

8424105

8424105  
11/18/2002 11:21 AM 245.00  
Book - 8685 Pg - 7634-7676  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: ROJ, DEPUTY - WI 43 P.

WHEN RECORDED, PLEASE MAIL TO:

Woodside Homes Corporation  
39 East Eagleridge Drive, Suite 100  
North Salt Lake, UT 84054  
Attn: Nate Pugsley

02-1595

**DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR THE VILLAGES AT OQUIRRH HIGHLANDS  
A PLANNED UNIT DEVELOPMENT**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THE VILLAGES AT OQUIRRH HIGHLANDS (this "Declaration") is made and executed this 14th day of November, 2002, by WOODSIDE HOMES CORPORATION, a Utah corporation ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property in Salt Lake County, Utah, more particularly described on Exhibit A attached hereto (the "Property"). Declarant desires to develop the Property as a one hundred fifty lot planned unit development to be known as "The Villages at Oquirrh Highlands" (the "Community").

B. Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of the Community.

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 Elements 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 Villages at Oquirrh Highlands Homeowners Association, a homeowners' association and nonprofit corporation, has or will be incorporated for the purpose of exercising the aforementioned powers and functions.

**DECLARATION**

NOW, THEREFORE, it is hereby declared that the Community shall be held, sold, conveyed, leased, rented, encumbered, and used subject to the following easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions, and uses, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

655504

ACCOMMODATION RECORDING ONLY.  
FIRST AMERICAN TITLE MAKES NO  
REPRESENTATION AS TO CONDITION OF  
TITLE, NOR DOES IT ASSUME  
ANY RESPONSIBILITY FOR VALIDITY,  
SUFFICIENCY OR AFFECT OF DOCUMENT.

BK8685PG7634

## ARTICLE I

### DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

(a) "Annual Assessment" shall mean the charge levied and assessed each year against each Lot pursuant to Section 4.2 hereof.

(b) "Association" shall mean the The Villages at Oquirrh Highlands Homeowners Association, a Utah nonprofit corporation or limited liability company, organized or to be organized to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

(c) "Board" shall mean the Board of Trustees of the Association.

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

(e) "Committee" shall mean and refer to the Architectural Control Committee established pursuant to Article VII hereof.

(f) "Common Element" shall mean all land within the Community, that is designated as Common Element by this Declaration and areas shown or otherwise designated as Common Element or "Common Area" on the Plat, or for which the Association has been granted an easement or which the Association has been permitted to use. Common Elements shall include, but not be limited to, areas shown on the Plat as (i) private roads, (ii) the park containing approximately 31,312 square feet, (iii) the island landscape area located approximately on the centerline of Ophir Road, (iv) Lot 258 containing approximately 5,738 square feet, and (v) three segments of parkstrip located on the south side of Cedar Hills Road containing approximately 3,442; 2,378; and 750 square feet. Without limiting the generality of the foregoing, Common Elements shall include any streetlights, entry monuments, any curbs and gutters, any park and equipment installed thereon, and certain designated drainage and sewer easement areas.

(g) "Common Expenses" shall mean all expenses for maintenance, repairs, landscaping, utilities and taxes incurred on or in connection with Common Elements within the Community, including snow removal and regular garbage collection, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, 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.

(h) "Community" shall mean the collective reference to (i) The Villages at Oquirrh Highlands No. 1 P.U.D. and (ii) The Villages at Oquirrh Highlands No. 2 P.U.D., as shown on the Plat and governed by this Declaration.

- (i) "County" shall mean Salt Lake County, Utah.
- (j) "Declarant" shall mean and refer to Woodside Homes Corporation, a Utah corporation and/or any successor to said corporation which, either by operation of law or through a voluntary conveyance, transfer, comes to stand in the same relationship to the Community as did its predecessor.
- (k) "Dwelling" shall mean a residential building located on a Unit, designed and intended for use and occupancy as a residence by a single Family.
- (l) "Governing Documents" shall mean the Declaration, articles of incorporation for the Association, bylaws, Plat, and rules and regulations.
- (m) "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Utah laws and local health codes and other applicable County ordinances.
- (n) "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, placed in the Community, including but not limited to Dwellings and other buildings, walkways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, wall, party fences, 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.
- (o) "Lot" shall mean any of the one hundred fifty separately numbered and individually described parcels of land shown as a Lot on the Plat and intended for private use and ownership.
- (p) "Maintenance Charges" shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Association for work done pursuant to Sections 5.2, 5.3 and 5.4 and fines, penalties and collection costs incurred in connection with delinquent Annual or Special Assessments pursuant to Section 4.6.
- (q) "Member" shall mean any person that is a member of the Association pursuant to the provisions of Section 2.1.
- (r) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot. If there is more than one record holder of legal title to a Lot, each record holder shall be an "Owner."
- (s) "Plat" shall mean the collective reference to the following duly approved and recorded plats filed herewith in the office of the Salt Lake County Recorder entitled:
- (i) The Villages at Oquirrh Highlands No. 1 P.U.D.; and

BK 8685 PG 7636

(ii) The Villages at Oquirrh Highlands No. 2 P.U.D.

(t) "Property" shall mean and refer to that certain real property located in Salt Lake County, State of Utah, and more particularly described on Exhibit A hereof.

(u) "Record," "Recorded," or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Salt Lake County, Utah.

(v) "Rules and Regulations" shall mean any rules or regulations adopted by the Association pursuant to this Declaration, including Section 11.4.

(w) "Special Assessment" shall mean any assessment levied and assessed pursuant to Section 4.3.

(x) "Unit" shall mean that portion of this Community to be separately owned by each Owner (as shown and separately identified on the Plat), and shall include a Lot and all Improvements thereon. The boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

## ARTICLE II

### MEMBERSHIPS AND VOTING

2.1 Membership. Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and any such transfer shall automatically transfer the membership appurtenant to such Lot to the new Owner thereof.

2.2 Voting Rights. The Association shall have the following-described two (2) classes of voting membership:

(a) Class A. Class A Members shall be all Owners, except Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Lot shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Lot. Which of the multiple Owners of a single Lot shall cast the vote on the basis of that Lot is determined under Section 2.3 of this Article II.

