

# Bridgestone Homeowners Association

## Amended and Restated Declaration of Covenants, Conditions, & Restrictions for Bridgestone Homeowners Association

This restatement of the Declaration of Covenants, Conditions and Restrictions includes all amendments and modifications thereto and previously recorded and any amendments adopted and approved by a vote in excess of two-thirds (2/3<sup>rd</sup>) of the eligible voting membership of the Bridgestone Homeowners Association.

This document supercedes and replaces the following Utah County recordings for the purpose of consolidation:

Amended and Restated Declaration of Covenants, Conditions, & Restrictions recorded on March 25, 2004, ENT 33495:2004.

Revised Declaration of Covenants, Conditions, and Restrictions recorded on October 11, 2002, ENT 120761:2002.

Declaration of Covenants, Conditions and Restrictions recorded on June 2, 1998, Book 4657, Page 609.

Amended Declaration of Covenants, Conditions and Restrictions recorded on April 14, 1999, Book 5046, Page 749.

Supplemental Declaration to Declaration of Covenants, Conditions, and Restrictions recorded on April 14, 1999, Book 5046, Page 734.

Article of Amendment to the Amended Declaration of Covenants, Conditions and Restrictions recorded on September 8, 2000, ENT 70907:2000.

FOOTHILL DEVELOPMENT, INC., a Utah Corporation, ("Declarant") is the owner of certain property in the City of Cedar Hills, County of Utah, State of Utah, which is more particularly described as:

Beginning from a point North 0° 0' 47" East 22.70 feet and South 89° 59' 13" East 2650.75 feet from the Northwest corner of Section 7, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence South 0° 17' 52" East 507.99 feet; thence North 75° 6' 30" West 428.36 feet; thence North 75° 7' 19" West 326.633 feet; thence North 75° 6' 30" West 131.11 feet, thence North 0° 41' 4" West 42.72 feet; thence North 3° 33' 27" West 238.19 feet; thence North 0° 5' 20" East 226.40 feet; thence South 89° 59' 13" East 200.70 feet; thence North 0° 0' 47" East 121.25 feet; thence South 73° 17' 13" East 229.79 feet; thence South 63° 32' 34 East 416.50 feet; thence South 0° 0' 47" West 96.73 feet; thence North 89° 32' 8" East 75 feet to the point of beginning.

Including all Units and Common Areas in Plat "A," Phase "B," and Plat "D," BRIDGESTONE PLANNED UNIT DEVELOPMENT

Less and excepting any portion lying in the boundaries of 4500 West Street

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

### I. NAME AND PURPOSE

The purpose of this instrument is to provide for the preservation of the values of both Lots and Common Areas within Bridgestone, a Planned Unit Development in Cedar Hills, Utah (the "Development"), and for the maintenance of the roadways, driveways, sidewalks, parking amenities, open spaces, landscaping, trees, and all other common areas therein.

The Development is hereby encumbered by the covenants, conditions, restrictions, easements, and charges set forth below, in order to:

- A. Insure the best and highest use and the most appropriate development and improvement of each lot within the Development for residential purposes;
- B. Protect the Owners of Units against the improper use of surrounding lots;
- C. Preserve, so far as practicable, the natural beauty of the Development;
- D. Guard against the erection of unsightly structures of improper or unsuitable materials;
- E. Encourage and secure the proper continued maintenance of the land and improvements on each lot;
- F. Secure and maintain the proper use of easements within the Development;
- G. Preserve, as far as practicable, lines of sight from the Units; and
- H. In general, provide for a residential subdivision of the highest quality to enhance the value of the investment made by Owners in purchasing Units.

## **II. ARCHITECTURAL CONTROL**

**A. ARCHITECTURAL CONTROL COMMITTEE.** An Architectural Control Committee (the "Committee") shall be designated and composed of three (3) or more representatives. The developer (Declarant) shall appoint the three members until the developer has sold 75% of the lots in Bridgestone. After 75% of the lots have been sold, the Bridgestone Homeowners Association Board of Directors shall appoint the members. In the event of death or resignation of any member of the committee, the developer or Board, as appropriate, shall designate a successor. Both the Declarant and the Board of Directors shall have the right to remove any member of the Committee appointed by it.

