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**DECLARATION OF
COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
CANYON RIDGE**

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**PATSY CUTLER - IRON COUNTY RECORDER
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FOR
CANYON RIDGE**

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**DECLARATION OF
COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
CANYON RIDGE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made this 6 day of June, 2004 by NS Canyon Ridge, L.L.C., a Utah Limited Liability Company ("NS"), and the State of Utah, acting by and through the School and Institutional Trust Lands Administration ("SITLA").

RECITALS

A. SITLA manages certain state trust lands owned by the State of Utah, in Iron County, Utah, shown on the plat entitled, "Canyon Ridge" to be recorded with the Recorder's Office of Iron County, Utah, (the "Recorder's Office"), in Plat Book 937 No. 1576 (the "Property" as defined herein).

B. SITLA has leased the Property to NS pursuant to a Development Lease dated June __, 2004, as the same may be amended, supplemented or extended from time to time (the "Development Lease"), and with respect to which a Memorandum of Lease was recorded on _____, 2004, as Entry No. _____ in Book _____, beginning at page ____, in the official records of Iron County, Utah. Under the terms of the Development Lease, NS is entitled to develop residential lots on the lands and sell the lots to third-party purchasers. Pursuant to Section 5.11 of the Development Lease, SITLA further agreed to join with NS in the execution of Covenants, Conditions and Restrictions governing development and use of the Property.

C. It is the intention of NS, as SITLA's lessee, to develop the land subject to this Declaration as a residential community, and to insure a uniform plan and scheme of development, and unto that end NS and SITLA have adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To facilitate the sale by NS, its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.

(3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of NS and SITLA, the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.

(4) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces and common areas, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an association to be delegated and assigned the powers of maintaining and administering the Common Area (as hereinafter defined), and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created upon the Property designated by this Declaration or any Supplemental Declaration; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions mentioned herein.

NOW, THEREFORE, NS and SITLA do hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of, and to be observed and enforced by, the Declarant, its successors and assigns, the Association, as well as by all purchasers of Lots, to wit:

ARTICLE I **DEFINITIONS**

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "**Additional Property**" means any property that may be annexed to Canyon Ridge as provided in Article III below.

1.2 "**Architectural Review Committee**" or "**ARC**" means that committee constituted and acting pursuant to Article XII below.

1.3 "**Assessment**" means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of this Declaration, the Bylaws or applicable law.

1.4 "**Association**" means and refers to the Canyon Ridge Homeowners Association, Inc.

1.5 "**Builder**" means any person or entity other than the Declarant, which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.

1.6 "**Bylaws**" means the Bylaws of the Association and recorded simultaneously with this Declaration, as they may be amended from time to time.

1.7 "**Common Areas**" means:

(a) Those areas of land intended to be devoted to the common use and enjoyment of the Owners and designated as common area on any Plat of the Property, or in this Declaration or any supplemental declaration annexing Additional Property to Canyon Ridge as

provided in Section 3.1 below, including but not limited to roads, sidewalks, trails, parks and any improvements thereon. Excepting, however, areas deemed "open spaces" any on final Plat shall not be considered common areas if conveyed to a municipality.

(b) Any other real property or other facilities which the Association owns or in which the Association acquires a right of use for the benefit of the Association and its members.

1.8 "**Community**" means all of the land described in attached Exhibit A and any property annexed to this Declaration as provided in Article III below.

1.9 "**Community Wide Standard**" means the standard of conduct, maintenance, or other activity generally prevailing in the community, as defined by the Board of Directors from time to time.

1.10 "**Declarant**" means NS Canyon Ridge, L.L.C., and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof. The term Declarant shall include SITLA only to the extent specifically provided in Section 2.3.

1.11 "**Development Period**" means the time between the date of recordation of this Declaration with the Recorder's Office and the date on which the administrative control of the Association is turned over to the Owners. The Development Period shall be the earlier of seven (7) years from the recording of this Declaration or the date the Declarant has conveyed ninety-five percent (95%) of the total number of Lots to be added by Supplemental Declaration to Owners of the Association.

1.12 "**Improvements**" means every structure or improvement of any kind, including but not limited to landscaping required under Section 8.3 below and any Living Unit, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.13 "**Living Unit**" or "**Unit**" means a Lot or two or more contiguous Lots combined into one parcel with a structure situated upon it that is designated and intended for use and occupancy as a residency by a single family.

1.14 "**Lot**" or "**Lots**" "Lot" means a subdivided parcel, lot or plot of ground (exclusive of the Common Area) and designated by numerals on the Plat. "Lots" shall include both Townhouse Lots and Single Family Lots

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1.15 "**Mortgage**" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

1.16 "**Mortgagee**" means the person secured by a Mortgage.

1.17 "**Owner**" means the person or persons owning any Lot (including the holder of a vendee's interest under a land sale contract, unless otherwise stated in the contract), but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot (including the holder of a vendor's interest under a land sale contract, unless otherwise stated in the contract).

1.18 "**Plat**" means the plat entitled, "Canyon Ridge" to be recorded among the Recorder's Office of Iron County, Utah, and any plats recorded among the Recorder's Office in substitution therefore or amendment thereof, plus any amendment annexing Additional Property to Canyon Ridge as provided in Article III below.

1.19 "**Property**" means all of the real property described in attached Exhibit A , and any Additional Property annexed to Canyon Ridge as provided in Article III below.

1.20 "**SITLA**" means the State of Utah, acting through the School and Institutional Trust Lands Administration, and its successor and assigns as the holder of the rights of the Lessor pursuant to the Development Lease.

1.21 "**Turnover Meeting**" means the meeting at which the Declarant turns over administrative control of the Association to the Owners pursuant to Article X of this Declaration.

1.22 "**Single Family Lot**" means those Lots upon which there are constructed a single family detached dwelling.

1.23 "**Townhouse Lot**" means those Lots upon which there are constructed townhouse style or similar attached dwellings.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Description of Property.** The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Iron County, Utah, also known as "the Community," and is described on **Exhibit "A"** attached hereto, all of which real property is referred to herein as the "Property."

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2.2 **Declaration Subjecting Property to Covenants.** Declarant declares that all of the Property shall be owned, conveyed hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of the Association, and each Owner thereof.

2.3 **SITLA Joinder.** By executing this Declaration, SITLA joins in and consents to this Declaration subject to **Section 5.11(d)** of the Development Lease, for the purpose of subjecting the fee ownership interest in the Property to all of the terms, covenants, conditions, restrictions, easements, servitudes, and other provisions of this Declaration, subject to the limitations contained in **Section 2.4** of this Declaration. Any other provisions of this Declaration to the contrary notwithstanding, neither SITLA nor the State of Utah generally shall have no rights, obligations or liabilities as Declarant unless Declarant specifically assigns to SITLA, and SITLA specifically assumes, the rights and obligations of Declarant under this Declaration. Upon a termination of the Development Lease as to any lands within the Property, including any lands annexed thereto, SITLA shall have the right, but not the obligation, to succeed to the rights and obligations of Declarant by executing and recording an Assumption of Declarant's Rights and Obligations with the Iron County Recorder's Office, whereupon SITLA shall be entitled to exercise all rights of the Declarant under this Declaration, including, without limitation, the right to withdraw land from the Property pursuant to **Section 3.2** of this Declaration, and shall further be subject to all of the obligations of the Declarant under this Declaration. At such times as the Development Lease is in effect as to any portion of the Property and Declarant is the lessee of such portion of the Property, Declarant shall, solely for the purposes of this Declaration, be deemed the fee owner of such property for all purposes of this Declaration. At such time as Declarant is no longer the lessee of any portion of the Property, and SITLA is the fee owner of such portion of the Property, SITLA shall be deemed the Owner of such portion of the Property.

