or possession of a Unit, each Owner (for purposes of this Section, the term "Owner" shall include the Owner, any resident, and their respective families, guests and tenants), shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

19.8(a) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust,

construction-related traffic and traffic restrictions, and other construction-related "nuisances". Each Owner acknowledges and agrees that it is purchasing a Unit and/or Unit which is within a residential subdivision currently being developed, and that the Owner will experience and accepts substantial levels of construction-related "nuisances" until the subdivision (and any neighboring or nearby land), have been completed and sold out, and that such construction-related "nuisances" are not a violation of any restriction herein;

19.8(b) that the Community may be located nearby a religious center, and subject to levels of traffic and sound and noise and other nuisance resulting from proximity to such religious center;

19.8(c) that the Community is located adjacent to or nearby certain designated commercial sites, and subject to substantial levels of sound and noise, and other nuisances, from such commercial sites, and commercial facilities developed thereon that the Community is or may be located adjacent to or nearby major roadways, and subject to levels of traffic thereon and noise, dust, and other nuisance from such roadways and vehicles; that Declarant hereby specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to roads and/or noise, dust, and other nuisance therefrom;

19.8(d) that the Community is or may be located nearby a school, and subject to levels of noise, dust, and other nuisance resulting from proximity to such school or otherwise related nuisance resulting from proximity to such school or otherwise related to such school;

19.8(e) that the Unit and other portions of the Community are or from time to time may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; and

19.8(f) that the Community is or may be located adjacent to or nearby a storm drain detention basin and drainage channel and may be subject to certain nuisances resulting from proximity to such detention basin and channel.

19.8(g) that there may be a fire station constructed within the Community which will subject residents of the Community to certain nuisances; including, but not limited to , loud noises, sirens and increased traffic and activity.

19.9 Releases. By acceptance of a deed to a Unit, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant and the Declarant Affiliates specifically disclaims any and all representations and warranties, express and

implied, (other than to the extent expressly set forth in the foregoing disclosures) with regard to any of the foregoing disclosed or described matters; and (b) to fully and unconditionally release Declarant, the Declarant Affiliates and the Board, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration.

19.10 Reservation of Easements. Declarant hereby reserves for the benefit of each Owner and such Owner's Unit reciprocal, nonexclusive easements over the adjoining Unit or Units for the control, maintenance and repair of the utilities serving such Owner's Unit. Declarant expressly reserves for the benefit of all of the real property in the Community, and for the benefit of all of the Units and of the Owners, reciprocal, nonexclusive easements over all Units, for maintenance and repair of utility services, for drainage and flow from the Units of water resulting from the normal use of adjoining Units, and for maintenance and repair of any Residence. Declarant and the Owners of each Unit on which there is constructed a Residence along or adjacent to such Unit line shall have an easement appurtenant to such Unit over the Unit line to and over the adjacent Unit for the purposes of accommodating any natural movement or settling of any Residence located on such Unit, any encroachment of any Residence due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs and architectural features comprising parts of the original construction of any Residence located on such Unit.

19.11 Entry Statement Easements. Declarant hereby reserves for the benefit of the Association a nonexclusive easement over, across, under and above the areas described on **Exhibit C** and depicted on **Exhibit D** for purposes of constructing, maintaining, repairing and improving entry statements, lighting, landscaping and related improvements.

19.12 No Limitation. This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposition of each Unit within the Community.

20. EXPANSION OF THE COMMUNITY

20.1 Expansion by Declarant. From time to time, the Declarant may submit to the terms of this Declaration all or any portion of the Annexable Property by recording a Supplement describing the additional property to be submitted. The Declarant may record such a Supplement without the consent of any Person except the owner of such property, if not the Declarant.

20.1(a) The Declarant's right to expand the Community under this Section expires when all property described in Exhibit B has been submitted to this Declaration or 30 years after this Declaration is recorded, whichever is earlier. Until then, the Declarant may transfer or assign this right to a Declarant Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit A or Exhibit B. Any such transfer shall be described in a recorded instrument executed by the Declarant.