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which the interest required for membership in the Association is held. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following:  
(i) the expiration of one hundred and twenty (120) days after fee titles to seventy-five

percent (75%) of the Lots contained in the Community have been conveyed by Declarant to purchasers; or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Lot.

2.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

2.4 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 Lot which is owned by such person. In the event of any transfer of a fee or undivided fee interest in a Lot, 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 Salt Lake County, Utah. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it, or at its option, the Association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the lot owned by such person unless the Association is otherwise advised.

### ARTICLE III

### ASSOCIATION

3.1 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 this Declaration. 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.

3.2 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 three (3) 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. For as long as Declarant controls the Board, the Declarant may appoint and substitute members of the Board.

3.3 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 Member, 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 except for 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 attorney's 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 and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, including any decision to not institute Proceedings as described in Section 6.4, except for their own individual acts performed intentionally and with malice and any acts that are *ultra vires* under Section 6.4(d) or otherwise. The officers 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 Members of the Association), 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. The Association may, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

#### ARTICLE IV

#### ASSESSMENTS

4.1 Purpose of Assessments; Assessment Lien. All Members of the Association hereby covenant and agree, and each Owner, except Declarant, by acceptance of a deed to a Lot is deemed to covenant and agree, to pay to the Association the following assessments and charges: (a) Annual Assessments, (b) Special Assessments, and (c) Maintenance Charges, all such assessments and charges to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments and Maintenance Charges, together with interest, costs and reasonable attorneys' fees, shall be secured by a lien (the "Assessment Lien") on the Lot to which they relate, in favor of the Association, which shall be a continuing servitude and lien upon the Lot against which each such assessment or charge is made. The Assessment Lien shall be a charge on the Lot, shall attach from the date when the unpaid assessment or charge shall become due, and shall be a continuing lien upon the Lot against which each assessment is made. Each assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. The Assessment Lien may be foreclosed by the Association in substantially the same manner as provided for non-judicial foreclosure of deeds of trust on real property upon the Recording of a Notice of Delinquent Assessment or charge as set forth in Section 4.6 hereof. The Association shall be entitled to purchase the Lot at any foreclosure sale. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged, and

BK 8685 PG 7639

is exempt from paying, any assessments, whether Annual, Special, Maintenance or otherwise, with respect to Lots owned by Declarant.

4.2 Annual Assessments. Commencing on December 1, 2002, an Annual Assessment shall be made against each Lot, except any Lot owned by Declarant, for the purpose of paying (or creating a reserve for) Common Expenses. The Annual Assessment for all Lots, except any Lot owned by Declarant, shall be Three Hundred Dollars (\$300.00) per Lot.

(a) After December 1, 2003, 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.

(b) From and after December 1, 2003, the Annual Assessment may be increased above the twenty-five percent (25%) per year limit by a vote of sixty-six and two-thirds percent (66.66%) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

4.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Lots owned by Declarant, 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 Element, 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 Members who are voting in person or by proxy at a meeting duly called for such purpose.

4.4 Uniform Rate of Assessment. Annual Assessments shall be fixed at a uniform rate for all Lots, except owned by Declarant, and may be collected on a yearly basis or more frequently (such as monthly or on a quarter-annual basis) if the Board shall so determine.

4.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the twelve month period beginning December 1, 2002. 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. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

4.6 Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty (30) 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 Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also

BK8685PG7640

Record a Notice of Delinquent Assessment or Charge against any Lot as to which an assessment or charge is delinquent. The Notice shall be executed by an 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 Lot. 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 Maintenance Charge 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 Lot. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the benefits derived from assessments or abandonment of his or her Lot. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged and is exempt from paying any assessments, whether Annual, Special, Maintenance, or otherwise, with respect to Lots owned by Declarant.

4.7 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 Lot 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 Lot. Sale or transfer of any Lot shall not affect the Assessment Lien.

## ARTICLE V

### MAINTENANCE OBLIGATIONS

5.1 Common Elements. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Elements in the Community. This maintenance will include the mowing, watering and appropriate upkeep and repair of any designated Common Elements, and the sweeping, snow removal, repair, and maintenance. The Board shall be the sole judge as to the appropriate maintenance of all Common Elements 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 maintenance obligations of the Common Elements includes all private roads in the Community.

5.2 Assessment of Certain Costs. In the event that the need for maintenance or repair of Common Elements and other areas maintained by the Association is caused through the willful or negligent act of any Owner (except Declarant), his or her family, guests or invitees, the cost of such maintenance or repairs shall be added to and become part of the Maintenance Charge to which such Owner's Lot is subject and shall be secured by the Assessment Lien.

5.3 Improper Maintenance. In the event any portion of any Lot, except Lots owned by Declarant, is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Community which are substantially affected thereby or related thereto; or in the event any portion of a Lot, except Lots owned by Declarant, is being used in a manner which violates this Declaration; or in



the event any Member, except Declarant, is failing to perform any of its obligation under this Declaration or the architectural guidelines and standards of the 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 Member 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 added to and become part of the Maintenance Charge and shall be secured by the Assessment Lien. No strict or absolute liability shall be imposed on an Owner for damage to the Common Elements or other Lots in the Community caused by such Owner.

5.4 Party Walls or Fences. Each wall or fence which is built as a part of the original construction by Declarant and placed on the property line between Units shall constitute a party fence. In the event that any party fence is not constructed exactly on the property line, the Owners affected shall accept the party fence as the property boundary. The cost of reasonable repair and maintenance of party fences shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party fence is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party fence is destroyed or damaged by fire or other casualty, the party fence shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the wall. Subject to the foregoing, any Owner whose Unit has or had use of the wall may restore it to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 5.4, an Owner who by his negligent or willful act causes a party fence to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection, repair or replacement. The right of any Owner to contribution from any other Owner under this Section 5.4 shall be appurtenant to the land and shall pass to such Owner's successors in title. Any other provision herein notwithstanding, no Owner shall alter, add to, or remove any party fence constructed by Declarant, or portion of such wall, without the prior written consent of the other Owner(s) who share such party fence, which consent shall not be unreasonably withheld. Due to the location of a party fence on a slope between Lots, the apparent height of a party fence may differ between Lots.