**B. SUBMISSION & APPROVAL OF PLANS.** Every Owner of a Unit who intends to modify or make improvements on it shall deliver a complete set of plans and specifications (the "Plans") to the Committee, not less than thirty (30) days prior to the date modifications are to be commenced. Any modification of a residence that is to the exterior, permanent, and visible from the street or to any neighbors, and/or requires a Building Permit from the City of Cedar Hills is subject to governance by the Committee. No structure or improvement (including, but not limited to, buildings, fences, walls, landscaping, or site clearing) shall commence or be placed or altered on any lot until the Plans have been approved in writing by a majority of the members of the Committee. The Plans shall include any information or documents, which may be required by the Committee. Plans must conform to requirements of this Declaration and of the recorded subdivision plat. The Committee may postpone its review of the Plans pending receipt of any information or materials that the Committee, in its sole discretion, may require. The Committee may retain copies of the Plans until the modification is built out in its entirety. The Committee may refuse to approve the Plans on any grounds that, in the sole and absolute discretion of the Committee, are deemed sufficient, including, but not limited to, purely aesthetic grounds. In reviewing the Plans, the Committee shall be guided by, but not be limited by, the purposes set forth in Paragraph I of this Declaration.

The Association is authorized to remove or undo any modifications that are undertaken without proper notification to the Architectural Control Committee at the homeowner's expense.

It is specifically understood and provided that approval by the Committee of any Plans, or components

thereof, shall not constitute a certification or assurance of compliance with this Declaration, the subdivision plat, or applicable law. The full burden of responsibility for compliance with all such requirements shall at all times be and remain upon the Owner.

This article does not apply to the architecture or construction of the 104 Units to be built at Bridgestone or the other improvements required to complete these Units and/or Common Areas.

**C. ADOPTION OF RULES & REGULATIONS.** The Committee shall have the authority to adopt, and to amend from time to time, such procedural and substantive rules, not in conflict with this Declaration, as it may deem necessary or appropriate for the performance of its duties hereunder.

**D. ACTIONS OF THE COMMITTEE.** The vote of a majority of all of the members of the Committee shall constitute an act of the Committee. The Committee may, by resolution, unanimously adopted in writing, designate one or two of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the Committee, except the granting of variances.

**E. FAILURE TO ACT.** In the event that Plans are submitted to the Committee as provided above, and the Committee shall fail either to approve or reject the Plans within fourteen (14) days following the submission of all Plans required by the Committee, no approval by the Committee shall be required, and approval of the Plans shall be presumed; provided, however, that such 14-day period shall not begin to run until all information required by the Committee to assist the Committee in its review has been received. Any failure of the Committee to act upon a request for a variance, however, shall not be deemed consent to the variance, and the Committee's written approval of all requests for variances shall be expressly required.

**F. VARIANCES.** The Committee may grant a variance from compliance with any of the provisions of this Declaration or any supplemental declaration, when, in the opinion of the Committee, in its sole and absolute discretion, the variance will not be adverse to the overall development plan for the Development, and the variance is justified due to visual or aesthetic considerations or unusual circumstances. All variances must be evidenced in writing and must be signed by at least a majority of the members of the Committee. The granting of a variance shall not operate to waive or amend any of the terms and provisions of this Declaration or any supplemental declaration for any purpose except as to the particular property and in the particular instance covered by the variance. A variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of this Declaration.

**G. DURATION OF APPROVAL.** The approval or consent of the Committee of any Plans, whether by action or inaction, and any variances granted by the Committee, shall be valid for a period of three (3) months only, unless modifications are begun within that time period. In the event modifications in accordance with the Plans or variance are not commenced on a Unit within that 3-month period, the Owner shall be required to resubmit the Plans or the request for a variance to the Committee. The Committee shall then have the authority to reevaluate the Plans or request in accordance with this Article and may, in addition, consider any changes in circumstances which may have occurred since the time of the original approval.

**H. NO WAIVER OF FUTURE APPROVALS.** The approval of the Committee to any Plans or variance request shall not be deemed a waiver of any right to withhold approval or consent as to any other Plans or variance request, or other matter whatever, nor shall the approval or consent be deemed a precedent for future approvals by the committee.

**I. NON-LIABILITY OF COMMITTEE MEMBERS.** Neither the Committee nor any member thereof, shall be liable to any Owner or to any other person for any loss, damage, or injury arising out of the performance or non-performance of the Committee's rights and duties under this Declaration.

### **III. USE RESTRICTIONS**

**A. LAND USE & CLEARING.** All Units shall be used for three singles or single-family residential purposes only, and no building or improvement shall be erected, altered, placed, used, or permitted to remain on any lot except as authorized under this Declaration. The Committee prior to any such action must approve any removal of trees or shrubbery, or other natural plants.

