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When Recorded Return to:
Springville City Community Development
50 South Main Street
Springville, Utah 84663
(801) 489-2704

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When Recorded Return To:
Dee Thatcher, Manager
Duck Creek Development, L.L.C.
1882 East Maple Street
Mapleton, Utah 84664

ENT 142914:2005 PG 1 of 25
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2005 Dec 12 8:49 am FEE 129.00 BY SS
RECORDED FOR SPRINGVILLE CITY CORPORATIO

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
for
DUCK CREEK SUBDIVISION

THIS DECLARATION (the "Declaration") is made this 24 day of August, 2005, by Duck Creek Development, L.L.C., a Utah limited liability company, and (the "Declarant") and in its capacity as the owner of Duck Creek Subdivision ("Duck Creek").

RECITALS

A. Declarant herewith imposes this Declaration upon the following described property located in Springville, County of Utah, State of Utah (the "Property"):

Commencing at a point located North 88 deg. 33'19" East along the section line 528.12 feet and North 1056.06 feet from the South Quarter corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 02 deg. 22'50" East 306.93 feet; thence South 89 deg. 58'42" West 453.00 feet; thence North 00 deg. 42'45" West 159.50 feet; thence North 00 deg. 39'52" East 160.38 feet; thence North 89 deg. 20'08" West 405.04 feet; thence North 00 deg. 13'32" East 260.62 feet; thence South 89 deg. 42'48" East 230.78 feet; thence South 89 deg. 36'39" East 166.30 feet; thence North 89 deg. 11'40" East 68.17 feet; thence South 89 deg. 39'50" East 204.06 feet; thence South 89 deg. 11'58" East 66.07 feet; thence North 89 deg. 26'38" East 48.35 feet; thence North 88 deg. 49'24" East 62.25 feet; thence South 89 deg. 22'47" East 143.29 feet; thence South 88 deg. 26'03" East 72.20 feet; thence South 89 deg. 56'13" East 205.68 feet; thence North 88 deg. 10'12" East 61.69 feet; thence South 88 deg. 22'43" East 0.84 feet; thence South 00 deg. 52'50" West 0.36 feet; thence South 89 deg. 32'07" East 55.53 feet; thence South 18 deg. 00'43" West 188.47 feet; thence South 00 deg. 52'50" West 69.11 feet; thence North 89 deg. 53'51" East 2.59 feet; thence South 18 deg. 00'43" West 246.46 feet; thence South 71 deg. 59'17" East 10.00 feet; thence South 18 deg. 00'43" West 181.19 feet; thence along a curve having a radius of 500.00 feet to the right 193.04 feet (chord bears South 29 deg. 04'20" West 191.84 feet); thence along a reverse curve having a radius of 500.00 feet to the left 80.17 feet (chord bears South 35 deg. 32'20" West 80.09 feet); thence North 89 deg. 04'15" West 221.53 feet to the point of beginning.

B. To maintain the scheme and integrity of the development of the Property, Declarant herewith files with the Utah County Recorder this declaration of covenants, conditions and restrictions.

C. As part of the development scheme of Duck Creek, Declarant intends on filing additional plats for additional phases in the development of Duck Creek. Upon the recording of the plat for each additional phase, this Declaration will be amended to include the additional property described by each additional plat. Declarant also reserves the right to remove the following described property from this Declaration for the development of a condominium project:

Commencing at a point located North 88°33'19" East along the section line 528.12 feet and North 1,056.06 feet from the South Quarter Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 02°22'50" East 306.93 feet; thence South 89°58'42" West 44.79 feet; thence North 00°39'52" East 95.57 feet; thence South 89°20'08" East 46.99 feet; thence along a curve having a radius of 50.00 feet to the right 32.59 feet, (chord bears South 70°39'47" East 32.02 feet); thence along a reverse curve having a radius of 50.00 feet to the left 128.58 feet, (chord bears North 54°20'18" East 95.97 feet); thence along a reverse curve having a radius of 50.00 feet to the right 32.59 feet, (chord bears North 00°39'37" West 32.02 feet); thence North 18°00'43" East 92.53 feet; thence along a curve having a radius of 15.00 feet to the right 23.56 feet, (chord bears North 63°00'43" East 21.21 feet); thence South 71°59'17" East 239.51 feet; thence along a curve having a radius of 15.00 feet to the right 23.56 feet, (chord bears South 26°59'17" East 21.21 feet); thence South 18°00'43" West 256.66 feet; thence along a curve having a radius of 466.50 feet to the right 180.10 feet, (chord bears South 29°04'20" West 178.99 feet); thence along a reverse curve having a radius of 533.50 feet to the left 104.70 feet, (chord bears South 34°30'36" West 104.54 feet); thence North 89°04'15" West 183.24 feet to the point of beginning.