2.2 **SITLA Exemption.** Anything in this Declaration to the contrary notwithstanding, SITLA shall not be liable for and shall not be required to pay Assessments upon Lots or other lands owned by SITLA (regardless of whether or not SITLA is the "Owner" thereof, or the Declarant, as provided in **Section 2.3**) and Lots and other lands owned by SITLA shall not be subject to any assessment or other lien.

ARTICLE III EXPANSION OF COMMUNITY

3.1 **Additions to Property.**

(a) **Annexation of Additional Property.** The Declarant, its successors and assigns, after joinder by SITLA as provided in the Development Lease, shall, during the term of the Development Lease, have the unilateral right for seven (7) years from the date of the recording of this Declaration without the necessity for consent from the members of the Association, to bring the property described in attached **Exhibit B** within the scheme of this

Declaration as provided in this article. Notwithstanding the provisions of this subsection (a), the Declarant may add additional property to the plan of development not set forth in Exhibit B as provided in this subsection.

(b) Method of Annexation. All or any portion of the Additional Property may be annexed to the Community by the recording of a supplemental Declaration and plat for each phase in the Recorder's Office of Iron County, Utah. The supplemental declaration shall extend the scheme of the Declaration to the Additional Property. The described property shall thereupon become part of the Property. Upon the filing recording of a supplemental declaration and plat for a subsequent phase, Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property.

(c) Plan of Development. Any Additional Property annexed pursuant to this Article shall conform to the general plan of development as shown on the Plat, but the plan shall not bind the Declarant, its successors or assigns, to make the proposed additions, or to adhere to the plan in any subsequent development of the land shown thereon.

(d) Limitation on Number of Lots. There is no limitation on the number of Lots or Living Units which Declarant may create or annex to the Property or the number of phases by which Additional Property is annexed to the Property, except as may be established by applicable ordinances of Cedar City. Similarly, there is no limitation on the right of Declarant to annex common property, except as may be establish by Cedar City.

3.2 Withdrawal of Property.

(a) Prior to the Turnover Period, the Declarant may withdraw any property (excluding, however, any Common Areas conveyed to the Association by the Declarant) from the Property for a period of five (5) years from the date of recordation of this Declaration. Such withdrawn property shall no longer be subject to the covenants and restrictions of this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which burdens the withdrawn property for the benefit of any property which is subject to the Declaration. Such withdrawal shall be made by recording a Supplementary Declaration among the Land Records of the County, withdrawing the effect of the covenants and restrictions of this Declaration from the withdrawn property. Such withdrawn property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

(b) So long as any Lot is encumbered by a deed of trust or mortgage which is guaranteed by the Federal Housing Administration and/or Veterans Administration, as the case may be, no withdrawal shall be made pursuant to this Section, or otherwise, except following a determination by the Federal Housing Administration and/or Veterans Administration, that the withdrawal is not contrary to a general plan for the development of the Community previously approved by the Federal Housing Administration and/or Veterans Administration, or, if no such general plan was approved by the Federal Housing Administration and/or Veterans

Administration, except following the prior written approval of the Federal Housing Administration and/or Veterans Administration.

ARTICLE IV
PROPERTY RIGHTS IN LOTS

4.1 **Use and Occupancy.** Except as otherwise expressly provided in this Declaration, or the Bylaws, the Owner of a Lot (Single Family Lot and Townhouse Lot) shall be entitled to the exclusive use and benefit of such Lot. Each Lot shall be bound by and the Owner shall comply with the restrictions contained in Article VIII below and all other provisions of this Declaration and the Bylaws for the mutual benefit of the Owners.

4.2 **Restriction on Lot Division.** All Owners are prohibited from dividing any and all Lots subject to this Declaration unless expressly permitted, in writing, by the Architectural Review Committee.

4.3 **Easements Reserved.** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of Declarant, its successor and assigns, the Owners and the Association:

(a) **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to in Article XIII below and determining whether or not the Lot is in compliance with this Declaration and Bylaws. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. The right of entry granted by the subsection applies only to Lots upon which the Association has maintenance responsibilities as provided for in Article XIII or otherwise in this Declaration or any supplement thereto.

(b) **Utility Easements.** Declarant, its successors and assigns, the Association, or any public utility provider shall have an easement over all Lots for the installation, maintenance and development of utilities and drainage facilities. The easement area of each Lot and all Improvements therein shall be maintained continuously by the Owner of the Lot of the Association in accordance with Article XIII below, except for those improvements for which a public authority or utility provider is responsible.

4.4 **Easements Shown on the Plat.** Lots shall be subject to the easements shown on the Plat.

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4.5 **Easements for Golf Course.**

(a) Every Lot and Common Area which adjoins or abuts the golf course is burdened with an easement permitting golf balls unintentionally to come upon such adjoining Common Areas and Lots and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following persons or entities be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association, or its members (in their capacity as such); its successor or assigns, or any successor Declarant.

(b) The Properties immediately adjacent to the golf course are hereby burdened with a non-exclusive easement in favor of the Owner of such golf course for the overspray of water, materials used in connection with fertilization, and effluent from any irrigation system serving such course. The owner of the golf course may use treated effluent in the irrigation of the golf course. Under no circumstances shall the Association, the Declarant or the owner of the golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) The owner of the golf course, its respective agents, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Properties, for the installation, operation, maintenance, repair, replacement, monitoring and controlling of irrigations systems and equipment, including without limitation, wells, pumps and pipelines, serving all or portions of the golf course.

(d) The Properties are hereby burdened with easements in favor of the golf course for golf cart paths serving such golf course. Under no circumstances shall the Association or the owner of the golf course, or their respective agents, successors, or assigns, be held liable for any damage or injury resulting from the exercise of this easement.

(e) There is hereby established for the benefit of the owner of the golf course, its respective agents, successors and assigns, as well as its members, guests, invitees, employees and authorized users, a right and nonexclusive easement of access and use over all roadways located within the Properties and Common Area reasonably necessary to travel between the entrance to the Properties and the golf course.

ARTICLE V
PROPERTY AND USE RIGHTS IN COMMON AREA

5.1 **Title to Common Area.** Title to the Common Area shall be conveyed to the Association by the Declarant not later than the date the first Lot is conveyed to an Owner (other than the Declarant or a Builder) free and clear of all monetary encumbrances.

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5.2 **Member's Right of Enjoyment.**

(a) Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Area and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

(b) Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or topography of the area, or for aesthetic reasons.

(c) No portion of the Common Area may be used exclusively by any Owner or Owners for personal gardens, storage facilities or other private uses.

5.3 **Nuisance.** No noxious or offensive activity shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Community.

5.4 **Restrictions.** The right of each member of the Association to use the Common Area shall be subject to the following:

(a) Any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;

(b) The right of the Association, in accordance with its Articles of Incorporation this Declaration and Bylaws, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Area;

(c) The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure;

(d) The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration as provided in Article XIV below.

