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WHEN RECORDED, PLEASE MAIL TO:

Furka Limited Liability Company  
c/o P.O. Box 45385  
Salt Lake City, Utah 84145-0385

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SHERYL L. WHITE, DAVIS CNTY RECORDER  
1999 DEC 17 11:51 AM FEE 46.00 DEP NT  
REC'D FOR WESTERN STATES TITLE COMPANY

01-259-0301 (plus 0313 (all))  
Summerwood unit 3

**DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR SUMMERWOOD ESTATES PHASE 3 SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERWOOD ESTATES PHASE 3 SUBDIVISION (this "Declaration") is made and executed this 24 day of November, 1999, by FURKA LIMITED LIABILITY COMPANY, a Utah limited liability company ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property in Davis County, Utah, more particularly described on Exhibit A attached hereto (the "Property"). Declarant desires to develop the Property as a thirteen lot subdivision to be known as Summerwood Estates Phase 3 (the "Project").

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

C. In order to efficiently manage and to preserve the value and appearance of the Project, it is necessary and desirable to create a nonprofit corporation to maintain Common Areas in the Project; to collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Project and the Homeowners. Summerwood Estates Phase 3 Homeowners Association, a homeowners' association and nonprofit corporation, has or will be incorporated for the purpose of exercising the aforementioned powers and functions.

**DECLARATION**

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

I. DEFINITIONS

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

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

(b) "Association" shall mean the Summerwood Estates Phase 3 Homeowners Association, a Utah nonprofit corporation or limited liability company, organized or to be organized to administer and enforce the covenants and to exercise the rights, powers and duties set forth in this Declaration.

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

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

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

(f) "Common Area" shall mean all land within the Project, if any, that is designated as Common Area by this Declaration and areas shown or otherwise designated as Common Area on the Plat, and the parcel of land outside the Project boundary consisting of the common entry way landscaping feature at the Bountiful Boulevard entrance to the overall Summerwood Development.

(g) "Common Expenses" shall mean all expenses for maintenance, utilities and taxes incurred on or in connection with Common Areas within the Project, the landscaped entrance at Bountiful Boulevard to the overall Summerwood Development, all insurance premiums, all expenses incurred in connection with enforcement of this Declaration, all expenses expressly declared to be Common Expenses by this Declaration or the Bylaws of the Association, and all other expenses which the Association is entitled to incur pursuant to the provisions of this Declaration or its Bylaws.

(h) "Declarant" shall mean and refer to Furka Limited Liability Company, a Utah limited liability company and/or any successor to said company which, either by operation of law or through a voluntary conveyance, transfer, comes to stand in the same relationship to the Project as did its predecessor.

(i) "Lot" shall mean any of the thirteen separately numbered and individually described parcels of land shown as a Lot on the Plat and intended for private use and ownership.

(j) "Maintenance Charges" shall mean any and all costs assessed against an Owner's Lot and to be reimbursed to the Association for work done pursuant to Sections

5.2 and 5.3 and fines, penalties and collection costs incurred in connection with delinquent Annual or Special Assessments pursuant to Section 4.6.

(k) "Member" shall mean any person holding a membership in the Association pursuant to the provisions of Section 2.1.

(l) "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot. If there is more than one record holder of legal title to a Lot, each record holder shall be an "Owner."

(m) "Plat" shall mean and refer to the duly approved and recorded plat filed herewith in the office of the Davis County Recorder, entitled Summerwood Estates Phase 3.

(n) "Project" shall mean the Summerwood Estates Phase 3 Subdivision, as shown on the Plat and governed by this Declaration.

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

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

## II. MEMBERSHIPS AND VOTING

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

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

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

(b) Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which the interest required for membership in the Association is held. The Class B membership shall cease and the Declarant shall become a Class A Member upon the first to occur of the following:

(i) the expiration of one hundred and twenty (120) days after fee titles to seventy-five percent (75%) of the Lots contained in the Project have been conveyed by Declarant to purchasers; or (ii) the expiration of fifteen (15) years after the date on which Declarant first conveys to a purchaser fee title to a Lot.

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

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

### III. ASSOCIATION

3.1 Formation of Association. The Association shall be a nonprofit Utah corporation or limited liability company charged with the duties and invested with the powers prescribed by law and set forth in its Articles and Bylaws and this Declaration. Neither the Articles nor Bylaws of the Association shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. As set forth above, the Project is intended to be operated in cooperation with and consistent with the overall Summerwood Development, and may be subject to the common assessments as set forth in subsections 1(f) and 1(g) above.