**B. VEHICLES, TRAILERS, & BOATS.** Parking of resident's vehicles should be in their respective garage spaces. Parking by residents in the common area parking or on any driveway should be temporary and only for loading or unloading. Parking in the common area parking is reserved for visitors. No bus, semi-trailer, tractor, machinery, equipment, truck larger than 3/4-ton pickup, boat, trailer, or recreational vehicle of any type shall be kept, parked, placed, maintained, constructed, or repaired on or in the street, or in the driveway in front of the house on any lot, except for construction and repair vehicles during the period of construction on a lot. No motor vehicle of any type shall be constructed or repaired on the street or on any lot in a location that is visible from any street or neighboring property. No motorized vehicles of any kind shall be operated in any manner that is dangerous, noisy, or creates a nuisance. Motor homes, recreational house trailers, horse trailers, campers, boats, boat trailers, trailers of any type, and recreational vehicles of all types must be parked in designated RV parking, and shall never be used as a temporary or permanent dwelling. Such vehicles may not be kept, placed, or maintained on any undeveloped lot at any time. Parking of RV vehicles in the RV designated parking area will be allowed for any owner while there is space available. When there is more demand for RV parking spaces than room, owners will be placed on a yearly rotational basis for the available spaces. An annual fee per space, to be determined by the Board of Directors, will be assessed to the users of the RV designated parking area.

**C. DUMPING, RUBBISH, GARBAGE, & STORAGE.** No rubbish, trash, junk, ashes, scrap, building materials, inoperative vehicles, or other unsightly storage of personal property is allowed on any portion of any lot. Trash, garbage, and other waste shall be stored in "animal-proof" sanitary containers. All trash cans and other equipment for storage of trash materials shall be kept clean and shall not be visible from the street except on appropriate trash pickup days. Small (less than 10' x 10') compost heaps for personal gardening are allowed so long as they are not visible from the street and there is no odor.

**D. ANTENNAE, SATELLITE DISHES.** No external antennae, satellite receiving dishes, or other structures designed or used for receiving any type of radio, television, or other communications signal shall be located on any lots or units except pursuant to written approval by the Architectural Control Committee pursuant to rules and regulations adopted by it and/or as set forth in this Declaration.

**E. CLOTHESLINES.** No clotheslines shall be constructed, placed, erected, or used on any lot in such a way as to be visible from outside that lot.

**F. POLES, LIGHTS, FLAGPOLES.** No poles, exterior overhead lights, flagpoles, or other similar structures, shall be constructed or maintained upon any lot without prior consent of the Committee. This shall not be construed to prohibit attractive landscaping lighting, or security lighting that does not intrude on neighboring lots.

**G. WINDOW AIR-CONDITONERS.** No window, roof, or wall-type air-conditioner that is visible from any public street shall be used, placed, or maintained on or in any dwelling.

**H. SOLAR.** All solar panels or other solar collection devices must be constructed or added as an integral part of the architectural design of a dwelling, and their design and installation require the approval of the Committee.

**I. FENCES.** All fences are subject to the prior written approval of the Committee, the same as for all other improvements pursuant to §II.B above.

**J. WINDOWS.** No reflective material may be used on or in windows that face to the front or the side of any lot.

**K. SIGNS.** No signs or any character shall be allowed on any lot except one professionally done for lot identification purposes; provided, however, that the Declarant shall have the right, during the periods of development, construction, and sale, to construct and maintain signs as may be reasonably convenient for such construction and sale.

**L. ANIMALS & LIVESTOCK.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, and other ordinary household pets may be kept, provided that they are not kept, bred, or maintained for commercial purposes, and provided that they are maintained as essentially indoor pets. No more than two (2) dogs, cats, or other household pets (in the aggregate) shall be kept in a Unit at any time, and pets must not be allowed to become a nuisance to the neighborhood. No animal shall be allowed to run at large within the Development. All animals, when allowed outdoors, shall be kept on a leash, and owners are responsible to pick up animal's waste.

**M. LANDSCAPING.** The Architectural Control Committee has the right to regulate all landscaping additions (e.g., gardens, landscaping that can grow to a height in excess of ten feet, additional shrubbery, etc.). Additions are generally permitted, however, except where such landscaping would unreasonably interfere with the passage of light and air to, or the view from, any other Unit in the Development.

**N. FIREARMS & FIREWORKS.** No firearms, fireworks, or other explosives shall be kept or maintained in any Unit, other than firearms for the protection of an Owner's family and property, and firearms for sporting or recreational purposes. No explosives, or fireworks of any type, shall be discharged within the Development. No hunting, including hunting with bow and arrow, pellet gun, or sling shot, shall be permitted within the Development, and no firearms of any type shall be discharged within the Development unless necessary in order to protect an Owner's person, family, or property.