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(e) The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of the transferee or any relevant municipality; provided, however, that except no dedication, transfer, mortgage, or determination as to the purposes or as to the conditions thereof, shall be effective unless two-thirds (2/3) of the members (excluding the Declarant) of the Association consent to such dedication, transfer, purpose and conditions; and

(f) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.

(g) All of the foregoing rights specified in this section shall inure to the benefit of and be enforceable by the Association and the Declarant, or either of them, their respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, or enforce performance of any term, condition, provision, rule or regulation. Further, the Association and the Declarant shall each have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.

(h) The right of the Declarant to reconfigure the layout and design of the Common Area as the development plan may require.

5.5 **Delegation of Right of Use.** Any member of the Association may delegate its rights to the use and enjoyment of the Common Area to family members who reside permanently with such member and to its tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

5.6 **Compliance with Covenants and Restrictions and Rules and Regulations.** Each Owner shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Area. Further, each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area.

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ARTICLE VI
ENCROACHMENTS

6.1 **No Encroachments/Shifting/Settling.** No Lot shall encroach upon an adjoining Lot or the Common Area without the express written consent of the Architectural Review Committee. If, however, an encroachment occurs due to the settlement or shifting of a Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

6.2 **Conveyance of Lot and Easements.** The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

6.3 **Misconduct.** Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Plat.

ARTICLE VII
BUDGET, EXPENSES AND ASSESSMENTS

7.1 **Covenant for Assessment.**

(a) The Declarant for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

(1) Annual assessments (the "Annual Assessment") as provided in Section 7.2 below.

(2) Special assessments ("Special Assessments") as provided in Section 7.7 below.

(3) Emergency assessments ("Emergency Assessments") as provided in 7.10 below.

(4) Individual assessments ("Individual Assessments") as provided in Section 7.11 below.

(b) Assessments shall be established and collected as provided in this article.

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(c) No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member or by the abandonment of the member's right to the use and enjoyment of the Common Area.

7.2 **Annual Budget and Assessment.**

(a) **Adoption of Budget.**

(1) The Board of Directors shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Area and for the administration, management and operation of the Association. If Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

(2) If additional Lots are annexed to the Property as provided in Article III above, the Board of Directors may prepare a new budget reflecting the additional Lots and re-compute any previous assessment covering any period after the closing of the first Lot in the new phase in accordance with Section 7.18 below.

(b) **Determination of Annual Assessment.**

(1) The Board of Directors of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

(2) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

7.3 **Apportionment of Assessments.** Subject to Subsections (d) and (e) of this section, assessments shall be apportioned as follows:

(a) **Annual, Special and Emergency Assessments.** All Lots shall pay a pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots.

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(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefited or to which the expenses are attributable as provided in Section 7.11 below.

(c) Payment of Assessments. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

(d) Declarant and Builder Assessment Allowance. Neither the Declarant, nor a Builder, nor any Lot to which the Declarant or Builder holds record title, shall be exempt from any Assessment under this Article, except until the date specified in Section 7.9(a)(1)(B) below, the following allowance shall be made by the Association to the Declarant and Builder in each instance:

(1) Annual Assessments or Emergency Assessments made or levied against any Lot to which the Declarant or Builder hold record title shall equal twenty-five percent (25%) of the Annual Assessment or Emergency Assessment made or levied against any other Lot.

(2) In no event shall the Declarant or Builder pay less than twenty-five percent (25%) of the per Lot Annual Assessment or Emergency Assessment established by the Association under this article. Nothing in this article shall preclude the Declarant or Builder from electing to pay more than the minimum percentage specified in this subsection.

(e) Deferral of Payment of Assessment for Reserves. After the date a Use and Occupancy Permit is issued by the proper authorities of the City of Cedar City, Utah, for any Lot owned by Declarant or a Builder, the Declarant or Builder may elect to defer payment to the Association of that portion of the Annual Assessment or Emergency Assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot as provided in Section 7.9(c) below.

7.4 Lien. The Annual Assessment and all other Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VII and shall be construed as a real covenant running with the land.

7.5 Personal Obligation and Costs of Collection.

(a) Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board of Directors, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

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(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

7.6 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and including, but not limited to:

(a) The improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area;

(b) The payment of any taxes on the Common Area (except to the extent that proportionate shares of the public charges and assessments on the Common Area may be levied against all Lots by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots);

(c) The payment of insurance premiums on the Common Area;

(d) The costs of repair, replacement and additions to the Common Area and improvements thereon;

(e) The cost of obtaining, planting and thereafter maintaining street trees or other common area landscaping throughout the Community if required by Cedar City, whether or not such street trees or landscaping are located in the Common Area if required or deemed necessary by the Declarant or Board of Directors.

(f) The costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association;

(g) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws;

(h) The cost of maintenance, insurance and replacement of any playground equipment, trails, or lighting;

(i) Unless otherwise dedicated to Cedar City, the cost of maintaining, insuring and replacing the roads, parks, sidewalks of the Association;

(j) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements in accordance with Section 7.16 below; and;

(k) Any other items properly chargeable as an expense of the Association.

7.7 **Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of members of the Association other than the Declarant, voting in person or by proxy at a meeting duly called for such purpose and the written consent of Declarant until the Turnover Meeting and thereafter as long as Declarant owns at least one Lot.

7.8 **Notice and Quorum for any Action Authorized Under Section 7.7 and 7.10.**

(a) Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 7.7 and 7.10 of this article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of the members, other than the Declarant, entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum.

(b) If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.9 **Commencement and Due Date of Assessments.**

(a) **Commencement of Assessments.** All Lots subject to this Declaration shall be subject to assessment as provided in Section 7.1 above.

(1) Subject to Subsection (c) of this section, the full Annual Assessment or Emergency Assessment as to any Lot shall commence on the earlier of:

(A) The date the Lot is conveyed to any person or entity other than the Declarant or a Builder; or

(B) The date a Use and Occupancy Permit is issued by the proper authorities of Cedar City, Utah to the Declarant or a Builder.

(2) Until the date specified in Subsection (a)(1)(B) of this section, the Annual Assessment or Emergency Assessment as to any Lot owned by the Declarant or a Builder shall be as specified in Section 7.3(d) above.

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(b) Due Dates.

(1) The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by resolution of the Board of Directors, and shall be delinquent if not paid within thirty (30) days after the due date.

(2) The due date of any Special Assessment, Emergency Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

(c) Commencement of Assessment for Replacement Reserves.

(1) The portion of the Annual or Individual Assessments allocated for major maintenance and replacement reserves as described in Section 7.16 below shall commence to accrue upon the closing of the sale of the first Lot in the Community for which the reserve is established.

(2) After the date a Use and Occupancy Permit is issued by the proper authorities of the City of Cedar City, Utah, for any Lot owned by the Declarant or a Builder, the Declarant or Builder may elect to defer payment to the Association of that portion of the Annual Assessment or any Emergency Assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot. However, the Declarant or any Builder may not defer payment of accrued assessments for reserves beyond the Turnover Meeting or if the Turnover Meeting is not held, the date the Owners assume administrative control of the Association. The deferral shall not apply to the obligation of the Declarant or a Builder to pay regular operating expense assessments under Section 7.3 above.

(3) Declarant and any Builder shall deposit the balance due the Association within thirty (30) days after the date due specified in paragraph (2) of this subsection.

7.10 Emergency Assessments.

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

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

at least one Lot.