5.5 Snow Removal 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.

## ARTICLE VI

### RIGHTS AND POWERS OF ASSOCIATION

6.1 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.

6.2 Rights of Enforcement. The Association, as the agent and representative of the Members, shall have the right to enforce the covenants set forth in this Declaration. The Association or Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If the Association prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action. Failure by the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association fails or declines to take action to enforce the covenants set forth in this Declaration within thirty (30) days after the written request of an Owner, then and in such event that Owner may take legal action to enforce the covenants set forth in the Declaration.

6.3 Insurance. The Association may obtain in its name and keep in full force and effect at all times, insurance policies for such casualty and public liability and other insurance policies, as the Board deems necessary.

6.4 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 hereinafter referred to 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 Elements 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:

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against 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) for 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.

(b) 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 6.4 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(i) 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 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 Members 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:

(1) 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 County, 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 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 \$5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose.

(2) 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").

(3) 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 Members. The written notice to each Member 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 Member ("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 Members, whereupon: (x) 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 (y) 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 Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members 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 and 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 Members, 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 attorneys fees and costs incurred to date in connection therewith.

4) 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 Members of the Association.

(c) 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).

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 6.4, 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 6.4, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation 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 6.4 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 6.4 may not be amended or deleted at any time without the express prior written approval of both: (1) Members 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 6.4, or any portion hereof, without both of such express prior written approvals shall be void.

## ARTICLE VII

### ARCHITECTURAL CONTROL COMMITTEE

7.1 Purpose. In order to create, maintain and improve the Community as a pleasant and desirable environment, to establish and preserve a harmonious design for the Community and to protect and promote the value of the Property, all Improvements, exterior design, landscaping and changes or alterations to existing use, landscaping and exterior design and development shall be subject to design review by the Architectural Control Committee (the "Committee").

7.2 Creation. The Architectural Control Committee shall consist of three (3) persons, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Committee. In the event of death or resignation of any of the Committee members, the surviving members of the Committee shall have full authority to appoint another person to fill the said vacancy. The initial Committee will consist of three (3) persons to be appointed by Declarant in its sole discretion for so long as there is a Class B Member. At such time that the Class B Membership shall have ceased to exist, the initial Committee shall be released from responsibility and a new Committee shall be selected

which shall consist of three (3) Members. The term for which each Committee Member shall serve shall be four (4) years, plus any time required to duly select a successor Committee Member, unless such Member shall have died or resigned prior to such time. The Members on the Committee shall be selected by a two-thirds (2/3) majority vote of the Owners voting in person or by proxy, at a meeting duly called for that purpose. No Member may serve on the Committee for more than two (2) consecutive terms at a time.

Except for the initial Committee appointed by Declarant, all members of the Committee must be Owners at the time of their appointment. Should any Member move his or her residence outside of the Community, such Member shall automatically be deemed to have resigned and the Committee shall declare a vacancy. At such time that all lots owned by the Declarant are sold, the aforementioned Initial Committee shall be released from responsibility of the Committee. The reorganization of the Committee shall be by a two-thirds (2/3) majority vote of the then current Owners within the Community.

In the event of violation of any of the provisions of this Declaration, the Architectural Control Committee is 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.

7.3 Powers. The Committee is hereby authorized to perform (or to retain the services of one or more consulting architects, landscape architects, or urban designers, who need not be licensed to practice in the State of Utah, to advise and assist the Committee in performing) the design review functions prescribed in this Declaration and the Association's Bylaws and to carry out the provisions set forth therein.

Each Lot Owner shall be required to pay a Three Hundred Dollar (\$300) Design Review Fee to the Committee before any Improvement, alteration, remodeling or other construction plans shall be reviewed or approved by the Committee. The Three Hundred Dollar (\$300) fee will be used by the Committee to pay the costs of architects and other professionals retained by the Committee to review home plans. Lot Owners are encouraged to submit preliminary schematic drawings to the Committee as soon as possible in order to avoid unnecessary revisions and delays in constructions.

7.4 Basic Architectural Requirements

(a) Land Use and Building Type. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling not to exceed two (2) stories in height (not counting the basement) and private garage for not less than two (2) bays and not more than three (3) bays without the prior written approval of the Committee. Carports may not be built without the prior written permission of the Committee. Rambler-style houses shall have a minimum of one thousand (1,000) finished square feet of floor area above finished grade, not counting the basement. Two-story houses shall have a minimum of one thousand three hundred (1,300) finished square feet of main floor area above finished grade, not counting the basement. Multi-level houses shall have a minimum of nine hundred (900) finished square feet of main floor area

above finished grade not counting the basement. Square footage of any style is excluding garages, porches, verandas, patios, basements, eaves, overhangs, and steps. Any square footage with any portion thereof beneath the top grade of the foundations will not qualify to offset the minimum square footage requirement. Any deviations from this requirement must be approved in writing by the Committee. The side yard for each building shall be a minimum of five (5) feet to the lot line, absent the prior written approval of the Committee.

(b) Architectural Control. To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite. Designs shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, along with a topographical plan showing the location of all improvements, including a detailed landscaping plan, have been approved in writing by the Committee. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade on any Lot, shall be subject to the prior written approval of the Committee. Once approved by the Committee, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the Committee. Subsequent to receiving approval of the Committee and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from Salt Lake County or West Jordan City.

(c) Submittals to Committee. No construction of home or landscaping may commence without approval by the Committee of the working drawings. Submittals to the Committee shall include:

(i) Plot Plans to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.

(ii) Detailed floor plans showing dimensions and measurements.

(iii) Detailed elevations, indicating all materials and showing existing and finished grades.

(iv) Detailed sections, cross and longitudinal.

(v) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

(vi) Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence.