**O. PROHIBITED ACTIVITIES.** No business, professional, commercial, or trade venture or activity shall be conducted in any Unit; provided, however, that storage areas, model homes, and sales offices may be constructed and maintained by Declarant, its successors and assigns. An office incidental to an Owner's business may be maintained within an Owner's residence so long as activities conducted in connection with the home office do not attract traffic, or otherwise become an annoyance or nuisance to the PUD, and the office is not advertised in any way.

**P. ANNOYANCE OR NUISANCE.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done which is an annoyance or nuisance to the neighborhood (this includes noise pollution such as barking dogs and loud music). All exterior lighting shall require approval by the Committee as a design feature.

#### **IV. DUTIES AND OBLIGATION OF OWNERS**

##### **A. MAINTENANCE AND REPAIRS.**

**1.** Each Owner shall at his own cost, maintain his Lot and any improvements constructed thereon and keep his/her Unit in good repair at all times, except for the exteriors and roofs, which shall be maintained and repaired by the Association as provided herein.

2. Each Owner shall at his own cost and expense maintain, repair, paint, repaint, tile, wallpaper, or otherwise refinish and decorate the interior of their Unit including the walls, ceiling, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows, and doors within such boundaries. In additions to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for he maintenance, repair, or replacement of any plumbing fixtures, pipes, water heater, heating equipment, air condition, lighting fixtures, wire, refrigerator, dishwasher, disposal equipment, range, or other appliances or fixtures that may be in or connected with his Unit.

3. In the event of damage or destruction of any Unit, the Owner of the Unit shall rebuild the same within a reasonable time. The painting or repainting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.

4. In the event that the need for maintenance of repair of a Unit is caused through the willful or negligent acts of its Owner of through the willful or negligent acts of the family, guests, invitees, or tenants of the Owner, the cost of such maintenance or repairs shall be completed by the Association (as provided herein), added to and become a part of the assessment to which such Unit is subject.

5. In the event an Owner of any Unit in the Project shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Association, the Management Committee, after approval by two-thirds (2/3) vote of the Association, shall have the right, through its agents and employees to enter said Unit and to repair, maintain, and restore the Unit and the exterior of the Building and any other improvement erected thereon. The cost of such maintenance shall be added to and become a part of the assessment to which such Unit is subject.

6. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association.

**B. ASSESSMENTS AND RULES OBSERVANCE.** Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the rules and regulation promulgated by the Association from time to time.

**C. MAINTENANCE OF LIMITED COMMON AREAS.** Each Owner shall keep the Limited Common Areas designed for use in connection with his Unit in a clean, sanitary, safe, and attractive condition at all times.

**D. ACCESS FOR REPAIR OF COMMON, LIMITED COMMON, AND RESTRICTED COMMON AREAS.** Some of the Common Areas, Limited Common Areas, and Restricted Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of the other Units shall have the irrevocable right, to be exercised by the Committee as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for maintenance, or repair of the Common Areas, accessible there from or for making emergency repairs therein necessary to prevent damage to the Common Areas or another Unit or Units. The Committee shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair emergency repair, or replacement of any of the Common Areas or as a result of emergency repair within another unit at the insistence of the Committee or the Unit Owners, shall be an expense of all the Unit Owners and assessed proportionately; provided, however, that if such damage is the result of negligence or the Owner of the Unit, then such Owner shall be financially responsible for all such damage. The Committee shall collect amounts owing by Owners pursuant hereto by assessment pursuant to this Declaration.

**E. COMMON AREA: CLUBHOUSE.** Clubhouse hours, rules, and scheduling are to be determined by the Association from time to time. Homeowners are issued one (1) key to the Clubhouse exercise room. Keys to the Clubhouse event room will be kept by the Clubhouse Committee and issued to Homeowners prior to scheduled event. Replacement keys are issued with a fee. Homeowners are responsible for all fees incurred for lost, stolen, and damaged keys. Transferring a key to non-residents is prohibited. Absentee homeowners should transfer their key to their tenants(s) and are responsible for collection of the key when the tenant vacates. All residents are responsible for the safety and supervision of their own families and guests. An adult must supervise children under twelve. Skateboards, bikes, big wheels, or other such toys are not allowed in the Clubhouse. Pets are prohibited.

**F. RIGHT OF INGRESS AND EASEMENT OF ENJOYMENT.** Each owner shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall appurtenant to and shall pass with the title to each lot and in no event shall be separate there from. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides in such Owner's Unit.