(c) Emergency Assessments shall be apportioned as provided in Section 7.3 above.

7.11 **Individual Assessments.**

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

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

(2) Expenses relating to the cost of maintenance, repair replacement and reserves of Townhouse Lots or otherwise not provided to single family Lots as may be specified in any supplemental Declaration annexing Townhouse Lots to the Property pursuant to Article III above.

(3) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot owners and the Association in general.

7.12 **Nonpayment of Assessments.** Any assessment or portion thereof not paid within thirty (30) days after the due date (which shall be established by resolution of the Board of Directors):

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board of Directors, not to exceed the maximum rate permitted by law, and

(b) Shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater; and

(c) If paid by installments, the assessment may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days' written notice to the Owner.

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7.13 **Subordination of Lien to Mortgages.**

(a) The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, nor from the lien of any future assessment.

7.14 **Enforcement of Lien.** The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provision of this Declaration, the Bylaws or any rules and regulations of the Association.

7.15 **Exempt Property.** The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created under this Declaration.

7.16 **Reserve Funds.**

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

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate, including for costs relating the maintenance, repair and replacement of Townhouse Lots.

(c) The proportional interest of any member of the Association in any reserve fund established under this section shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with the Lot.

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7.17 **Initial Capital Contribution.** At settlement for each Lot, an amount equal to two (2) months of the current monthly Assessment amount for that type of Lot shall be paid from each prospective member of the Association (other than the Declarant or a Builder), for the purpose of start-up expenses and operating contingencies. Such amount shall be in addition to any pro rata share of Assessments due and adjusted at settlement.

7.18 **Annexation of Additional Property.**

(a) When Additional Properties are annexed to the Community as provided in Article III above, the Lots shall become subject to assessment from the date of the annexation. Subject to Section 7.3(d), all newly annexed Lots shall pay Assessments in the amount then being paid by other Lots.

(b) The Board of Directors, at its option, may elect to re-compute the budget based upon the additional Lots subject to assessment and re-compute Annual Assessments of all Lots, including the new Lots, for the balance of the fiscal year.

7.19 **Certificate of Assessment.** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by resolution of the Board, may be levied in advance by the Association for each certificate so delivered.

ARTICLE VIII
ARCHITECTURAL CONTROL PROVISIONS

8.1 **Living Units on Lots.** Not more than one (1) Living Unit may be located on any Lot. Lots 15 through 23, 25, 26, 57 and 58, however, shall be limited to no more than a single story home as provided in subsection (i) below.

8.2 **Improvements.**

(a) **Completion of Improvements.** Unless extended by the Board of Directors, construction of all Improvements, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, the periods specified in this section may be extended for a reasonable length of time upon written approval from the Board of Directors of the Association. The building areas shall be kept reasonably clean and in workmanlike order during the construction period. All construction activities shall conform to any construction rules that may be adopted by resolution from time to time by the Board of Directors.

(b) **Construction Materials.** All construction shall be conducted with new building materials excepting brick used for building fascia but only if approved by the

Architectural Review Committee.

(c) Front Lawn and Landscaping. The area within the front of a dwelling shall be kept only for ornamental or decorative planting of grass, trees, shrubbery or rock landscaping materials. All front and side yards must be landscaped within nine (9) months after the dwelling is occupied. Rear yards shall be landscaped within twelve (12) months of occupancy of the dwelling. Landscaping for the Lots includes maintenance between the curb and sidewalk.

(d) Minimum Square Footage. The ground floor area of a Single Family Lot Living Unit, exclusive of open porches and garages, shall not be less than 1,700 square feet for a one story Living Unit or less than 1,400 square feet on the main floor for a two story Living Unit. Additionally, any two story Living Unit shall have a minimum floor area of 2,000 square feet above ground.

(e) Setbacks. There shall be a 25 foot setback from the front of each Lot; a 30 foot setback from the back of each Lot; and a 10 foot setback on the side of each Lot. However, there shall be a 15 foot setback from the side of any corner Lot where the side of said Lot abuts a street.

(f) Roofing Materials. All Living Unit roofing materials shall consist of either: slate, tile, masonry, or asphalt shingles of at least 300 pounds per hundred square feet.

(g) Roof Pitches. Pitches must be a minimum of a 5/12 roof pitch (or steeper) except in areas of 100 square feet or less as approved by the Architectural Review Committee.

(h) Garages. Each Living Unit shall have an enclosed private garage for not less than two (2) automobiles which shall be attached to the Living Unit.

(i) Carports. Carports are not permitted.

(j) No Temporary or Prefab Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot. No prefabricated housing or pre-built housing may be installed or maintained on any Lot. All dwellings shall be stick built, on-site construction.

(k) Front and Rear Exteriors. The front exterior to each and every Living Unit shall consist of at least eighty percent (80%) masonry, stucco or EFIS-like product. Any rear exterior of a Living Unit that faces the golf course or any park area shall also consist of at least 80% masonry, stucco or EFIS-like product. No vinyl or masonite siding is permitted on any exterior of any Living Unit. No log or log type, or simulated log siding or exterior materials are allowed.

(l) Lots Limited to Single Story. Notwithstanding anything to the contrary, Living Units located on Lots 15 through 23, 25, 26, 57 and 58 shall be limited to a single story

home.

(m) Lot Drainage, Sprinkler and Downspout Placement. Downspouts shall direct water at least 8 feet away from the Living Unit's foundation. The Architectural Review Committee, or the Board, may require the use of specific sprinkler heads and direct sprinkler location in order to minimize the amount of incidental water that would otherwise make contact with the Living Unit and/or foundation.

(n) Aesthetic Considerations for Mechanical Equipment. All exterior mechanical equipment, including but not limited to, air conditioning equipment, exterior heating equipment, and pool equipment, shall, to the extent practical, be blocked from view and sight by shrubbery or other plantings in order to preserve the aesthetic appearance of the Property and Community and to minimize disturbing noise.

(o) Lines and Cables. All cable, television, electrical lines or other cables and lines of a similar nature must be located underground or within the interior of the Living Units. No overhead hanging wires, lines or cables are permitted on the exterior of the structures.

(p) Driveways. Driveways must be hard surface concrete, concrete aggregate, asphalt, brick or pavers. No loose materials such as gravel, sand or dirt are permitted.

8.3 Landscaping. That portion of the Lot which is visible from a street shall be landscaped in accordance with a plan (including a specified date of completion) approved by the ARC as required under Article XII below.

8.4 Temporary Structures.

(a) Subject to Subsection (b) of this section, except with the consent of the Board of Directors, no structure of a temporary character, trailer, recreational vehicle, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

(b) Builders may place or erect temporary or portable sheds for storage in connection with construction, so long as such sheds are maintained in a good condition and removed no later than the date of completion of construction on such Lot.

ARTICLE IX
RESTRICTIONS ON USE

9.1 Restrictions and Requirements. The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws:

(a) Residential Use. Lots shall be used for residential purposes in accordance

with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted on any Lot or in any other portion of the Planned Community without the written consent of the Board of Directors pursuant to rules and regulations adopted under Section 9.2 below. Nothing in this section shall be construed so as to prevent or prohibit:

(1) Activities relating to the rental or sale of Lots or Living Units;

(2) An Owner from maintaining his or her professional personal library; keeping his or her personal business or professional records or accounts; handling his or her personal business or professional telephone calls; or conferring with business or professional associates, clients, or customers, in such Owner's Living Unit; or

(3) The right of Declarant, its successors and assigns or any contractor or homebuilder to construct a Living Unit on any Lot and to store construction materials and equipment on such Lots in the normal course of construction in accordance with the other provisions of this Declaration.