7.5 Construction Quality, Size and Cost. The Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations on the acceptability and harmony of the external design of the proposed structures with respect to topography and grade, quality of materials, size, height, color, etc. All structures constructed on the Property shall be of new materials, except pre-approved used brick, and shall be of good quality workmanship and materials. Only those exterior materials which will blend harmoniously with the natural environment, with special emphasis on earth-toned colors, shall be permitted. All exterior material shall be new, except pre-approved used-brick, and consist of brick, rock, stucco, or combination approved in writing by the Architectural Control Committee. Aluminum soffit and fascia is acceptable. Aluminum or vinyl exterior siding homes shall be permitted in the Community. No wood exterior siding shall be permitted in the Community with the exception of a masonite-type material in combination with brick, rock, and/or stucco if approved by the Committee. All exterior materials and colors are to be specified on plans and submitted for approval by the Committee. No pre-manufactured homes shall be permitted. No flat roofs shall be permitted in the Community without prior written approval of the Committee. Pitched roofs shall be at least 4/12 pitch and no greater than 8/12 without the prior written consent of the Committee. A minimum of six (6) inches shall be required on the fascia. All stacks and chimneys from fireplaces in which combustible materials other than natural gas are burned shall be fitted with spark arresters. All Owners shall strictly comply with all state laws and city ordinances pertaining to fire hazard control.

7.6 Construction Time. The Committee shall have final control for approval of all color and material plans. There is no time limit for beginning construction; however, upon commencement, the construction time for the exterior portion of any structure shall not exceed eighteen (18) months from start to finish. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. "Finish" shall be the date that a permanent certificate of occupancy is issued for the Unit by the appropriate governing authority. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the eighteen (18) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks within the Community.

7.7 Building Location. No building shall be located on any Lot nearer than ten (10) feet to the front lot line, the rear lot line or a side street line, or the minimum building set-back lines required by Salt Lake County, whichever is greater. No building shall be located on any Lot nearer to the side lot line or nearer to the side street line than five (5) feet.

7.8 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate an Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 7.13 below. In the absence of such designation, the vote of a majority of the Committee, or the written consent of a majority of the Committee taken without a meeting, shall constitute an act of the Committee.

7.9 No Waiver of Future Approvals. The approval by the Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to



constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

7.10 Compensation of Members. Subject to the provisions of Section 7.3 above related to costs of the Committee in the review process, members of the Committee shall not receive compensation from the Association for services rendered as members of the Committee.

7.11 Correction by Owner of Nonconforming Items. Subject to all applicable requirements of governmental authority, Committee inspection (which shall be limited to inspection of the visible appearance of the size, color, location and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows:

(a) The Committee or its duly appointed representative shall have the right to inspect any Improvement (“Right of Inspection”) whether or not the Committee’s approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such Improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority). Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the Committee of written notice from the Owner of the Unit that the work of Improvement has been completed. If, as a result of such inspection, the Committee finds that such Improvement was done without obtaining approval of the plans and specifications therefore or was not done in substantial compliance with the plans and specifications approved by the Committee, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner’s failure to comply with this Article 7 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefore, the Committee may require the Owner of the Unit in which the Improvement is located, to submit “as-built” record drawings certified by a licensed architect or engineer which describe the Improvement in detail as actually constructed. The Committee shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition, may peacefully remedy the noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys’ fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of

the Association to remove a noncomplying Improvement or otherwise to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration.

(c) If for any reason the Committee fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in compliance with Committee requirements (but of course shall remain subject to all requirements of applicable governmental authority).

(d) All construction, alteration or other work shall be performed as promptly and as diligently as possible and shall be completed within one hundred eighty (180) days of the date on which the work commenced.

7.12 Scope of Review. The Committee shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of the considerations set forth in this Article 7, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. **Each Owner shall be responsible for obtaining all necessary permits and for complying with all governmental (including, but not necessarily limited to County) requirements.**

7.13 Variances. When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the Committee may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. **The granting of any such variance by Committee shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations, and requirements affecting the use of his or her Unit, including but not limited to zoning ordinances and Lot setback lines or requirements imposed by the County, or any municipal or other public authority.** The granting of a variance by Committee shall not be deemed to be approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and The Committee provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance.

7.14 Non-liability for Approval of Plans. The Committee's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering

design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the Committee, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefore, or for any defect in the structure constructed from such proposals or plans or specifications. Neither the Committee, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

7.15 Architectural Guidelines. The Committee, in its sole discretion, from time to time, may promulgate Architectural Guidelines for the Community.

7.16 Declarant Exemption. The Committee shall have no authority, power or jurisdiction over Units owned by a Declarant, and the provisions of this Article 7 shall not apply to Improvements built by a Declarant, or, until such time as a Declarant conveys title to the Unit to a Purchaser, to Units owned by a Declarant. This Article 7 shall not be amended without Declarant's written consent set forth on the amendment.

## ARTICLE VIII

### ADDITIONAL COVENANTS, CONDITIONS AND RESTRICTIONS

8.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family (as the term "Family" is defined in this Declaration) and for no other purpose. No part of the Community shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending "reverse engineering," destructive testing, or any other nonresidential purposes; provided that Declarant, its successors and assigns, may exercise the reserved rights described in Article 15 hereof. The provisions of this Section shall not preclude a professional or administrative occupation, or an occupation of child care provided that the number of non-Family children, when added to the number of Family children being cared for at the Lot, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 8.11, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than thirty (30) days.

8.2 Architectural Requirements. Owners must comply with the architectural and construction requirements of Article 7 of this Declaration.

8.3 Landscaping. Any trees, lawns, shrubs, or other planting provided by Declarant in any Common Element shall be properly nurtured and maintained by the Association. Each

Lot Owner, except the Declarant, shall be assessed the Annual Assessment set forth in Section 4.2 to maintain these areas.

Lawn, patio, and garden areas are subject to approval by the Committee. Owners are encouraged to plant trees and shrubs to enhance the natural beauty, provide windbreaks, and improve erosion control within the Community. The planting of trees that will have a high profile and obstruct the view from neighboring Lots is prohibited. Such trees may be pruned or removed at the discretion of the Board or the Committee.

No planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion, or change the direction of drainage channels. All materials used to retain and contour the slope of any Lot or improvement must conform with the natural beauty and color of the Property and must be approved by the Committee.

Each dwelling shall have installed surrounding it an underground outdoor sprinkler system for fire protection and irrigation within (1) year of the occupancy date of any structure built upon said Lot.