**G. EASEMENT TO MANAGEMENT COMMITTEE.** The Management Committee shall have nonexclusive easements to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions, which they are obligated or permitted to perform pursuant to this Declaration.

**H. EASEMENT FOR UTILITY SERVICES.** There is hereby created a blanket easement upon, across, over and under the property for ingress, egress, installation, replacement, repair, and maintenance of all utilities, including, but not limited to, water sewer, gas, telephone, electricity, and other public and private utility services.

#### **I. USE OF UNIT.**

**1. Zoning.** Each of the Units in the Project is intended to be used for either singles or single families. Each Unit is restricted to one family or three singles. Each unit may be rented or leased by the Unit Owner for use and occupancy as herein stated.

**2. Restriction Concerning Common Areas.** There shall be no obstruction of the common area by the Owners, their tenants, guests, or invitees without the prior written consent of the Association. The Association may by rules and regulations prohibit or limit the use of the common areas as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be altered, constructed, or removed from the common areas, except upon consent of the Association.

**3. Miscellaneous Restrictions.** Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance of the Project or any part thereof or increase the rate of the insurance on the Project or any part thereof over what the Association would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to or waste of the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each owner shall indemnify and hold the Association harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive, or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any; other Owner or to any person at any time lawfully residing in the Project. This latter restriction does not include normal activities associated with living in the unit such as operation of the elevator, showering or bathing, or operation of the garage doors regardless of the time of day or night.

**4. Animals.** No livestock or poultry of any kind shall be raised, bred, or kept in any Unit of in the Common Areas. Household pets may be kept in Units, subject to strict observance or rules and regulations adopted by the Association.

**5. No Violation of Rules and Regulations.** No Owner shall violate the rules and regulations for the use of the Units and the Common Areas as adopted from time to time by the Association.

**6. Restrictions or Alterations.** No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Architectural Control Committee.

**7. Declarant's Right to Sell Units.** Notwithstanding anything contained herein to the contrary until the Declarant has completed and sold all of the Units, neither the Unit Owners who have purchased Units from the Declarant nor the Association or either or them shall interfere with the completion of the contemplated improvements and sale of the remaining Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including, but not limited to, the maintenance of a sales office, the showing of the Units and recreations facilities, and the display of signs. Once a Unit has been sold the new Owner or its agent may not place a "For Sale" or any other sign on the premises indicating the Unit is for sale or that it is listed with a real estate agency or broker. The new Owner may advertise through off-site publications, ads, multi-listings, Realtor agencies, or any other off-site media so long as it does not distract from the overall marketing plan of the Declarant. At such time as 80% of the Units are sold and closed then Owners may place one private "For Sale" sign on the premises, but it may not be larger than three feet square (3 ft. x 3 ft.).

**J. DUTY OF OWNER TO PAY TAXES ON UNIT OWNED.** Each owner shall pay the property taxes assessed for the Unit that they own as well as pro-rata share of the taxes assessed for the Common Areas.

**K. RESPONSIBILITY TO PROVIDE SUPERVISION.** Each Owner has the responsibility to provide proper supervision for children, those who are handicapped, or otherwise for those who have disabilities, to insure the safety al tenants, invitees, and Owners. Particularly to provide supervision around staircases, parking garages, common areas, and elevators such that those with disabilities (whether physical or due to age) are kept from harm. Declarant and/or Contractor shall not be responsible for any injuries that might occur on the property except for those injuries directly caused by Declarant and/or Contractor's intentional misconduct.

## **V. HOMEOWNERS ASSOCIATION**

### **A. DEFINITIONS.**

1. "Association" shall mean and refer to the "*BRIDGESTONE HOMEOWNERS ASSOCIATION, INC.*", its successors and assigns.

2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

3. "Limited Common Areas" shall mean and refer to those Common Areas reserved for use of a certain Unit or Units to the exclusion of other Units. Limited Common Areas include (but are not limited to) storage areas and Parking spaces and Hall spaces and Elevator and Doors and Stairs specifically assigned for the exclusive use of the individual Unit Owners.



4. "Restricted Common Areas" shall mean and refer to those Common Areas restricted for use by the Unit Owners. Restricted Common Areas include (but are not limited to) attics, utility closets, and the clubhouse maintenance garage.