20.1(b) Nothing in this Declaration shall require the Declarant or any successor to submit additional property to this Declaration or to develop any of the property described in Exhibit B in any manner whatsoever.

20.2 Expansion by the Association. The Association also may submit additional property to this Declaration by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Voting Delegates representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Declarant's consent is required. The Association's President and Secretary, the owner of the property, and the Declarant, if the Declarant's consent is required, shall sign the Supplement.

20.3 Additional Covenants and Easements. Any Supplement that the Declarant records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Special Assessments. Such provisions may be included in a Supplement submitting new property to this Declaration or may be set forth in a separate Supplement applicable to property previously submitted to this Declaration. If someone other than the Declarant owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

20.4 Effect of Filing a Supplement. A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

20.5 Unit Conversions. In the event that any development or building now or hereafter constructed within the Community is used or operated for non-residential purposes, such as retail, office, or other commercial uses, and such development is later converted or operated for residential purposes, the owner of such property may submit such property to the provisions of this Declaration by

recording a Supplement describing the property and specifically submitting it to the terms of this Declaration. Such Supplement Declaration shall not require the consent of the Association, but shall require the signature of an officer of the Association acknowledging it. In addition, the Declarant's prior written consent shall be necessary so long as the Declarant or a Declarant Affiliate owns any property described in **Exhibits A or B**.

20.6 Withdrawal. Notwithstanding any other provisions of this Declaration, Declarant reserves the right to amend this Declaration so long as it has the right to expand/annex additional property pursuant to this Article, for the purpose of removing property then owned by the Declarant or its assignees from coverage of this Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property, provided such withdrawal is not unequivocally contrary to the overall scheme of development for the Property.

20.7 No Obligation to Expand. Nothing herein shall constitute a representation, warranty or covenant that Declarant, any successors or assigns of Declarant, or any other Person will subject any additional property to the provisions of this Declaration, nor shall Declarant, any successors or assigns of Declarant, or any other person be obligated so to do, and Declarant may, by recorded instrument executed by Declarant, waive their rights so to do, in whole or in part, at any time or from time to time.

20.8 FHA/VA Approval. In the event that, and for so long as, the FHA or the VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Annexable Property with respect to the initial sale by Declarant or builder to the initial purchaser of any Residence, then a condition precedent to any annexation of any property other than the Annexable Property shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA; provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

21. CHANGES IN THE COMMON AREA

21.1 Assignment and Reassignment of Limited Common Area. The Board may designate a portion of the Common Area as Limited Common Area, and may reassign Limited Common Area, upon approval of the Board and the vote of Voting Delegates representing a majority of the total votes in the Association, including a majority of the votes attributable to Units which the Limited Common Area is proposed to be assigned or reassigned. During the Development and Sale Period, any such assignment or reassignment shall also require the Declarant's written consent.

21.1(a) Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of

other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

21.2 Condemnation. If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required by the terms of this Declaration, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

21.2(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 17.9 regarding funds for restoring damaged improvements shall apply.

21.2(b) If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area.

21.3 Partition. Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Declaration, with such approval as may be required by the terms of this Declaration.

21.4 Transfer or Dedication of Common Area. The Association may dedicate portions of the Common Area to the County, the City, or to any other local, state, or federal governmental or quasi-governmental entity, any religious organization, or any land trust or organization dedicated to the preservation and protection of natural resources; may subject Common Area to a security interest; or may transfer or convey Common Area as follows:

21.4(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association, and the Declarant during the Development and Sale Period; or

21.4(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

21.4(c) In addition, the Association shall obtain such approval as may be required pursuant to this Declaration.

21.4(d) The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

(xli) No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

22. MISCELLANEOUS

22.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefited or bound by the covenants and provisions hereof.

22.2 Severability. The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provision hereof.

22.3 Construction of This Declaration. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community, and any violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each include the other, unless the context dictates otherwise.