Landscaping may include a combination of lawns, shrubs, or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Ground cover may also include mineral or non-living organic permeable material in not more than fifty percent (50%) of the net landscaped area. Mineral ground cover may include such materials as rocks, boulders, gravel, or brick over sand. Species, size, and placement of landscape elements shall be determined by the homeowner in keeping with overall landscaping of the Community and is subject to approval of the Committee.

(a) Deadline for Completion of Landscaping. The portion of the front yard of each Lot (from the street to the front line of the residence on the Lot) which is to be landscaped shall be approved by the Committee and shall be landscaped within one (1) year of the occupancy date of any structure built upon said Lot. The remainder of the Lot shall be landscaped within two (2) years of the occupancy date of any structure built upon said Lot.

(b) Revegetation of Slopes. Where any slope on any Lot has a slope of thirty percent (30%) or greater, the Owner thereof shall be required to immediately revegetate said slope and present a revegetation plan to the Committee for review and approval.

8.4 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

8.5 Accessory Structures. Patio structures, trellises, sunshades, gazebos, and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures, and materials approved for the dwelling and shall be integral to the architecture of the house and subject to the prior written approval of the Committee.

8.6 Exterior Antennas, Lights, and Power Lines. Exterior antennas are prohibited without the prior written approval of the Committee. Satellite TV dishes will be allowed, provided they are placed or screened so they are not readily visible to neighboring Lots and streets. The location of Satellite TV dishes must be approved by the Committee. Exterior lighting that is detached from the dwelling will not be allowed unless approved by the Committee. All power lines and similar type cables shall be buried underground. No short-wave radio antennas may be constructed on any Lot or attached to any structure thereon without the prior written approval of the Committee.

8.7 Nuisances; Construction Activities. Prior to commencing construction on a Lot an Owner shall post with the Association a one thousand dollar (\$1,000.00) cash construction bond 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 Lot, 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 Lot 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 Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots 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 Lot during construction of improvements may be kept only in areas approved by the Committee, which may require screening of the storage areas.

No articles, material, equipment, or vehicles of any nature shall be parked or stored on any street location within the Property. Licensed, regularly used passenger vehicles (i.e., visitor vehicles) may be parked on streets within the Property for brief periods of time (i.e., less than twenty-four (24) hours). Overnight parking of such vehicles should generally be restricted to driveway of the dwelling being visited.

The use or operation of snowmobiles on Community streets is not permitted. The use of motorcycles and other motorized recreational vehicles which may produce audible annoyance to the Owners shall be limited to ingress and egress of the Property.

No oil or gas drilling, development, operations, refining, storage, quarrying, or mining operations of any kind shall be permitted upon any Lot.

BK8685PG7654

The burning of rubbish, leaves, or trash on the Property is prohibited. Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection.

No Owner shall permit anything or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

The Committee, in its sole discretion, shall have the right to determine the existence of any nuisance.

8.8 Signs. Except as provided in this Section 8.11, no signs of any kind shall be displayed to public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent. The placement of signs, graphics, or advertisements which are permanent in nature or represent advertisement for small business conducted in the home or on a Lot is prohibited.

8.9 Animals. The Association is committed to the preservation and protection of native animal wildlife which may from time to time wander onto and through the Property. Such wildlife shall not be fed or hunted within the Community. No animal, bird, fowl, poultry, or livestock of any kind shall be raised, bred, or kept on any Lot except that domestic dogs (a maximum of two (2)), cats (a maximum of two (2)), and other household pets may be permitted by the Association as long as they are maintained in accordance with this Declaration and any additional Rules and Regulations imposed by the Association and are not a nuisance or kept, bred, or maintained for any commercial purposes. No dog shall be allowed to roam unattended on the Community. All dogs going outdoors must be on a leash under the direct supervision and control of the Owner or confined to a dog run or kennel on the Owner's Lot. The manner and location of all dog runs or kennels is subject to approval by the Committee.

8.10 Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Section 8.1 above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

8.11 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivisions, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be Recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions, or easements Recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot and no applications for variances or use permits shall be filed with any governmental authority unless the proposed uses of the Lot has been approved by the Board and the Committee and the proposed use otherwise complies with this Declaration. The Common Elements cannot be

BK8685PG7655

mortgaged, pledged or conveyed without the prior written consent of at least two thirds of the Owners other than Declarant.

8.12 Building Height. No Lot in the subdivision shall have a building or structure which exceeds a height of two (2) stories or thirty-five (35) feet to the apex of the roof, whichever is less. Height shall be measured as the vertical distance from average finish grade surface at the building wall to the highest point (apex) of the roof. Chimneys, flag poles and similar structures not used for human occupancy are excluded for purposes of calculating the height of a structure. If Salt Lake County Ordinances are more restrictive, then they shall govern.

8.13 Non-Residential Use. No gainful occupation, profession, or other non-residential use shall be conducted on the Lot, and no persons shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval of the Board and the appropriate officials of Salt Lake County.

8.14 Fuel Storage. No tank for storage of fuel may be maintained above the surface of the ground without the prior written consent of the Committee.

8.15 Building Material Storage. No building material of any kind or character shall be placed or stored upon any Lot until the Owner thereof is ready to commence improvements, and then the material shall be placed within the property lines of the Lot upon which the improvements are to be erected and shall not be placed in the streets or between the curb and the property line.

8.16 Easements. Easements for installation of and maintenance of utilities, drainage facilities, and water tank access and lines are reserved as shown on the Recorded Plat. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or water tank lines or which may change the direction of flow of drainage channels in the areas or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

8.17 Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, asphalt, quarry tile, brick, or paving blocks. Gravel areas are not permitted.

8.18 Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be compatible with roof colors, all equipment must be screened from view, and prior written approval must be obtained from the Committee.

8.19 Pools, Spas, Fountains, Game Courts. Pools, spas, fountains, and game courts must be approved by the Committee and shall be located to avoid impacting adjacent properties with light or sound. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or similar area ramps, which structures shall be prohibited.