## **B. PROPERTY RIGHTS.**

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

**a.** The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

**b.** The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; or for any infraction of its published rules and regulations; and shall remain suspended until all payments are brought current and all defaults cured;

**c.** The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

**2. Delegation of Use.** Any Owner may delegate, in accordance with the *Bylaws*, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

**3. Allocation of undivided interest in Common Area.** Each Unit owner shall have one share interest in the common Areas and Facilities proportionate to the number of units completed.

## **C. MEMBERSHIP & VOTING RIGHTS.**

**1.** Every Owner of a Unit that is subject to assessment shall be a member of the Association. Membership shall be pertinent to and may not be separated from ownership of any Unit that is subject to assessment. In addition, the Declarant shall be a member of the Association until the earlier of the dates set forth below.

**2.** The Association shall have two (2) classes of voting membership:

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

*Class B.* Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned including projected Lots in Additional Land. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

**a.** When the total votes outstanding in the Class A membership equal the total vote outstanding in the Class B membership, or

**b.** December 31, 2008.

## **D. COVENANT FOR MAINTENANCE ASSESSMENTS.**

**1. Creation of the Lien & Personal Obligation of Assessments.** The Declarant, for each Unit owned within the Properties hereby covenants, and each Owner of any Unit by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- a. Annual assessments on charges; and
- b. Special assessments for capital improvements;

Such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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

a. In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance for each Unit which is subject to assessment hereunder, as follows: paint, repair replacement and care of roofs, gutters, down spouts, and exterior building surfaces; replacement of trees, shrubs, grass; repair and replacement of walks; and other exterior improvements. Such exterior maintenance shall not include repair or replacement of glass windows for each Unit.

b. Included in the Assessments is the cost of adequate liability and hazard insurance on property owned by the Association, water for the landscaping, outside lighting, elevator maintenance, snow removal, landscape and grounds maintenance, capital improvements, roadway and parking area maintenance, and a reserve for maintenance and repairs of common area structures.

### **3. Maximum Annual Assessment.**

a. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be EIGHT HUNDRED AND FORTY DOLLARS (\$840.00) per Unit.

b. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the membership.

c. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 10% by vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

d. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

e. The annual assessment may be paid in monthly installments at the rate of one-twelfth of the total amount, due by the 10<sup>th</sup> of each month, or in other installments, approved by the Homeowners Association Treasurer.

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

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

**6. Uniform Rate of Assessment.** Both regular and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

**7. Date of Commencement of Assessments: Due Dates.** The annual assessments provided for herein shall commence for all Units on the date of conveyance of title to the new owner. The annual assessment for new owners shall be adjusted according to the number of months remaining in the calendar year with the amount for the first month to be prorated from the day of title conveyance proportional to the number of days in that month. The Board of Directors shall fix the amount of the assessment against each Unit at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every Owner subject thereto. The Board of Directors shall establish the due dates. 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 specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

**8. Effect of Non-Payment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12.0% per annum. The Association may bring an action at law against the Owner personally obligated to pay for same, or foreclose the lien against the Property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

**9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. No sale or transfer shall relieve such Unit from liability for any assessments that are past due or from any assessments thereafter becoming due.

**10. Unoccupied Units.** There shall be no monthly or special assessment assessed to new Units being built until such time as the Unit is fully completed and an "Occupancy Permit" is granted from the City of Cedar Hills. If the Declarant is the owner after the "Occupancy Permit" has been obtained, sixty percent (60%) of the assessment applicable for that Unit shall be the obligation of the Declarant. Such assessment shall begin at the first of the month following the day the "Occupancy Permit" is obtained. When each Unit is occupied for the first time or title thereto is no longer vested in the Declarant, such Unit shall then pay 100% of the amount, which would otherwise be assessed, to that Unit.

**11. No Abatement.** No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from any construction within the Development; the making of any repairs or improvements to or maintaining of the Development, or any part thereof, or

from any action taken to comply with the provision of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

**12. Taxes.** Except for those Lots owned by Declarant, the owner of the lot against which the assessment is made shall pay all taxes assessed against lots before delinquency. All taxes assessed against the Common Area or against other property owned by the Association shall be paid for out of annual assessments and, if necessary, a special assessment may be levied (in the manner set forth in D.4 above) against the lots in an amount equal to said taxes.

**13. Insurance: Coverage and Costs.** The Association shall set out procedures and standards for the limits and types of coverage that will be implemented on a yearly basis. The cost of the insurance shall be included in the annual assessment.