22.4 No Public Right or Dedication. Nothing contained in this Declaration constitutes a gift or dedication of all or any part of the Properties to the public, or for any public use.

22.5 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement,

reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties or any portion thereof.

22.6 Business of Declarant. Except to the extent expressly provided herein, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, its agents or representatives in connection with or incidental to Declarant's improvement, development, and sales and marketing activities regarding the Properties, so long as any Unit therein owned by Declarant remains unsold.

IN WITNESS WHEREOF, Declarant has executed the instrument this 26th day of June, 2007.

DECLARANT

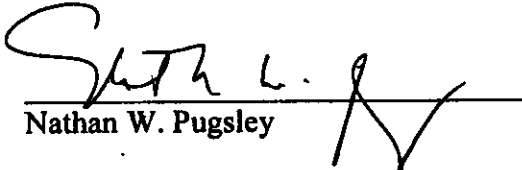
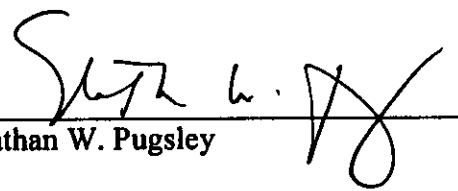
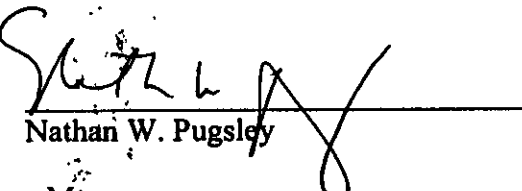
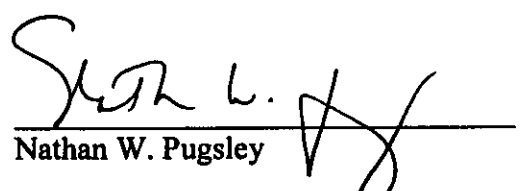
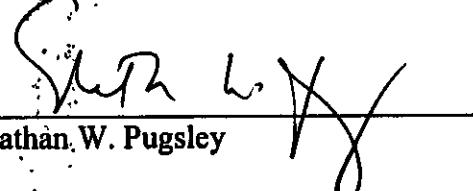
<p>WOODSIDE AMBERLY, LLC, a Utah limited liability company</p> <p>By: <u></u> Nathan W. Pugsley</p> <p>Its: Manager</p>	<p>WOODSIDE BERKELEY, LLC, a Utah limited liability company</p> <p>By: <u></u> Nathan W. Pugsley</p> <p>Its: Manager</p>
<p>WOODSIDE CAMBRIA, LLC, a Utah limited liability company</p> <p>By: <u></u> Nathan W. Pugsley</p> <p>Its: Manager</p>	<p>WOODSIDE CASTLETON, LLC, a Utah limited liability company</p> <p>By: <u></u> Nathan W. Pugsley</p> <p>Its: Manager</p>
<p>WOODSIDE STONEHAVEN, LLC, a Utah limited liability company</p> <p>By: <u></u> Nathan W. Pugsley</p> <p>Its: Manager</p>	

EXHIBIT A

ORIGINAL PROPERTY LEGAL DESCRIPTION

The property within Foxboro North Plat 1 LESS AND EXCEPTING therefrom Lots One Hundred One (101) and One Hundred Two (102) of Foxboro North Plat 1 recorded at the office of the Davis County Recorder as Entry Number 2224271, in Book 4171, at Page 304, on December 4, 2006.

Parcel ID No's: None

Lots Two Hundred One (201) through Two Hundred Eleven (211) of Foxboro North Plat 2 recorded at the office of the Davis County Recorder as Entry Number 2224956, in Book 4172, at Page 1006, on December 5, 2006.