3.2 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws of the Association as the same may be amended from time to time. The initial Board shall be composed of three (3) natural persons, who need not be Members of the Association. The Board may also appoint various committees and may appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager or any other employee of the Association.

3.3 Personal Liability. Neither the Declarant, any manager or member of Declarant, nor any member of the Board, officer, manager or other employee or committee member of the

Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice.

#### IV. ASSESSMENTS

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

4.2 Annual Assessments. Commencing on January 1, 2000, an Annual Assessment shall be made against each Lot, except any Lot owned by Declarant, for the purpose of paying (or creating a reserve for) Common Expenses. The Annual Assessment for all Lots, except any Lot owned by Declarant, shall be Two Hundred Forty Dollars (\$240.00) per Lot.

(a) After January 1, 2001, the Annual Assessment may be increased each year by not more than twenty-five percent (25%) above the Annual Assessment for the previous year without a vote of the Members as required by subsection (b) of this Section 4.2. The annual Assessment may not be increased under this subsection (a) by more than Sixty Dollars (\$60.00) per year.

(b) From and after January 1, 2000, the Annual Assessment may be increased above twenty-five percent (25%) or the Sixty Dollars (\$60.00) per year limit by a vote of sixty-six and two-thirds percent (66.66%) of the Members who are voting in person or by proxy, at a meeting duly called for that purpose.

4.3 Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, except with respect to Lots owned by Declarant, in any assessment period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, or for the purpose of defraying other extraordinary expenses; provided that any such assessment shall have the assent of a majority of the total number of votes held by the Members who are voting in person or by proxy at a meeting duly called for such purpose.

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

4.5 Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year beginning January 1, 2000. The Board, in its sole discretion from time to time, may change the Assessment Period by recording with the County an instrument specifying the new Assessment Period. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of the end of each Assessment Period. Written notice of the Annual Assessment shall be sent to each Member. Failure of the Association to send a bill to any Member shall not relieve the Member of liability for payment of any assessment or charge. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

4.6 Effect of Nonpayment. Any assessment or charge or installment thereof not paid when due shall be deemed delinquent and in the discretion of the Board may bear interest from thirty (30) days after the due date until paid at the legal rate of interest or other reasonable rate not to exceed the legal rate, and the Member shall be liable for all costs, including attorneys' fees, which may be incurred by the Association in collecting the same. The Board may also record a Notice of Delinquent Assessment or Charge against any Lot as to which an assessment or charge is delinquent. The Notice shall be executed by an officer of the Association or a member of the Board, set forth the amount of the unpaid assessment, the name of the delinquent Owner, and a description of the Lot. The Board may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency, and recording a release of such lien, which fixed fee shall be treated as part of the Maintenance Charge of the Association secured by the Assessment Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment and/or foreclose the lien against such Owner's Lot. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the benefits derived from assessments or abandonment of his or her Lot. Notwithstanding anything in this Declaration to the contrary, Declarant shall not be charged and is exempt from paying any assessments, whether Annual, Special, Maintenance, or otherwise, with respect to Lots owned by Declarant.

4.7 Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or first deed of trust of which the beneficiary is, a lender who has loaned funds with a Lot as security, or held by the lender's successors and assigns, and shall also

be subject and subordinate to liens for taxes and other public charges. Except as provided above, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien.

## V. MAINTENANCE

5.1 Common Areas. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas in the Project, if any. This maintenance will include the mowing and watering of any designated Common Areas, and shall pay a pro-rata portion based on the total number of lots in the overall Summerwood development of the costs of maintenance, operation, repair, and watering of the landscape feature located outside the Project at the Bountiful Boulevard entrance of the overall Summerwood Development. The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of such properties shall be taken by the Board or by its duly delegated representative.

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

5.3 Improper Maintenance. In the event any portion of any Lot, except Lots owned by Declarant, is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto; or in the event any portion of a Lot, except Lots owned by Declarant, is being used in a manner which violates this Declaration; or in the event any Member, except Declarant, is failing to perform any of its obligation under this Declaration or the architectural guidelines and standards of the Committee, the Board may by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Member that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at such Owner's cost. If at the expiration of such fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become part of the Maintenance Charge and shall be secured by the Assessment Lien.

## VI. RIGHTS AND POWERS OF ASSOCIATION

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

6.2 Rights of Enforcement. The Association, as the agent and representative of the Members, shall have the right to enforce the covenants set forth in this Declaration. The

Association or Declarant shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. If the Association prevails in any proceeding at law or in equity to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action. Failure by the Association or Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

## VII. ARCHITECTURAL CONTROL COMMITTEE

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

7.2 Creation. The initial Committee will consist of three (3) Members to be appointed by Declarant in its sole discretion.