**VI. ALTERATION TO SITE PLAN AND EXPANDABILITY**

**A. SITE PLANS.** Declarant shall be entitled to construct one or two floor plans on each of the Lots. One of the alternatives is a two-story building and the other is a single story building. Declarant shall be entitled to choose from the two alternatives and to alter the site plan so as to meet the desires of those interested in buying Units. The property descriptions and easements relating to the Common Areas within a building shall be adjusted depending upon which building plan is actually built on the particular Lot.

**B. ANNEXATION BY DECLARANT.** Declarant may, from time to time, expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land. Subject to compliance with the conditions imposed by the following C, the annexation of any such land shall become effective upon the concurrent recordation in the office of the County Recorder of Utah County, Utah, of a Plat of such Additional Land signed by the owner thereof and of a supplemental declaration ("Supplemental Declaration") which

1. is signed by the then owner(s) of such Additional Land as Declarant;
2. describe the land to be annexed;
3. declares that the annexed land is to be held, transferred, sold, conveyed, and occupied as part of the Property subject to this Declaration; and
4. sets forth such additional limitations, restrictions, easements, covenants, and conditions, not inconsistent with those of this Declaration, as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this declaration and any amendment or supplement thereto.

**C. LIMITATION ON ANNEXATION.** Declarant's right to annex land to the Development shall be subject to the following limitation:

1. The annexed land must be part of the Additional Land set forth and described herein;
2. Declarant shall not effectuate any annexation of land, which would cause the total number of Lots existing in the Development to exceed one hundred four (104);
3. The holder of each mortgage, deed of trust, or other security device affecting any part of the Additional Land being annexed into the Development must consent, through appropriate instruments recorded in Utah

County, Utah, to the recordation of the Supplemental Declaration and to the Plat to which such Supplemental Declaration related;

4. The final Plat for the portion of the Additional Land to be annexed shall have been approved by the Town Council;

5. The Additional Land added to the Development must be subdivided into Lots and Common Areas designed to be used for purposes similar to those contemplated by this Declaration, with all Units and Lots being similar in concept as that of such Units, Lots, and uses in Phase A of the Development, provided, however, that in each succeeding phase of the Development the architectural style of the Units within such phase must remain consistent throughout such succeeding phase and in harmony with that of prior phases;

6. All Common Areas covered by the Supplemental Declaration designed on the Plat related thereto shall be conveyed to the Association; and

7. Declarant's right to annex land to the Development shall expire ten (10) years after this Declaration is filed for record in the office of the County Recorder of Utah County, Utah.

**D. NO OBLIGATION TO ANNEX OR DEVELOP.** Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as described on page 1, and the land annexed thereto in accordance with the terms of this Article shall be deemed to be subject to this Declaration whether or not shown on any subdivision plat filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

**E. OTHER ANNEXATION.** Notwithstanding, anything herein to the contrary, to the extent that Declarant does not now or in the future may not own all of the Additional Land, the then owners of such Additional Land or parts thereof ("Adjoining Owners") may annex all or any part of the Additional Land to the Development and subject the same to the terms of this Declaration provided that:

1. The same limitations which are imposed on Declarant under B of this Paragraph VIII shall be applicable to Adjoining Owners; and

2. Adjoining Owners make the recordations and comply with all the other requirements referred to in this document.

## **VII. GENERAL PROVISIONS.**

**A. NOTICES.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to any officer or Director of the Association. Any notice required or permitted to be given to the Architectural control Committee may be given by delivering or mailing the same to any member of the Architectural Control Committee.

**B. INTEREST.** In the event any charge, cost, or other expense or monetary duty is not paid when due, then such amount shall bear interest at the highest rate allowed by law from the due date until paid.

**C. ENFORCEMENT.** The Declarant, the HOA Board of Directors, and each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by this Declaration, or any supplemental declaration. Any failure to enforce these covenants and restrictions shall not be deemed a waiver of the right to do so thereafter. Any violation of

these covenants shall not affect the lien of any mortgage or deed of trust of any secured party. Nothing herein shall authorize the Declarant, Board, or Owner to deny ingress and egress to or from a Lot by a Property Owner.

**D. BOARD OF DIRECTORS AUTHORITY AND ENFORCEMENT.** The HOA Board of Directors may make and enforce reasonable Rules and Regulations governing the use of the Property, which shall be consistent with these CC&Rs. Unless it is specifically otherwise stated in these CC&Rs, the Articles of Incorporation, or the Bylaws, that an action is required to be taken by the HOA as a whole, with Members voting thereon, the Board shall have the power to take all actions on behalf of the HOA.