(b) Drainage System. There shall be no interference with the established drainage patterns or systems over or through any Lot so as to affect any other Lot or Common Property or any real property outside the Property unless adequate alternative provision is made for proper drainage and is approved by the ARC as required under Article XII below. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets designed and constructed for the Property.

(c) Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of car parts and appliances, or activities shall be permitted on any Lot or other portion of the Property, nor shall anything be done in or placed upon any Lot which interferes with or jeopardizes the enjoyment of other Lots or the Common Property or which is a source of annoyance to residents.

(d) Unlawful Activities. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

(e) Animals.

(1) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Lot, except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog or cat must keep such dog or cat on a leash or keep it confined within the Lot and no cat or dog shall be allowed to run free in the Planned Community.

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(2) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from other Lots or the Common Property.

(3) An Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given pursuant to a resolution relating to rules and regulations governing pets within the Planned Community and enforcement of such rules and regulations and provisions of this subsection.

(f) Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

(g) Vehicles in Disrepair.

(1) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the other Lots.

(2) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board of Directors, the Board may have such vehicle removed from the Property and assess the Owner the expense of such removal and any storage necessitated thereby.

(h) Fences and Hedges. No fences or boundary hedges shall be installed by an Owner without the prior written approval of the Architectural Review Committee in accordance with Article XII below. The Architectural Review Committee, with the approval of the Board of Directors, may establish a common fencing and hedge standard to be applied to all Lots.

(i) Parking of Automobiles and Other Vehicles.

(1) Except as otherwise provided in this subsection, parking of boats, trailers, commercial vehicles, motorcycles, commercial trucks, truck campers, motor homes, golf carts and like vehicles and equipment and the parking of automobiles shall be allowed only within the confines of a garage, unless written approval has been given by the Board of Directors. No portion of such vehicle or equipment or automobile may project beyond the enclosed garage area. All other parking of such automobiles, vehicles and equipment shall be

prohibited. As used in this subsection, "automobile" means a small truck or car, sports utility vehicle, van and other similar passenger vehicles.

(2) No parking is permitted on any street within Canyon Ridge.

(3) The Board of Directors shall adopt rules pursuant to Section 9.2 below to govern the enforcement of this subsection which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of this subsection and the cost of any storage thereof.

(j) Basketball Standards. No permanent basketball standards are permitted to be located in or on the front of any Lot or Living Unit.

(k) Clothes Lines and Clothing and Materials. No clothes lines, clothes racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Property except within a Living Unit, unless in an area screened from public view. No garments, rags, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Living Unit unless in an area screened from public view.

(l) Yard Areas. No items of any kind may be stored in front yard areas or other areas of Lots so as to be visible from public view. In order to preserve the attractive appearance of the Property, the Board of Directors, pursuant to rules and regulations adopted under Section 8.2 below, may regulate the nature of items which may be placed in front yard areas and others areas of Lots so as to be visible from public view.

(m) Signs. Unless written approval is first obtained from the Board of Directors, no advertisement or poster of any kind may be posted in or upon the Properties except:

(1) Not more than one (1) "For Sale" or "For Rent" sign, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long, may be temporarily placed on a Lot by the Owner, resident or a licensed real estate agent;

(2) "Political" signs may be temporarily placed on a Lot by the Owner or occupant of the Lot; and

(3) Signs may be placed on the Property by Declarant pursuant to Section 10.2 below.

(n) Antennas and Service Facilities. Exterior antennas and satellite dishes shall not be permitted to be placed upon the exterior of a dwelling that is visible from any street or from the adjacent golf course. No exterior antennas other than satellite dishes less than 36" in diameter are permitted but the location thereof is subject to ARC approval.

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(o) Noise Disturbance. Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

(p) Leasing and Rental of Living Units. Other than provided in this subsection, there is no restriction on the right of an Owner to lease or rent such Owner's Lot.

(1) Except with respect to any Townhouse Lot, no Owner shall lease or rent less than his or her entire Living Unit and no Owner shall rent such Owner's Living Unit for transient or hotel purposes, or for a period of less than thirty (30) consecutive days. No Lot or Living Unit thereon may be used as a boarding home, a group homes, or as a care facility. Each Living Unit shall only be occupied by a single family.

(2) All leases or rentals shall be by written lease agreement, which shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association, and that any failure by the lessee or tenant to comply with the terms of such documents shall be a default under the lease. The Owner shall provide the lessee or tenant a copy of this Declaration, the Bylaws, including any relevant amendments to such documents, and all rules and regulations adopted by the Association.

(3) Upon the commencement of the lease period, the Owner shall provide the Association written notice of such lease and that the lessee or tenant has been provided with copies by the Owner of this Declaration, the Bylaws, any relevant amendments thereto, and all rules and regulation adopted by Association. If the Owner shall fail to provide the tenant with copies of the documents specified herein, the Association shall provide such documents to the lessee or tenant and charge the copy expenses to the Owner as part of the Owner's assessments.

(4) If the Board of Directors finds that a lessee or tenant has violated any provisions of this Declaration, the Bylaws or the rules and regulations, the Board of Directors may require that the Owner terminate such lease or rental agreement.

(q) Increase in Insurance Cost. Nothing shall be done or kept within any Lot or the Common Property which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Lot or in the Common Property which will result in cancellation of insurance on any Lot or any part of the Common Property.

9.2 Association Rules and Regulations. In addition to the restrictions and requirements in Section 9.1 above, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation and use of the Lots, and Common Property as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property.

ARTICLE X
DECLARANT RIGHTS AND CONTROL

10.1 **Administrative Control of Association.** Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting. The Turnover Meeting shall be held within ninety (90) days of the earlier of the following:

- (a) Seven years from the recording of this Declaration; or
- (b) The Declarant having conveyed ninety-five percent (95%) of the total number of Lots to be developed upon the Property or any Additional Property pursuant to Article III above.

Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

10.2 **Other Rights.** In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least five (5) Lots within the Property or any Additional Property, Declarant:

(a) **Sales Office and Model.** Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) **"For Sale Signs."** May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Property, including without limitation, the Common Property.

(c) **Approval of Amendments.** Consistent with Section 17.1(b), for so long as the Declarant owns at least one Lot within the Property or any Additional Property, Declarant shall have the right to approve all amendments to the Declaration or Bylaws of the Association proposed by the members.

10.3 **Easements Reserved to Declarant.**

(a) There is reserved to the Declarant, its successors and assigns, of a non-exclusive easement and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road or Common Area on the Property, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

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(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes.

(d) The reservation to Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services, and related services and facilities.

(e) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or as shown on the Plat.

(f) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Architectural Review Committee.

(g) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

(h) Declarant further reserves unto itself, for itself and any Builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use

any and all portions of the Property other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association, for all purposes necessary or appropriate to the full and final completion of construction of the Community.

The Declarant will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

ARTICLE XI ASSOCIATION

11.1 Organization.

(a) The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah (Utah Code Annotate Titled 16). The name of the association is "Canyon Ridge Homeowners Association Inc."