The Architectural Control Committee shall consist of three (3) Members, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Committee. In the event of death or resignation of any of the Members, the surviving Members of the Committee shall have full authority to appoint another person to fill the said vacancy. Except for the initial Members appointed to the Committee, all Members of the Committee must be Owners at the time of their appointment. Should any Member move his or her residence outside of the Project, such Member shall be disqualified to serve and the Committee shall declare a vacancy. At such time that all lots owned by the Declarant are sold, the aforementioned Initial Committee shall be released from responsibility of the Committee. The reorganization of the Committee shall be by a two-thirds (2/3) majority vote of the then current Owners within the Project.

In the event of violation of any of the provisions of this Declaration, the Architectural Control Committee is authorized and empowered to take such action as may be necessary to restrain or enjoin the violations of these codes and covenants. All costs, including attorneys' fees, of such enforcement shall be borne by the Owners who are in violation of this Declaration.

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

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

#### VIII. COVENANTS, CONDITIONS AND RESTRICTIONS

8.1 Land Use and Building Type. No lot shall be used for other than residential purposes. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling not to exceed two (2) stories in height (not counting the basement) and private garage for not less than two (2) vehicles and not more than three (3) vehicles without the prior written approval of the Committee. Carports may not be built without the prior written permission of the Committee. Rambler-style houses shall have a minimum of two thousand (2,000) finished square feet of main floor area above finished grade, not counting the basement. Two-story houses shall have a minimum of one thousand seven hundred (1,700) finished square feet of main floor area above finished grade, not counting the basement. Multi-level houses shall have a minimum of two thousand two hundred (2200) finished square feet of main floor area above finished grade not counting the basement (only two levels may be used to determine the two thousand (2,200) finished square feet and not all levels). Square footage of any style is excluding garages, porches, verandas, patios, basements, eaves, overhangs, and steps. Any square footage with any portion thereof beneath the top grade of the foundations will not qualify to offset the minimum square footage requirement. Any deviations from this requirement must be approved in writing by the Committee. The side yard for each building shall be a minimum of fifteen (15) feet to the lot line, absent the prior written approval of the Committee.

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

No construction of home or landscaping may commence without approval by the Committee of the working drawings.

- (a) Plot Plans to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property line and street fronts and elevations of floors from a designated point on the street.
- (b) Detailed floor plans showing dimensions and measurements.
- (c) Detailed elevations, indicating all materials and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

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

8.3 Construction Quality, Size and Cost. The Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations on the acceptability and harmony of the external design of the proposed structures with respect to topography and grade, quality of materials, size, height, color, etc. All structures constructed on the Property shall be of new materials, except pre-approved used brick, and shall be of good quality workmanship and materials. Only those exterior materials which will blend harmoniously with the natural environment, with special emphasis on earth-toned colors, shall be permitted. All exterior material shall be new, except pre-approved used-brick, and consist of brick, rock, stucco, or combination approved in writing by the Architectural Control Committee. Aluminum soffit and fascia is acceptable. No aluminum exterior siding homes shall be permitted in the Project. No wood exterior siding shall be permitted in the Project with the exception of a masonite-type material in combination with brick, rock, and/or stucco if approved by the Committee. All exterior materials and colors are to be specified on plans and submitted for approval by the Committee. No pre-manufactured homes shall be permitted. No flat roofs shall be permitted in the Project without prior written approval of the Committee. Pitched roofs shall be at least 6/12 pitch and no greater than 12/12 without the prior written consent of the Committee. A minimum of ten (10) inches shall be required on the fascia. All stacks and chimneys from fireplaces in which combustible materials other than natural gas are burned shall be fitted with spark arresters. All Owners shall strictly comply with all state laws and city ordinances pertaining to fire hazard control.

8.4 Construction Time. The Committee shall have final control for approval of all color and material plans. There is no time limit for beginning construction; however, upon commencement, the construction time for the exterior portion of any structure shall not exceed eighteen (18) months from start to finish. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the eighteen

(18) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks within the Project.

8.5 Building Location. No building shall be located on any Lot nearer to the front lot line or the rear lot line than the minimum building set-back lines required by Bountiful City. No building shall be located on any Lot nearer to the side lot line or nearer to the side street line than fifteen (15) feet.