ARTICLE I

PURPOSE

1.01 Purpose. The purpose of this Declaration is to maintain the scheme and integrity of the development and to preserve the value of both Lots and Common Areas within Duck Creek, a multi-use development in Springville, Utah (the "Development"), and for the maintenance of Common Areas such as open spaces, landscaping, wetlands, trees, parks, and all other improvements located therein.

1.02 Effectiveness. Upon recordation of this Declaration: (a) Each part of the Development and each Lot lying within the boundaries of the Development shall constitute parts of a single a multi-use development; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the applicable Plats; (c) The Declaration for the Development shall consist of this document as it may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plat or plats of the Development shall consist of each instrument which is identified as part of the Development of Duck Creek. Declarant reserves the unilateral right to remove part of the Property from the Development so that it can be developed under the Utah Condominium Act in Title 57, Chapter 8. If any part of

the Property is removed for the condominium project, Declarant also reserves its rights in any easements now existing or hereafter created.

ARTICLE II

DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

2.01 Articles shall mean and refer to the Articles of Incorporation of the Association, which are filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as amended from time to time.

2.02 Assessment shall mean the amount that is to be levied and assessed against each Lot and paid by each Owner to the Association for Association expenses.

2.03 Association shall mean DUCK CREEK HOMEOWNERS ASSOCIATION, Inc., a Utah non-profit corporation, its successors and assigns.

2.04 Board shall mean the Board of Directors of the Association.

2.05 Common Areas shall mean all portions of the Development, except the Lots, and shall include all property managed by the Association for the common use and enjoyment of the Owners who are members of the Association. The Common Areas shall include such as all private, undedicated roadways, driveways, parking, undedicated sidewalks, open spaces, together with all easements appurtenant thereto, as reflected on the applicable Plats.

2.06 Declarant shall mean Duck Creek Development, L.L.C., a Utah limited liability company, its successors and assigns, if any, as developer of the Development.

2.07 Declaration shall mean this "Declaration of Covenants, Conditions and Restrictions of Duck Creek, a multi-use development" as the same may be supplemented or amended from time to time.

2.08 Development shall mean the a multi-use development known as Duck Creek as it exists at any given time.

2.09 Lot shall mean and refer to any of the separately numbered and individually described parcel of land within the Development as designated on the applicable Plat. Every Lot within Duck Creek is intended solely for single-family residential use.

2.10 Managing Agent shall mean any person or entity appointed or employed as the Managing Agent by the Association.

2.11 Mortgage shall mean any recorded mortgage or deed of trust encumbering a Lot; and Mortgagee shall mean any mortgagee under a mortgage or beneficiary under a deed of trust.

2.12 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Utah County, Utah) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be deemed an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable as to all responsibilities of an Owner.

2.13 Plat shall mean and refer to any subdivision plat covering any phase of the Property entitled executed and acknowledged by Declarant, accepted by Springville, and filed for record in the office of the Utah County Recorder.

2.14 Property shall mean all land covered by this Declaration, including Common Areas, and Lots, and other land annexed to the Development as provided in this Declaration.

2.15 Reimbursement Assessment shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner or his Lot into compliance with the provisions of this Declaration, the Articles, or rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provisions of this Declaration.

2.16 Rigtrup Property shall mean that portion of the Property owned by Brent Reed Rigtrup, Co-Trustee of The Rigtrup Family Trust established November 18, 1998 by Rowena H. Rigtrup ("Rigtrup"). A portion of the Rigtrup property shall be used as a detention basin and is described in paragraph 5.01 below. This detention basin shall be maintained by the Association.

ARTICLE III

PROPERTY DESCRIPTION AND ANNEXATION

3.01 Submission. The real property that initially is and shall be held, transferred, sold, conveyed, and occupied, subject to the provisions of this Declaration, consists of the Property described in Recital A above.

3.02 Division into Lots. The Development is projected to include sixty-eight (68) Lots and forty-eight (48) condominium units. Declarant reserves the right to withdraw the property described in Recital C for a condominium development.