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

(c) The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

11.2 **Membership; Board of Directors.** Each Owner during the entire period of Owner's ownership of one or more Lots within the Community shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

11.3 **Voting Rights.** Voting rights within the Association shall be allocated as follows:

(a) **Lots.** Subject to any rights granted to Declarant during the period of Declarant control expressed Article X above, each Owner (whether of a Single Family Lot or a Townhouse Lot) shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

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(b) Method of Voting. The method of voting shall be as provided in the Bylaws.

11.4 Powers, Duties and Obligations. The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers.

11.5 Adoption of Bylaws, Appointment of Interim Board of Directors. The Association has adopted Bylaws for the Association which are being recorded simultaneously with this Declaration. Declarant has appointed an interim Board of Directors of the Association, which directors shall serve until their successors have been elected at the Turnover Meeting as provided in Article X above.

11.6 Townhome Association. Nothing in this Declaration shall be construed as prohibiting the formation of a separate Townhome Association within Canyon Ridge. Said Association having all of the necessary powers, rights and responsibilities to operate the common and unique needs of townhome ownership.

ARTICLE XII **ARCHITECTURAL REVIEW COMMITTEE**

12.1 Architectural Review.

(a) No Improvement, including out buildings, shall be commenced, erected, placed or altered on any Lot until an application and construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of Improvements or changes have been submitted to and approved in writing by the Architectural Review Committee ("ARC") as provided in this article. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of exterior design with the existing improvements and landscaping and as to location with respect to topography and finished grade elevation.

(b) In all cases in which approval of the ARC is required by this Declaration or the Bylaws, the provisions of this article shall apply.

(c) Consistent with Section 8.2(1), the ARC may require the use of specific sprinkler heads and direct sprinkler location in order to minimize the amount of incidental water that would otherwise make contact with the Living Unit and/or foundation.

12.2 Membership, Appointment and Removal. The initial Architectural Review Committee shall be comprised of Declarant or any persons or entities appointed by the Declarant as it determines. After the Turnover Meeting described in Article X above, or at an earlier date if Declarant so elects, the committee shall consist of no fewer than three (3) members and no more

than five (5) members. The terms of office for each member of the ARC shall be for one (1) year unless lengthened or shortened by the Board of Directors at the time of appointment. The Board may appoint any or all of its members for the ARC and there shall be no requirement for non-Board members to serve on the ARC.

12.3 **Architectural Standards and Guidelines.**

(a) **Adoption.** The procedure and specific requirements for review and approval of an application required under Section 12.1 above shall be set forth in design guidelines and standards ("Architectural Standards and Guidelines") adopted from time to time by resolution of the Board of Directors at its sole discretion. All such guidelines must be in accordance with the Building Codes of the City of Cedar City and of Iron County, Utah.

(b) **Building Code.** All homes shall be built in accordance with both the Guidelines mentioned above and the Building Codes of the City of Cedar City and of Iron County, Utah.

(c) **Provisions.** The Architectural Standards and Guidelines shall interpret and implement the provisions of this Declaration and the Bylaws for architectural review and guidelines for architectural design of Living Units and other Improvements, including, but not limited to, decks, porches, awnings, carports, garages, and storage structures, color schemes, exterior finishes and materials and similar features which may be used on the Property and landscaping; however, Architectural Standards and Guidelines may not be in derogation of the minimum standards established by this Declaration and the Bylaws.

12.4 **Majority Action.** A majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ARC. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto.

12.5 **Duties.** The ARC shall consider and act upon the proposals or plans submitted pursuant to this article.

12.6 **ARC Decision.** The ARC shall render its approval or denial decision with respect to the proposal within thirty (30) business days after it has received all material required by it with respect to the application. All decisions shall be in writing. If the ARC fails to render its decision of approval or denial in writing within such thirty (30) business days of receiving all material required by it with respect to the proposal, the application shall be deemed approved.

12.7 **ARC Discretion.** The ARC may, at its sole discretion, withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Lot or incompatible with the Architectural Standards and Guidelines. Considerations such as siting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Lots or Common Area, and any other factors which the ARC reasonably believe to be relevant, may be

taken into consideration by the ARC in determining whether or not to approve any proposal.

12.8 **Nonwaiver, Precedent and Estoppel.** Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

12.9 **Appeal.**

(a) After the Turnover Meeting, or any earlier date that Declarant may designate by written notice to the Association, any Owner adversely impacted by action of the ARC may appeal such action to the Board of Directors.

(b) Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board of Directors within twenty (20) days after receipt of such appeal. The determination of the Board shall be final.

12.10 **Effective Period of Consent.** The ARC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

12.11 **Determination and Notice of Compliance.**

(a) **Inspection.** The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

(b) **Notice of Noncompliance.** If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date.

12.12 **Noncompliance.**

(a) **Notice of Hearing.** If after receipt of a notice of noncompliance pursuant to Section 12.11 above, the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, at the expiration of the third (3rd) day from the date of such receipt of notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not less than seven (7) or more than thirty (30) days from receipt of the notice of noncompliance.

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(b) Hearing. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it and may fine the Owner for such noncompliance. After such determination, the ARC shall require the Owner to remedy or remove the same within a period the ARC determines reasonable.

(c) Continued Noncompliance. If the Owner does not comply with the ARC's ruling within the specified period or within any extension of such period as the ARC, at its discretion, may grant, the ARC may either remove the non-complying improvement or otherwise remedy the noncompliance. The cost of any such action shall be assessed against the Owner either before or after any remedied action as provided in Article VI of the Bylaws.

12.13 Liability. Neither the ARC nor any member thereof shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

12.14 Estoppel Certificate.

(a) Within fifteen (15) business days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the chairman, or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that as of the date thereof either:

(1) All improvements made or done upon or within such Lot by the Owner that are subject to the requirements of this article comply with the Declaration and the Bylaws; or

(2) Such improvements do not comply, in which event, the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between and among Declarant, the ARC, the Association and all Owners and such persons deriving any interest through any of them.

12.15 Fees. There shall be an application fee in the amount of \$250.00 for any new construction upon a Lot. There shall also be a \$100.00 application fee for all other Improvements other than the construction of new Living Unit. In addition to any fees set forth herein, the ARC may charge a reasonable application fee and charge applicants additional costs

incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ARC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee schedule shall be adopted by Board resolution and shall be collectible as assessments pursuant to this Declaration and the Bylaws.

ARTICLE XIII
ASSOCIATION AND OWNER MAINTENANCE OBLIGATIONS

13.1 **Common Area**. The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area (including, without limitation, snow removal in the private courts for Townhouse Lots)

13.2 **Single Family Lots**.

(a) **Owner's Responsibility**. All maintenance of the Single Family Lots and all structures, landscaping and areas from the curb line to the rear property line, and all other Improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in accordance with the Community Wide Standards of the Association, said Standard to be adopted by the Board of Directors, by and through the ARC, as deemed necessary.

(b) **Maintenance by Association**. The Board of Directors may assume the maintenance responsibility over a Single Family Lot if, in the opinion of the Board of Directors, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall notice the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with thirty (30) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall be levied and collected in the same manner as assessments pursuant to this Declaration and the Bylaws.

13.3 **Townhouse Lots**. In the event that Living Units are constructed upon Townhouse Lots, the respective maintenance responsibilities of the Townhouse Lot Owners and the Association, including any necessary party wall provisions, shall be set forth in the Supplemental Declaration that adds such Townhouse Lots to the Property.