8.20 Fences and Walls. Fencing and walls shall be of solid privacy white vinyl material, or as approved by the Committee. No structures or fences shall be permitted in any areas designated by Salt Lake County as non-buildable. Fences, walls, or hedges shall not exceed six (6) feet in height; provided, however, that no wall, fence, or opaque hedge or screening materials (other than pre-construction natural vegetation) shall be maintained within: (i) a required front yard; (ii) in any portion of a rear yard which is highly visible from any Community street or non-adjoining Lot because of the elevation or slope of the portion of the rear yard concerned unless specifically permitted by the Committee; and (iii) any portion of the Lot having a slope greater than thirty percent (30%).

On corner Lots, no fence or other similar structure shall be erected to a height in excess of three and one-half (3.5) feet in any front side yard bordering a street. All fences and walls require a building permit from Salt Lake County and must have prior written approval of the Committee.

8.21 Parking and Storage. No major mechanical work or repairs are to be conducted in streets or front yards. No inoperative automobile or vehicle shall be placed or remain on any Lot adjacent street for more than forty-eight (48) hours. Recreational vehicles, commercial-type vehicles, and trucks shall not be parked or stored in the front yard setback of any Lot or within the side yard buildings setback on any Lot, or in the back yard, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall not be parked or stored in the front yard and side yard setback areas, except as approved by the Committee. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited. No pads used for the storage of vehicles or other material either temporarily or permanently shall be constructed within the side or the front yard set back requirements of a given Lot. This open space shall remain unoccupied and unobstructed by building, vehicles, and/or hard surfaces such as asphalt, concrete, and paved surfaces from this time hence forth and forever. The Association may implement other reasonable parking regulations (including prohibiting parking on certain sides of streets and painting the curbs of such streets, and prohibiting parking on the streets during certain times of the year in order to allow for snow removal).

8.22 Water Discharge. It shall be unlawful for any person owning, occupying, or having control of any premises to suffer or permit irrigation or water from the roof or eaves of any house, building, or other structure of from any source under the control of such person, to be discharged and spread upon the surface of any sidewalk, street, or adjoining Lot. This is intended to require that the Owner maintains water on his property.

8.23 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Community, or from carrying out construction activities in the Community.



## ARTICLE IX

### TERM OF DECLARATION; TERMINATION AND AMENDMENTS.

9.1 Term: Method of Termination. This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of Recordation. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting seventy-five percent of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. The Declaration may be terminated at any time if at least ninety-percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election held for such purpose. If the necessary votes are obtained, the Board shall cause to be recorded in the office of the Salt Lake County Recorder a "Certificate of Termination," duly signed by the President and Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, the covenants herein contained shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.2 Amendments. This Declaration may be amended by Recording in the office of the Salt Lake County Recorder a "Certificate of Amendment," duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws of the Association, the Owners casting seventy-five (75%) percent of the votes at the election voted affirmatively for the adoption of the amendment. Notwithstanding all of the foregoing, for so long as Declarant owns a Unit or Lot, Declarant shall have the power from time to time to unilaterally amend this Declaration to: (a) correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, and otherwise to ensure that the Declaration conforms with requirements of applicable law, or (b) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Mortgagees.

9.3 Agency Consents. If any Lots herein are, or will be, financed and/or mortgages insured through or by FHA/VA loan programs, so long as there is a Class B membership, the annexation of additional properties into the Community beyond those identified herein, dedication of additional property as Common Elements, and amendment of this Declaration other than as provided in Section 9.2 above, shall require prior FHA/VA approval.

**ARTICLE X**

**LIMITED WARRANTY;**  
**MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING**  
**DECLARANT**

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

Section 10.1 Limited Warranty by Declarant. Declarant may issue a "Home Builder's Limited Warranty" (the "Limited Warranty") regarding the Lots to each initial third-party Owner upon the close of escrow, and regarding the Common Elements 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. 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. Each Owner whether they are an initial purchaser of a Lot or a subsequent purchaser, and the Association, as concerns the Common Elements, are hereby advised and agree that:

- a) the Limited Warranty is the only warranty provided by the Declarant;
- b) 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;
- c) that final, binding arbitration is the sole remedy for resolving disputes involving alleged Construction Defects;
- d) that by taking title to a Lot or the Common Elements, each Owner (whether an initial purchaser of a Lot or a subsequent purchaser) and the Association agree to be bound by the terms of the Limited Warranty;
- e) the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

Section 10.2 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 Lot or Lots or the Common Elements involving the Declarant or any affiliate, agent, employee, executing officer, manager, or owner of Declarant (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:

- a) Any disagreement that a condition in the Lot or in the Common Elements is a Construction Defect (as defined in the Limited Warranty) and is therefore covered by the Limited Warranty;

- b) Any disagreement as to whether a Construction Defect has been corrected in compliance with the Limited Warranty;
- c) Any alleged breach of the Limited Warranty;
- d) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- 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;
- f) Any disputes concerning the issues that should be submitted to binding arbitration;
- g) Any disputes concerning timeliness of performance and our Buyer's notifications under the Limited Warranty;
- h) Any dispute as to the payment or reimbursement of the arbitration filing fee;
- 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;
- j) Any other claim arising out of or relating to the sale, design, or construction of the Lot or the Common Elements, 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.

**The arbitration shall be conducted by Construction Arbitration Services, Inc. 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.**

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.

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 each arbitration. Owners may contact PWC to determine the arbitration filing fee in effect at the time an 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.

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.

The obligations of this Section 10.2 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 10.1. In the event any Unit is not issued a Home Builder's Limited Warranty as described in Section 10.1, all Disputes shall be resolved by final, binding arbitration conducted

BK8685PG7660

by Construction Arbitration Services, Inc., or such other organization as the parties to the Dispute may agree upon, pursuant to the terms of this Section 10.2.

Section 10.3 Obligation of Owners to Provide Copy of Limited Warranty Documents to Subsequent Purchaser. 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 Lot under the Limited Warranty.

Section 10.4 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.

BK8685PG7661

**ARTICLE XI**  
**DECLARANT'S RESERVED RIGHTS**

Section 11.1 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:

(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 on 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 Elements 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.

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

(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 signs anywhere on the Common Elements, for so long as Declarant owns or leases any Lot.

(d) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.2 hereof.

(e) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 9.2, above, during the time periods set forth therein.