Parcel ID No's: 06-268-0201 to 06-268-0211

Lots Three Hundred One (301) through Three Hundred Forty-Two (342) and Parcels I and J of Foxboro North Plat 3 recorded at the office of the Davis County Recorder as Entry Number 2225732, in Book 4174, at Page 642, on December 7, 2006.

Parcel ID No's: 06-269-0301 to 06-269-0344

Lots Four Hundred One (401) through Four Hundred Thirty-Three (433) and Parcel I of Foxboro North Plat 4 recorded at the office of the Davis County Recorder as Entry Number 2226459, in Book 4176, at Page 795, on December 11, 2006.

Parcel ID No's: 06-271-0401 to 06-271-0444

Lots Six Hundred One (601) through Six Hundred Twenty-Five (625) of Foxboro North Plat 6 recorded at the office of the Davis County Recorder as Entry Number 2279192, in Book 4302, at Page 637, on June 12, 2007.

Parcel ID No's: 06-278-0601 to 06-278-0625

EXHIBIT B**ANNEXABLE PROPERTY LEGAL DESCRIPTION**

A parcel of land located in the South Half of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah described as follows:

BEGINNING at the intersection of the north line of the platted Foxboro Subdivision and the west right-of-way line of Redwood Road, said point being South 89°50'51" West 82.20 feet along the south line of Section 34, from the Southeast Corner of said Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian; thence continuing along said section line South 89°50'51" West 2571.87 feet to the South Quarter Corner of said Section 34; thence continuing along said south line of Section 34 and said Foxboro Subdivision South 89°51'41" West 1,049.87 feet to the East right-of-way line of the Legacy Highway Project; thence along said east line of the Legacy Highway Project the following 4 courses: (1) North 03°14'05" West 345.72 feet, (2) North 03°14'48" West 130.19 feet, (3) North 03°14'17" West 1,230.89 feet to a point on the arc of a 1,892.05 foot radius curve to the right, the center of which bears North 86°45'43" East, (4) northeasterly 741.32 feet along the arc of said curve through a central angle of 22°26'56" (chord = North 07°59'11" East 736.59 feet); thence North 89°55'26" East 353.74 feet; thence South 00°04'34" East 0.27 feet; thence South 89°45'47" East 2,436.78 feet to the Northwest corner of the Fire Station parcel; thence along said parcel the following 3 courses: (1) South 00°37'35" East 460.87 feet, (2) South 90°00'00" East 205.01 feet, (3) North 00°37'35" West 21.06 feet; thence North 89°49'56" East 599.24 feet to the said west right-of-way line of Redwood Road; thence along said west line South 00°26'30" East 109.46 feet; thence South 89°49'56" West 365.96 feet; thence North 00°10'04" West 9.46 feet; thence South 89°49'56" West 154.91 feet; thence South 00°37'35" East 622.70 feet to the Southwest corner of the Paul Hunter parcel; thence along said parcel North 89°51'33" East 518.82 feet to said west line of Redwood Road; thence South 00°26'30" East 431.48 feet along said west line to the Northeast corner of the Leger Property; thence South 89°49'56" West 134.26 feet along said Leger Property; thence along said Leger Property South 00°09'09" East 192.50 feet to the north line of the Hampton remainder parcel; thence along the north and west lines of said parcel the following 2 courses: (1) South 89°49'56" West 90.81 feet, (2) South 00°09'09" East 194.04 feet to the north line of 900 North Street; thence along said north line North 89°51'46" East 227.02 feet to said west right-of-way line of Redwood Road; thence along said right-of-way South 00°26'30" East 435.19 feet to the POINT OF BEGINNING. Contains 186.60 acres or 8,137,041 square feet, More or Less. LESS AND EXCEPTING therefrom the following parcels:

Lots One Hundred One (101) through One Hundred Two (102) of Foxboro North Plat 1 recorded at the office of the Davis County Recorder as Entry Number 2224271, in Book 4171, at Page 304, on December 4, 2006.