The following Lots shall be limited to one (1) story structures above the existing elevation of the Lot: 301 and 312. The Committee may allow a loft above the main level if the height shall in no way obstruct or take away from the view and open feeling that is desired for the Project.

8.6 Landscaping. Any trees, lawns, shrubs, or other planting provided by Declarant shall be properly nurtured and maintained by the Association. Each Lot Owner, except the Declarant, shall be assessed the Annual Assessment set forth in Section 4.2 to maintain these areas.

Only such foliage shall be removed from each Lot as is necessary for clearing the driveway, excavating for the foundation, and for lawns and patio areas. Lawn, patio, and garden areas must be approved by the Committee. Owners are encouraged to plant trees and shrubs to enhance the natural beauty, provide windbreaks, and improve erosion control. The planting of trees that will have a high profile and obstruct the view from neighboring Lots is prohibited. Such trees may be pruned or removed at the discretion of the Board or the Committee.

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

Each dwelling shall have installed surrounding it an outdoor sprinkler system for fire protection and irrigation.

Landscaping may include a combination of lawns, shrubs, or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Species, size, and placement of landscape elements shall be determined by the homeowner and approved by the Committee prior to commencement of landscaping.

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

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

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

8.8 Accessory Structures. Patio structures, trellises, sunshades, gazebos, and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures, and materials approved for the dwelling and shall be integral to the architecture of the house and subject to the prior written approval of the Committee. It is understood that out buildings such as swimming pool and tennis court dressing facilities and an additional garage may be constructed on any Lot as long as they are in conformity with the requirements of this Declaration and are approved in writing by the Committee prior to construction. All pools must be fenced in strict compliance with local ordinances and with the prior written approval of the Committee as to fence design and material.

8.9 Exterior Antennas, Lights, and Power Lines. Exterior antennas are prohibited without the prior written approval of the Committee. Exposed metal flues, vents, ventilator, or other metallic rooftop protrusions shall be coated or painted with a neutral color which will blend harmoniously with the surrounding Property. TV dishes will be allowed, provided they are placed or screened so they are not readily visible to neighboring Lots and streets. The location of TV dishes must be approved by the Committee. Exterior lighting that is detached from the dwelling will not be allowed unless approved by the Committee. It is anticipated that variances for exterior lights, detached from the dwelling, that are positioned above a one (1) story level (i.e. tennis court lighting) will rarely be given. All power lines and similar type cables shall be buried underground. No short-wave radio antennas may be constructed on any Lot or attached to any structure thereon without the prior written approval of the Committee.

8.10 Nuisances; Construction Activities. Prior to commencing construction on a Lot an Owner shall post with the Association a one thousand dollar (\$1,000.00) cash construction bond to cover any damage done by Owner or their contractors, subcontracts and materialmen to streets, sidewalks, curbs and utilities lines and pipes, or any clean-up expense caused by such construction activities. If no damage is done, and no repairs or clean up is required from such Owners construction activities, the bond, or the remaining portion thereof shall be refunded to Owner within sixty days of completion of construction activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or

otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be piled only in such areas as may be approved by the Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Committee, which may require screening of the storage areas.

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

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

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

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

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

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

8.11 Signs. Except as provided in this Section 8.11, no signs of any kind shall be displayed to public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent. Notwithstanding the foregoing, signs used by a builder or developer may be up to one hundred sixty (160) square feet in size and may be displayed to advertise the improvement or Lot during the construction period. The placement of signs, graphics, or advertisements which are permanent in nature or represent advertisement for small business conducted in the home or on a Lot is prohibited.

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

or kennel on the Owner's Lot. The manner and location of all dog runs or kennels must be approved by the Committee. Notwithstanding the foregoing, subject to compliance with any governmental ordinances, regulations and rules, horses may be kept on Lots 309 and 310 with the prior written approval of the Committee.

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

8.14 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the Plat or other instrument creating the subdivisions, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board, and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot and no applications for variances or use permits shall be filed with any governmental authority unless the proposed uses of the Lot has been approved by the Board and the Committee and the proposed use otherwise complies with this Declaration.

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

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

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

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

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

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

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

8.22 Pools, Spas, Fountains, Game Courts. Pools, spas, fountains, and game courts must be approved by the Committee and shall be located to avoid impacting adjacent properties with light or sound. No game courts shall be located in front yards without the prior written consent of the Committee. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or similar area ramps, which structures shall be prohibited.