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

(g) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration;

(h) 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.

Section 11.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(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.

(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.

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

(d) Without limiting Section 11.1 (c), above, or any other provision herein, 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.

(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.

(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 11) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 11.1 (a) above.

11.3 Additional Disclosures, Disclaimers and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Lot or possession of a Lot, each Owner (for purposes of this Section 11.3, 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:

BK8685PG7663

- (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 Lot 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;
- (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;
- (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
- (d) 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;
- (e) 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;
- (f) that the Lot 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
- (g) that the Community is or may be located adjacent to or nearby a storm drain detention basin and may be subject to certain nuisances resulting from proximity to such detention basin.

11.4 Releases. By acceptance of a deed to a Lot, each Owner, for itself and all Persons claiming under such Owner, shall conclusively be deemed to have acknowledged and agreed: (a) that Declarant 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 and the Committee, 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.

## ARTICLE XI

### MISCELLANEOUS

11.1 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.

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

11.3 Rule Against Perpetuities. Each provision contained in this Declaration which is subject to the laws or rules sometime referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the last survivor of the issue of Queen Elizabeth II of England and the now living children of such issue, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect in accordance with Section 9.1 hereof.

11.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration.

11.5 General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release, and otherwise deal with easements, reservations, exceptions, and exclusions with respect to the Property which do not materially interfere with the best interests of Owners and/or the Association including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails, and easements and drainage easements.

11.6 Run with the Land. Declarant for itself, its successors, and assigns, hereby declares that all of the Property shall be held, used, and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Property.



IN WITNESS WHEREOF, Declarant has executed this Declaration this 14th day of November, 2002.

WOODSIDE HOMES CORPORATION, a Utah corporation

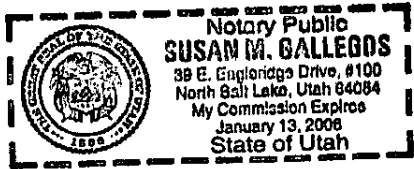
By: Nathan W. Pugsley  
Name: Nathan Pugsley  
Title: Assistant Secretary

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF DAVIS        )

The foregoing instrument was acknowledged before me this <sup>15th</sup>~~14th~~ day of November, 2002, by Nathan Pugsley, the Assistant Secretary of Woodside Homes Corporation, a Utah corporation.

Susan M. Gallegos  
Notary Public  
Residing at Syracuse, UT.

My Commission Expires:  
01/13/06



NOTARY SEAL NOT LEGIBLE  
CO RECORDER

BK 8685 PG 7666

**Exhibit A**

All of lots 101 through 164, The Villages at Oquirrh Highlands Phase 1 P.U.D., Salt Lake County, State of Utah, according to the official plat thereof, on file and of record in the Salt Lake County Recorder's Office.

All of lots 201 through 288, The Villages at Oquirrh Highlands Phase 2 P.U.D., Salt Lake County, State of Utah, according to the official plat thereof, on file and of record in the Salt Lake County Recorder's Office.

Please see attached Exhibit "B" for all tax i.d. numbers

BK8685PG7667

RKLP VILLAGES AT OQUIRRH HIGHLANDS 1 PUD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		L	101	20-23-401-022-0000	NO
		L	102	20-23-401-023-0000	NO
		L	103	20-23-401-024-0000	NO
		L	104	20-23-401-025-0000	NO
		L	105	20-23-401-026-0000	NO
		L	106	20-23-401-027-0000	NO
		L	107	20-23-402-008-0000	NO
		L	108	20-23-402-007-0000	NO
		L	109	20-23-402-006-0000	NO
		L	110	20-23-402-005-0000	NO
		L	111	20-23-402-004-0000	NO
		L	112	20-23-402-003-0000	NO
		L	113	20-23-402-002-0000	NO
		L	114	20-23-402-001-0000	NO
		L	115	20-23-402-019-0000	NO
		L	116	20-23-402-020-0000	NO
		L	117	20-23-402-021-0000	NO
		L	118	20-23-402-022-0000	NO
		L	119	20-23-402-023-0000	NO
		L	120	20-23-402-035-0000	NO

PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

*Exhibit "B" 9 pages*

BK8685 PG 7668

RXLP VILLAGES AT OQUIRRH HIGHLANDS 1 PUD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		L	121	20-23-402-034-0000	NO
		L	122	20-23-402-033-0000	NO
		L	123	20-23-402-032-0000	NO
		L	124	20-23-402-031-0000	NO
		L	125	20-23-402-030-0000	NO
		L	126	20-23-402-040-0000	NO
		L	127	20-23-402-041-0000	NO
		L	128	20-23-402-042-0000	NO
		L	129	20-23-402-043-0000	NO
		L	130	20-23-402-044-0000	NO
		L	131	20-23-402-045-0000	NO
		L	132	20-23-402-055-0000	NO
		L	133	20-23-402-054-0000	NO
		L	134	20-23-402-053-0000	NO
		L	135	20-23-402-052-0000	NO
		L	136	20-23-402-051-0000	NO
		L	137	20-23-402-050-0000	NO
		L	138	20-23-402-024-0000	NO
		L	139	20-23-402-025-0000	NO
		L	140	20-23-402-036-0000	NO

PF1=VTDI PF5=RXXP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK 8685 PG 7669

RXLP VILLAGES AT OQUIRRH HIGHLANDS 1 PUD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		L	141	20-23-402-046-0000	NO
		L	142	20-23-402-047-0000	NO
		L	143	20-23-402-056-0000	NO
		L	144	20-23-402-057-0000	NO
		L	145	20-23-402-059-0000	NO
		L	146	20-23-402-058-0000	NO
		L	147	20-23-402-049-0000	NO
		L	148	20-23-402-048-0000	NO
		L	149	20-23-402-038-0000	NO
		L	150	20-23-402-037-0000	NO
		L	151	20-23-402-039-0000	NO
		L	152	20-23-402-029-0000	NO
		L	153	20-23-402-028-0000	NO
		L	154	20-23-402-027-0000	NO
		L	155	20-23-402-026-0000	NO
		L	156	20-23-403-001-0000	NO
		L	157	20-23-403-002-0000	NO
		L	158	20-23-403-006-0000	NO
		L	159	20-23-403-005-0000	NO
		L	160	20-23-403-004-0000	NO

PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK 8685 PG 7670

RXLP VILLAGES AT OQUIRRH HIGHLANDS 1 PUD

B FLG BLK/BLDG IND FLG LOT/QUAR

BLK, LOT-QUAR

PARCEL NUMBER

OBSOLETE?