**1. Fining and Suspension Procedure.** In addition to such other rights as are specifically granted under this Restated Declaration, the Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Lot of the violator, and to suspend an Owner's right to vote or any person's right to use the Common Areas for violation of any duty, restriction or covenant imposed under this Restated Declaration if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any rule or regulation imposed hereunder, and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of this Restated Declaration or any rule or regulation imposed hereunder shall not be deemed a waiver of the right of the Board to do so thereafter.

**2. Notice.** Prior to the imposition of any fine hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (1) the nature of the alleged violation, (2) the proposed fine to be imposed, and (3) a period of time (generally 3-30 days) within which the alleged violator may present a written request for a hearing to the Board; provided the Board may, but shall not be obligated to, suspend any proposed fine if the violation is cured within the time period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Owner. Fines may incur late charges if not paid by stated due dates, and if so indicated by the Board. However, compliance with this section shall not be required for the following: (A) late charges on delinquent assessments, or (B) suspension of voting rights if an Owner is shown on the HOA records to be more than thirty (30) days delinquent in any payment due the HOA, in which case suspension of the right to vote shall be automatic.

**3. Hearing.** If a hearing is requested within the allotted time period, the hearing shall be held before the Board or its delegate in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The decision of the Board or its delegate at such hearing shall be final.

**E. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS.** If an Owner defaults in making a payment of any assessment or in the performance or observance of any provision of the Governing Documents of the HOA and the HOA obtains the services of an attorney with respect to the default involved, the Owner shall pay to and reimburse the HOA for any and all reasonable costs, fees, and expenses, including attorneys fees incurred by the HOA regardless of whether (a) the matter is resolved without suit, (b) the matter is resolved after suit is filed but before judgment, or (c) suit is filed and judgment is obtained. The Owner shall reimburse the HOA for the costs of preparing and recording a notice and claim of lien regardless of whether an attorney is employed by the HOA for that purpose.

**F. EQUAL TREATMENT OF OWNERS.** These Rules and Regulations shall be applied to and enforced against all Owners in a similar fashion and without discrimination.

**G. INTERPRETATION OF THE COVENANTS.** Except for judicial construction, the HOA, through its Board shall have the exclusive right to construe and interpret the provisions of these CC&Rs. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the HOA 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.

**H. OWNERS' COMPLIANCE.** Each owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Articles, Bylaws, and decisions, resolutions, rules and regulations of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, resolutions, rules or regulations shall constitute the basis for an action to recover sums due for damages, or for injunctive relief, including reasonable attorneys' fees and all costs. All Agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or Bylaws shall be deemed to be binding on all owners of lots, their successors and assigns.

**I. SEVERABILITY.** Invalidation of any one or more of the provisions of these covenants and restrictions by judgment or court order shall in no way affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**J. AMENDMENTS.** Except as otherwise provided herein, the provisions of this Declaration may be amended by an instrument in writing signed and acknowledged by the holders of record title to at least 67% of the Lots subject to these restrictions, which amendment shall be effective upon recordation in the Office of the County Recorder of Utah County, Utah.

**K. EXCEPTION.** Notwithstanding J above, Declarant may (at Declarant's option) amend or modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Federal National Mortgage Association or other similar agency.

**L. DURATION.** These covenants, conditions, and restrictions shall be effective for a term of thirty years (30 yrs.) from the date this Declaration is recorded; provided, however, that all easements shall be perpetual. After the 30-year period, these covenants, conditions, and restrictions shall be automatically extended for successive periods of ten years (10 yrs.) each, unless terminated by written instruments signed by the Owners of at least two-thirds (2/3) of the lots comprising the Property.

**M. INTERPRETATION.** If this Declaration or any word, clause, sentence, paragraph, or other part thereof shall be susceptible to more than one or conflicting interpretations, then the interpretation that is most nearly in accordance with the general purposes and objectives of the Declaration shall govern.

#### **N. GENDER AND GRAMMAR**

- 1.** The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.
- 2.** The headings contained in this Declaration are for reference purpose only and shall not in any way affect the meaning or interpretation of this Declaration.
- 3.** In the event of conflict between the terms of the Declaration and any Bylaws, rules, regulations or Articles of Incorporation of the Association, this Declaration shall control.

Executed the 24<sup>th</sup> day of January, 2005.

Declarant: FOOTHILL DEVELOPMENT, INC.

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Thomas E. Sawyer  
President

Notary:

State of Utah  
County of Utah

On Jan. 24, 2005, personally before me  
appeared Thomas E. Sawyer, whose ID I proved  
on the basis of UTDL, to be the signer of  
the foregoing, and he acknowledged that he  
signed it.

Michelle Grimshaw  
Notary Public