ARTICLE XIV
COMPLIANCE AND ENFORCEMENT

14.1 **Compliance**. Each Owner, tenant or occupant of a Living Unit shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner.

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14.2 **Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do, any or all of the following after giving notice and an opportunity to be heard:

(a) Subject to Article XII above, to enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors a copy of which has been delivered to each Owner, mailed to the mailing address of Lot or mailed to the mailing address designated by the Owner in writing to the Association;

(d) To terminate the right to receive utility services paid for out of assessments or, except for the right to an assigned parking space, to terminate the right of access to and use of recreational and service facilities of the Association, until the correction of the violation has occurred; or

(e) To suspend an Owner's voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration.

(f) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto.

14.3 **Action by Owners.** Subject to any limitation imposed under this Declaration, the Bylaw or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

14.4 **Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

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14.5 **Notification of First Mortgagee.** The Board of Directors shall notify in writing any first Mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

ARTICLE XV
INSURANCE

15.1 **Types of Insurance Maintained by the Association.** The Association shall obtain the following types of insurance:

(a) Insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction;

(b) A public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a Five Hundred Thousand Dollar (\$500,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(c) Workers' compensation insurance, if and to the extent required by law;
and

(d) Fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

15.2 **Premiums for Insurance Maintained by Association.** Premiums for all insurance and bonds required to be carried under Section 16.1 hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the Annual Assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

15.3 **Damage and Destruction of Common Area.**

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

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(b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with Subsection (b) of this section, the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

15.4 **Repair and Reconstruction of Common Area.** If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

15.5 **Hazard Insurance on Improved Lots.** Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

15.6 **Obligation of Lot Owner to Repair and Restore.**

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by Section 15.5 above of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the

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Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand from the Association, the Association may establish a lien upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

15.7 **Insurance of Townhouse Lots and Townhouse Living Units**. Notwithstanding anything above to the contrary, the Association may be required to provide insurance on the Living Units constructed upon any Townhouse Lot. Such insurance requirement shall be set forth in any Supplemental Declaration adding a Townhouse Lot to the Property.

ARTICLE XVI
AMENDMENT AND DURATION

16.1 **Amendments**.

(a) **How Proposed**. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) **Approval Required**. Except as otherwise provided in Subsections (c) and (e) of this section or by other provisions of this Declaration, this Declaration may be amended if such amendment is approved by Owners holding sixty-seven percent (67%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Property or any of the Additional Property, any and all amendments proposed pursuant to this Section must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) **Additional Approval Requirements**.

(1) No amendment may create, limit or diminish any special Declarant rights, change the boundary of any Lot or uses to which any Lot or Dwelling is restricted under Section 9.1(a)(1) above, change the method of determining liability for common expenses or right to common profit, or voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment.

(d) **Execution and Recordation**. An amendment shall not be effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the Recorder's Office of Iron County, Utah.

(e) Corrections and Regulatory Amendments. Notwithstanding the provisions of Subsections (b) and (c) of this section and any other provision of this Declaration, and in addition to all other special rights of the Declarant provided in this Declaration and the Bylaws, Declarant shall have the unilateral right (without the approval of the general membership or joinder by the Association, Owners, Mortgagee or other person) to amend this Declaration in order to:

(1) Correct obvious typographical, mathematical or similar errors.

(2) Comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Utah, Iron County, Cedar City, or any corporation wholly owned, directly or indirectly, by the United States, the State of Utah, Iron County or Cedar City which insures, guarantees or provides financing for a community such as Cougar Ridge or Lots in such a community.

16.2 Duration.

(a) Period. This Declaration perpetually shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof for an initial period of thirty (30) years commencing with the date on which this Declaration is recorded. Subject to Subsection (b) of this section, thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all time with respect to all property within the Property and the Owners thereof for successive additional period of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever.

(b) Termination. This Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning not less than seventy-five percent (75%) of the voting rights in the Association.

(c) Execution and Recording of Termination Certificate. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Recorder's Office of Iron County, Utah not less than six (6) months prior to the intended termination date.

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ARTICLE XVII
RIGHTS OF MORTGAGEES

17.1 **Approval Required.** In addition to any other approvals required by the this Declaration, or the Bylaws, subject to any special Declarant rights, the prior written approval of fifty-one percent (51%) of the holders of first Mortgages of Lots in the Community (based upon one vote for each Mortgage owned) must be obtained for the following:

(a) The abandonment, termination, or removal of the Property from the provisions of this Declaration, except when provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) The partition or subdivision of the Common Property;

(c) Any material amendment to this Declaration or the Bylaws. Except for an amendment to the Declaration or Bylaw if its purpose is to correct technical errors or to clarify, a change to the following would be considered as material:

- (1) Voting rights;
- (2) Assessments, assessment liens, or the priority of assessment liens;
- (3) Reserves for maintenance, repair, and replacement of Common Property;
- (4) Responsibility for maintenance and repairs;
- (5) Rights to use of Common Property;
- (6) Redefinition of any Lot boundaries;
- (7) Convertibility of Lots into Common Property or vice versa;
- (8) Expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
- (9) Insurance or fidelity bond;
- (10) Imposition of any restrictions on the Leasing of Lots;
- (11) Imposition of any restrictions on a Owner's right to sell or transfer his or her Lot;

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(12) A decision by the Association to establish self-management when professional management had been required previously by the project's documents or by an eligible mortgage holder;

(13) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws;

(14) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or

(15) Any provisions that expressly benefit mortgage holders, insurers, or guarantors;

(d) Abandonment, encumbrance, sale, or transfer of the Common Property. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Property by the Planned Community shall not be deemed a transfer within the meaning of this clause; or

(e) Use of hazard insurance proceeds for losses to any Planned Community property, whether to Lots or to Common Property, for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Lots and/or Common Property.

17.2 **Additional Rights.** In addition to the approvals required in Section 17.1 above, each mortgagee (or beneficiary of a trust deed or vendor and including guarantors) shall have the following rights:

(a) **Right to Examine Books and Records.** All mortgagees shall have the right to examine the books and records of the Association or the Planned Community property upon reasonable notice and at reasonable times.

(b) **Right to Annual Reports.** All mortgagees shall, upon request, be entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

(c) **Right to Receive Written Notice of Meetings.** The Association shall give all mortgagees, upon request, written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings.

(d) **Notice in Event of Loss or a Taking.** The Association shall give all mortgagees written notice of any loss to, or taking of, the Common Property of the Planned Community project, or a Lot in the Planned Community project if such loss or taking exceeds \$10,000 with respect to the Common Property, or \$1,000 with respect to any Lot.

(e) Merge with Successor Planned Community Regime. The Planned Community may not be amended or merged with a successor planned community regime without prior written approval of the Secretary for the Department of Veteran's Affairs.

17.3 Request for Approval of Mortgagees. Any mortgagee that receives a written request to approve amendments to the Declaration or Bylaws, or any other action to be taken by the Board of Directors, the Association or Owners, shall be considered to have given such approval unless such mortgagee delivers or posts a negative response within thirty (30) days after receipt of such request.

ARTICLE XVIII

MISCELLANEOUS PROVISIONS

18.1 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

18.2 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

18.3 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

18.4 Nonwaiver. Failure by Declarant, the Association, or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

18.5 **Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant, Association or Owner as to any similar matter.