		L	161	20-23-403-003-0000	NO
		L	162	20-23-402-075-0000	NO
		L	163	20-23-402-074-0000	NO
		L	164	20-23-402-060-0000	NO
		L	AREA	20-23-402-061-0000	NO

PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK8685PG7671

RXLP VILLAGES AT OQUIRRH HIGHLANDS 2 PUD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		L	201	20-23-402-064-0000	NO
		L	202	20-23-402-065-0000	NO
		L	203	20-23-402-066-0000	NO
		L	204	20-23-402-067-0000	NO
		L	205	20-23-402-072-0000	NO
		L	206	20-23-402-073-0000	NO
		L	207	20-23-402-080-0000	NO
		L	208	20-23-402-081-0000	NO
		L	209	20-23-402-088-0000	NO
		L	210	20-23-402-087-0000	NO
		L	211	20-23-402-086-0000	NO
		L	212	20-23-402-094-0000	NO
		L	213	20-23-402-095-0000	NO
		L	214	20-23-402-096-0000	NO
		L	215	20-23-402-097-0000	NO
		L	216	20-23-402-098-0000	NO
		L	217	20-23-402-099-0000	NO
		L	218	20-23-402-100-0000	NO
		L	219	20-23-402-090-0000	NO
		L	220	20-23-402-089-0000	NO

PF1=VTDI PF5=RXKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK8685PG7672

RXLP VILLAGES AT OQUIRRH HIGHLANDS 2 PUD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		L	221	20-23-402-083-0000	NO
		L	222	20-23-402-082-0000	NO
		L	223	20-23-403-007-0000	NO
		L	224	20-23-403-008-0000	NO
		L	225	20-23-403-015-0000	NO
		L	226	20-23-403-016-0000	NO
		L	227	20-23-403-017-0000	NO
		L	228	20-23-403-018-0000	NO
		L	229	20-23-403-019-0000	NO
		L	230	20-23-403-020-0000	NO
		L	231	20-23-403-021-0000	NO
		L	232	20-23-403-022-0000	NO
		L	233	20-23-403-023-0000	NO
		L	234	20-23-403-024-0000	NO
		L	235	20-23-403-025-0000	NO
		L	236	20-23-403-026-0000	NO
		L	237	20-23-403-014-0000	NO
		L	238	20-23-403-013-0000	NO
		L	239	20-23-403-011-0000	NO
		L	240	20-23-403-012-0000	NO

-PF1=VTDI PF5=RXKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK8685PG7673



RXLP VILLAGES AT OQUIRRH HIGHLANDS 2 PUD

B FLG    BLK/BLDG    IND FLG    LOT/QUAR

BLK, LOT-QUAR

PARCEL    NUMBER

OBSOLETE?

L			241	20-23-403-010-0000	NO
L			242	20-23-403-009-0000	NO
L			243	20-23-404-021-0000	NO
L			244	20-23-404-020-0000	NO
L			245	20-23-404-008-0000	NO
L			246	20-23-404-007-0000	NO
L			247	20-23-404-006-0000	NO
L			248	20-23-404-004-0000	NO
L			249	20-23-404-005-0000	NO
L			250	20-23-404-019-0000	NO
L			251	20-23-404-018-0000	NO
L			252	20-23-404-017-0000	NO
L			253	20-23-404-016-0000	NO
L			254	20-23-404-015-0000	NO
L			255	20-23-404-014-0000	NO
L			256	20-23-404-003-0000	NO
L			257	20-23-404-002-0000	NO
L			258	20-23-404-001-0000	NO
L			259	20-23-404-013-0000	NO
L			260	20-23-404-012-0000	NO

-PF1=VTDI PF5=RXKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK8685PG7674

RXLP VILLAGES AT OQUIRRH HIGHLANDS 2 PUD

B FLG    BLK/BLDG    IND FLG    LOT/QUAR

BLK, LOT-QUAR

PARCEL    NUMBER

OBSOLETE?

L			261	20-23-404-011-0000	NO
L			262	20-23-404-010-0000	NO
L			263	20-23-404-009-0000	NO
L			264	20-23-402-018-0000	NO
L			265	20-23-402-016-0000	NO
L			266	20-23-402-017-0000	NO
L			267	20-23-402-091-0000	NO
L			268	20-23-402-092-0000	NO
L			269	20-23-402-093-0000	NO
L			270	20-23-402-085-0000	NO
L			271	20-23-402-084-0000	NO
L			272	20-23-402-015-0000	NO
L			273	20-23-402-014-0000	NO
L			274	20-23-402-013-0000	NO
L			275	20-23-402-012-0000	NO
L			276	20-23-402-011-0000	NO
L			277	20-23-402-010-0000	NO
L			278	20-23-402-009-0000	NO
L			279	20-23-402-062-0000	NO
L			280	20-23-402-063-0000	NO

PF1=VTDI PF5=RXKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK8685PG7675

RXLP VILLAGES AT OQUIRRH HIGHLANDS 2 PUD

B FLG	BLK/BLDG	IND FLG	LOT/QUAR	BLK, LOT-QUAR PARCEL NUMBER	OBSOLETE?
		L	281	20-23-402-069-0000	NO
		L	282	20-23-402-068-0000	NO
		L	283	20-23-402-076-0000	NO
		L	284	20-23-402-077-0000	NO
		L	285	20-23-402-078-0000	NO
		L	286	20-23-402-079-0000	NO
		L	287	20-23-402-071-0000	NO
		L	288	20-23-402-070-0000	NO
		L	AREA	20-23-404-001-0000	NO

-PF1=VTDI PF5=RKKP PF7=RXAB LIST PF12=PREV ENTER=NEXT CURSOR DOWN AND ENTER=RXPN

BK8685PG7676