Parcel ID No's: **06-267-0101 to 06-267-0102**

Lots Two Hundred One (201) through Two Hundred Eleven (211) of Foxboro North Plat 2 recorded at the office of the Davis County Recorder as Entry Number 2224956, in Book 4172, at Page 1006, on December 5, 2006.

Parcel ID No's: **06-268-0201 to 06-268-0211**

Lots Three Hundred One (301) through Three Hundred Forty-two (342) and Parcels I and J of Foxboro North Plat 3 recorded at the office of the Davis County Recorder as Entry Number 2225732, in Book 4174, at Page 642, on December 7, 2006.

Parcel ID No's: 06-269-0301 to 06-269-0344

Lots Four Hundred One (401) through Four Hundred Thirty-three (433) and Parcel I of Foxboro North Plat 4 recorded at the office of the Davis County Recorder as Entry Number 2226459, in Book 4176, at Page 795, on December 11, 2006.

Parcel ID No's: 06-271-0401 to 06-271-0444

Lots Six Hundred One (601) through Six Hundred Twenty-five (625) of Foxboro North Plat 6 recorded at the office of the Davis County Recorder as Entry Number 2279192, in Book 4302, at Page 637, on June 12, 2007.

Parcel ID No's: 06-278-0601 to 06-278-0625

EXHIBIT C

EASEMENT LEGAL DESCRIPTIONS

An easement for the construction and perpetual maintenance of an entry sign to be constructed on the northeast corner of Lot 203 of Foxboro North Plat 2, located in the Southeast Quarter of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah more fully described as follows:

Beginning at a point on the north line of Lot 203 of Foxboro North Plat 2 as recorded in the official records of Davis County, said point being East, 77.60 feet from the Northwest corner of said Lot 203; thence continuing along said north line, East 4.14 feet to the point of tangency with a 20.00 foot radius curve to the right; thence southeasterly along said curve 31.42 feet through a central angle of 90° 00' 00" to the point of tangency with the east line of said Lot 203; thence along said east line South, 4.14 feet; thence West, 10.00 feet; thence North 45° 00' 00" West, 20.00 feet; thence North, 10.00 feet to the point of beginning. Said easement contains 397 square feet or 0.01 acres, more or less.