8.23 Fences and Walls. Fencing and walls shall be stucco, wood, brick, masonry, stone, vinyl, or wrought iron. Fences and walls are to be color coordinated with the approved dwelling colors. Use of landscaping materials for hedges and fencing is encouraged. No structures or fences shall be permitted in any areas designated by Bountiful City as non-buildable. Fences, walls, or hedges shall not exceed six (6) feet in height; provided, however, that no wall, fence, or opaque hedge or screening materials (other than pre-construction natural vegetation) shall be maintained within: (i) a required front yard; (ii) in any portion of a rear yard which is highly visible from any Project street or non-adjoining Lot because of the elevation or slope of the portion of the rear yard concerned unless specifically permitted by the Committee; and (iii) any portion of the Lot having a slope greater than thirty percent (30%).

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

8.24 Parking and Storage. No major mechanical work or repairs are to be conducted in streets or front yards. No inoperative automobile or vehicle shall be placed ore remain on any Lot adjacent street for more than forty-eight (48) hours. No commercial-type vehicles and no trucks shall be parked or stored on the front yard setback of any Lot or within the side yard buildings setback on the street side of a corner Lot, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three quarter ton capacity, boats,

campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall be parked or stored behind the front yard setback in an enclosed area screened from street view as approved by the Committee. Sufficient side yard gate access should be planned and provided for in the design of the home to permit ingress, egress, and storage of trailers and recreational type vehicles on the side and rear yards. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited. No pads used for the storage of vehicles or other material either temporarily or permanently shall be constructed within the side or the front yard set back requirements of a given Lot. This open space shall remain unoccupied and unobstructed by building, vehicles, and/or hard surfaces such as asphalt, concrete, and paved surfaces from this time hence forth and forever.

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

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

#### IX. AMENDMENTS.

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

9.2 Amendments. This Declaration may be amended by recording in the office of the Davis County Recorder a "Certificate of Amendment," duly signed and acknowledged as required for a Certificate of Termination. The Certificate of Amendment shall set forth in full the amendment adopted and shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws of the Association, the Owners casting seventy-five percent of the votes at the election voted affirmatively for the adoption of the amendment.

X. MISCELLANEOUS

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

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

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

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

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

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

IN WITNESS WHEREOF, Declarant has executed this Declaration this 24 day of November, 1999.

FURKA LIMITED LIABILITY COMPANY, a Utah limited liability company,

By Its Manager,

Larry G. Moore  
Larry G. Moore

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF DAVIS        )

On the 24 day of November, 1999, personally appeared before me Larry G. Moore, who being by me duly sworn, did say that he is the duly authorized Manager of Furka Limited Liability Company, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of the Company by authority of its Operating Agreement, and that the Company executed the same.

Notary Public  
CAROLYN K. MEYER  
79 B Main St.  
Salt Lake City, Utah 84111  
My Commission Expires  
October 22, 2002  
State of Utah  
My Commission Expires.

Carolyn K. Meyer  
Notary Public  
Residing at Salt Lake City Utah

10-22-02

## BOUNDARY DESCRIPTION

## SUMMERWOOD ESTATES PHASE "3"

Beginning at a point that lies North  $00^{\circ}08'42''$  West 338.45 feet along the Section line from the Northeast Corner of Section 7, Township 1 North, Range 1 East, Salt Lake Base and Meridian and running thence North  $00^{\circ}08'42''$  West 691.35 feet; thence North  $89^{\circ}37'30''$  West 520.00 feet; thence North  $37^{\circ}13'46''$  East, 362.41 feet; thence South  $89^{\circ}37'30''$  East, 300.00 feet; thence North  $00^{\circ}08'42''$  West, 149.16 feet; thence South  $68^{\circ}39'26''$  East 315.12 feet; thence North  $31^{\circ}22'24''$  East 410.84 feet; thence North  $03^{\circ}59'41''$  West 180.67 feet; thence South  $58^{\circ}25'00''$  East 729.17 feet; thence South  $00^{\circ}06'11''$  East 1501.45 feet; thence South  $89^{\circ}54'03''$  West 206.65 feet; thence South 185.01 feet; thence South  $52^{\circ}31'54''$  West 37.80 feet; thence West, a distance of 314.88 feet; thence South  $41^{\circ}53'51''$  West 47.50 feet; thence North  $17^{\circ}45'35''$  West 351.73 feet; thence North  $88^{\circ}13'49''$  West 291.70 feet; thence North  $23^{\circ}04'36''$  West 118.61 feet; thence North  $34^{\circ}26'56''$  West 154.18 feet to the point of beginning.

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