18.6 **Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

IN WITNESS WHEREOF, NS Canyon Ridge, LLC and SITLA have executed this Declaration this _____ day of _____, 2004.

NS CANYON RIDGE, LLC:

By: _____

Its: _____

**THE STATE OF UTAH, acting by and through
the School and Institutional Trust Lands
Administration ("SITLA")**

By: _____

Its: _____

00487260 Bk00937 Pg01623

STATE OF UTAH)
)ss:
County of)

The foregoing instrument was acknowledged before me on this ____ day of _____,
2004 by _____ and _____, President and
Secretary, respectively, of NS Canyon Ridge, LLC.

Notary Public for Utah
My Commission Expires:

STATE OF UTAH)
)ss:
County of)

The foregoing instrument was acknowledged before me on this ____ day of _____,
2004 by _____ the _____ of the State of Utah,
School and Institutional Trust Lands Administration.

Notary Public for Utah
My Commission Expires:

00487260 Bk00937 Pg01624

18.5 **Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant, Association or Owner as to any similar matter.

18.6 **Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

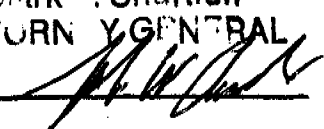
IN WITNESS WHEREOF, NS Canyon Ridge, LLC and SITLA have executed this Declaration this _____ day of _____, 2004.

NS CANYON RIDGE, LLC:

By: _____

Its: _____

THE STATE OF UTAH, acting by and through
the School and Institutional Trust Lands
Administration ("SITLA")

Approved as to Form
Mark . Shurtleff
ATTORNEY GENERAL
By: 

By: 

Its: Director

00487260 Bk00937 Pg01625

STATE OF UTAH)
)ss:
County of)

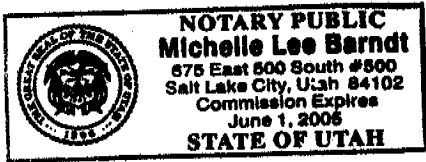
The foregoing instrument was acknowledged before me on this ___ day of _____, 2004 by _____ and _____, President and Secretary, respectively, of NS Canyon Ridge, LLC.

Notary Public for Utah
My Commission Expires:

STATE OF UTAH)
)ss:
County of)

The foregoing instrument was acknowledged before me on this 12th day of July, 2004 by Kevin S. Weller the Director of the State of Utah, School and Institutional Trust Lands Administration.

Michelle Lee Barndt
Notary Public for Utah
My Commission Expires:



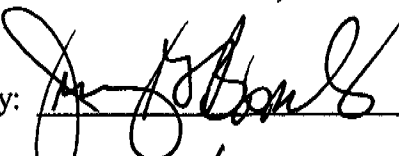
00487260 Bk00937 Pg01626

18.5 **Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant, Association or Owner as to any similar matter.

18.6 **Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

IN WITNESS WHEREOF, NS Canyon Ridge, LLC and SITLA have executed this Declaration this 22 day of July, 2004.

NS CANYON RIDGE, LLC:

By: 
Its: Secretary

THE STATE OF UTAH, acting by and through
the School and Institutional Trust Lands
Administration ("SITLA")

By: _____

Its: _____

00487260 Bk00937 Pg01627

STATE OF NEBRASKA)
)ss:
County of Douglas)

The foregoing instrument was acknowledged before me on this 6 day of July,
2004 by Jerry J. Barkz, Secretary, of NS Canyon Ridge, LLC.

Notary Public for Nebraska
My Commission Expires:



STATE OF UTAH)
)ss:
County of)

The foregoing instrument was acknowledged before me on this ___ day of _____,
2004 by _____ the _____ of the State of Utah,
School and Institutional Trust Lands Administration.

Notary Public for Utah
My Commission Expires:

00487260 Bk00937 Pg01628

EXHIBIT "A"

LEGAL DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF SECTION 2, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE S00°04'33"E, ALONG THE SECTION LINE 1670.41 FEET; THENCE N90°00'00"W, 532.80 FEET TO THE POINT OF BEGINNING; THENCE S09°13'37"E, 156.88 FEET; THENCE S57°48'05"W, 230.09 FEET; THENCE S07°14'21"W, 736.84 FEET; THENCE N78°44'36"W, 563.80 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1022.00 FEET, AND A CENTRAL ANGLE OF 11°47'13". RADIUS POINT BEARS N68°40'45"W. THENCE SOUTHWESTERLY ALONG SAID CURVE 210.25 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 228.00 FEET AND A CENTRAL ANGLE OF 20°24'06"; THENCE SOUTHWESTERLY ALONG SAID CURVE 81.19 FEET TO A POINT OF COMPOUND CURVATURE HAVING A RADIUS OF 100.00 FEET AND A CENTRAL ANGLE OF 35°00'34"; THENCE SOUTHERLY ALONG SAID CURVE 61.10 FEET; THENCE S22°18'13"E, 13.12 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 119.50 FEET AND A CENTRAL ANGLE OF 29°14'46"; THENCE SOUTHEASTERLY ALONG SAID CURVE 61.00 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 73.00 FEET AND A CENTRAL ANGLE OF 00°26'37"; THENCE SOUTHEASTERLY ALONG SAID CURVE 0.57 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 60.50 FEET AND A CENTRAL ANGLE OF 50°10'29"; THENCE EASTERLY ALONG SAID CURVE 52.98 FEET; THENCE N78°43'09"E, 54.44 FEET TO A POINT LOCATED ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 2; THENCE S00°08'24"E, ALONG SAID LINE 57.08 FEET; THENCE DEPARTING SAID LINE AND RUNNING S78°43'09"W, 16.89 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 118.50 FEET AND A CENTRAL ANGLE OF 40°48'10"; THENCE SOUTHWESTERLY ALONG SAID CURVE 84.39 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 79.00 FEET AND A CENTRAL ANGLE OF 56°44'48"; THENCE SOUTHWESTERLY ALONG SAID CURVE 78.24 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 54.50 FEET AND A CENTRAL ANGLE OF 47°19'12"; THENCE WESTERLY ALONG SAID CURVE 45.01 FEET; THENCE S47°20'35"W, 146.40 FEET TO A CURVE TO THE RIGHT HAVING A RADIUS OF 236.00 FEET AND A CENTRAL ANGLE OF 24°11'38"; THENCE SOUTHWESTERLY ALONG SAID CURVE 99.85 FEET; THENCE S07°00'37"W, 600.35 FEET; THENCE N00°18'59"W, 49.50 FEET; THENCE N18°20'23"E, 5.83 FEET TO THE SOUTHEAST CORNER OF THE GREENVIEW SUBDIVISION PHASE 2; THENCE N89°05'57"E, 426.71 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET AND A CENTRAL ANGLE OF 17°33'44"; THENCE EASTERLY ALONG SAID CURVE 52.11 FEET; THENCE N05°43'26"E, 208.71 FEET; THENCE N11°34'04"E, 482.20 FEET; THENCE N03°33'53"E, 599.28 FEET; THENCE N08°20'07"W, 733.27 FEET; THENCE N58°02'59"E, 222.06 FEET; THENCE S39°54'28"E, 620.51 FEET; THENCE S75°18'43"E, 583.37 FEET TO THE POINT OF BEGINNING. CONTAINING 30.085 ACRES.

Now known as Canyon Ridge lots 1-58

00487260 Bk00937 Pg01629