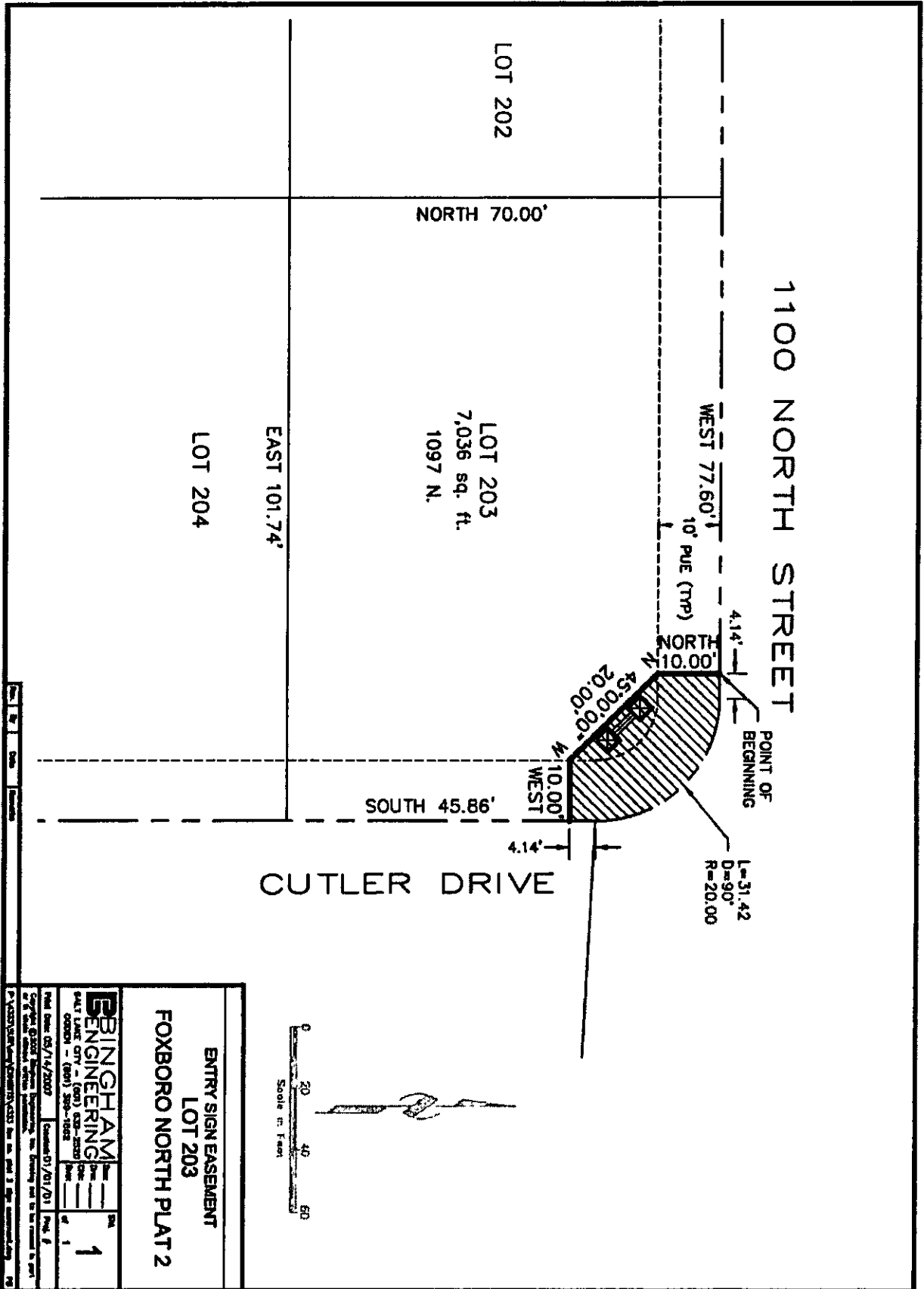
AND

An easement for the construction and perpetual maintenance of an entry sign to be constructed on the northeast corner of Lot 402 of Foxboro North Plat 4, located in the Southeast Quarter of Section 34, Township 2 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah more fully described as follows:

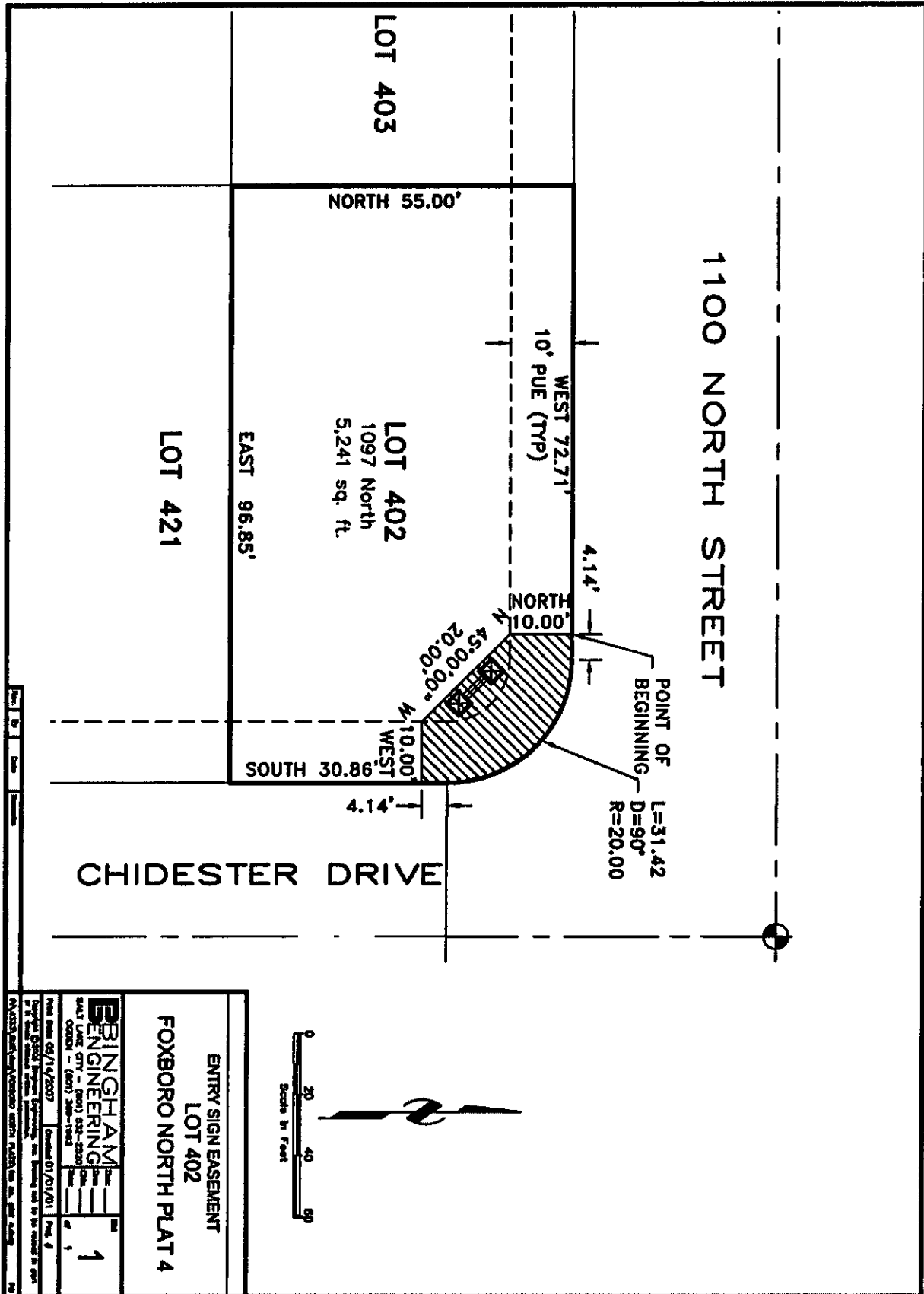
Beginning at a point on the north line of Lot 402 of Foxboro North Plat 4 as recorded in the official records of Davis County, said point being East, 72.71 feet from the Northwest corner of said Lot 402; thence continuing along said north line, East, 4.14 feet to the point of tangency with a 20.00 foot radius curve to the right; thence along said curve southeasterly 31.42 feet through a central angle of 90° 00' 00" to the point of tangency with the east line of said Lot 402; thence along said east line South, 4.14 feet; thence West, 10.00 feet; thence North 45° 00' 00" West, 20.00 feet, thence North, 10.00 feet to the point of beginning. Said easement contains 397 square feet or 0.01 acres, more or less.

EXHIBIT D
EASEMENT AREA DEPICTIONS

[See attached depictions.]



<p>ENTRY SIGN EASEMENT LOT 203 FOXBORO NORTH PLAT 2</p>	
<p>BENINGHAM ENGINEERING 542 LAKE CITY - (603) 329-2000 DORRIS - (603) 329-1622</p>	<p>DATE: 05/14/2007 CADD: 01/01/01 SHEET: 1 OF: 1</p>



<p>ENTRY SIGN EASEMENT LOT 402 FOXBORO NORTH PLAT 4</p>	
<p>BINGHAM ENGINEERING SALT LAKE CITY - (801) 532-2800 OGDEN - (435) 388-1842</p>	<p>Drawn: [] Check: [] Date: []</p>
<p>Print Date: 05/14/2007 Project: [] Drawing: []</p>	<p>Sheet: 1 of 1</p>