ARTICLE IV

BYLAWS, AND MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.01 Membership. Membership in the Association is limited to those persons owning lots in the following described portion of the Development:

Commencing at a point located North 88°33'19" East along the section line 159.76 feet and North 1,530.48 feet from the South 1/4 Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence along a curve having a radius of 15.00 feet to the right 23.56 feet, (chord bears North 44°20'08" West 21.21 feet); thence North 00°39'52" East 222.38 feet; thence along a curve having a radius of 15.00 feet to the right 23.56 feet, (chord bears North 45°39'52" East 21.21 feet); thence South 89°20'08" East 468.81 feet; thence along a curve having a radius of 25.00 feet to the right 46.84 feet, (chord bears South 35°39'42" East 40.28 feet); thence South 18°00'43" West 212.03 feet; thence along a curve having a radius of 25.00 feet to the right 31.70 feet, (chord bears South 54°20'17" West 29.62 feet); thence North 89°20'08" West 405.59 feet to the point of beginning.

Upon acquiring title to a Lot, every Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases. At the time of cessation of his membership in the Association, his membership interest shall automatically transfer to the successor Owner. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

4.02 Voting Rights. The Association shall initially have two (2) classes of voting memberships. The following votes of both classes will be tabulated as follows:

(a) Class A. Each Owner, including Declarant, shall be a Class A member entitled to one (1) vote for each Lot he owns.

(b) Class B. Declarant shall be the only Class B member and shall be entitled to One Hundred and Twenty (120) votes. Declarant shall have one (1) vote for each Association Class A membership outstanding at the time of any vote (in addition to any votes to which it is entitled as a Class B member). Upon Declarant's sale of each Lot, the number of Class B votes shall be reduced by four (4) votes. Class B membership shall lapse and become a nullity on the first to happen of the following events:

(i) ninety (90) days following the date upon which the total outstanding Class A memberships, other than those held by Declarant, greater than the total number of Class A and Class B votes to which Declarant is entitled pursuant to the provisions of Section 4.02; or

(ii) December 31, 2007; or

(iii) Upon surrender of said Class B membership by Declarant in writing to the Association.

Upon the lapse or surrender of the Class B membership, as provided in this Section 4.02(b)(i) and (ii), Developer shall be and thereafter remain a Class A member as to each and every Lot in which Declarant holds the interest otherwise required for Class A membership. Notwithstanding anything to the contrary in this Declaration, Declarant shall have a reasonable time to complete the improvements required by Springville City after it loses its majority voting rights under this Section 4.02. No Owner shall be entitled to vote unless he gives the Secretary of the Association written notice of his fee interest in a Lot. Notice to the Secretary must be given at least thirty (30) days prior to any meeting of the Association. A new Owner may vote his predecessor in interest's vote if notice was duly given to the predecessor and the new Owner acquires fee title to the Lot and gives notice of his acquisition before the meeting.

4.03 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 between or among themselves, but in no event shall more than one (1) vote be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting or in writing by another Owner of the same Lot. In the event of an objection, no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.

4.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him of his Lot and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Lots. The Secretary of the Association shall maintain all such information in the records of ownership. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owners.

4.05 Place of Meeting. Meetings of the Association shall be held at such suitable place convenient to the Owners as designated by the Secretary of the Association in the notice thereof.

4.06 Annual Meetings. Annual meetings of the membership of the Association shall be held in the month of January of each year. The date, place and hour of the meeting shall be designated by the Board. The Board may change the month for the meeting by resolution. Annual meetings shall commence the year 2006 on such day and time as is set forth in the notice therefor. At such annual meetings there shall be elected Directors of the Board, as needed, pursuant to the provisions of this Declaration. Financial and budget reports shall also be presented at such meetings as well as other business of the Association properly placed before each meeting.

4.07 Special Meeting. The President of the Board shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least ten percent (10%) of the total votes of the Association and presented to the Secretary. The special meeting shall be called within thirty (30) days of receipt of the petition or date of the resolution. No business shall be transacted at a special meeting except as stated in the notice therefor unless consented to by seventy-five percent (75%) or more of the Owners present, either in person or by proxy.

4.08 Notice of Meetings. Each Owner who has notified the Secretary of his fee title to a Lot at least thirty (30) days prior to a meeting, shall be entitled to notice of the meeting. The Secretary shall mail to each Owner of record a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting. Unless delivered ten (10) days before the meeting, the notice shall be mailed at least thirty (30), but not more than sixty (60) days prior to such meeting. The mailing of notice by prepaid, first-class or registered U.S. Mail or by delivery in person shall be considered notice served. A member's attendance at a meeting waives any objection to the notice unless an objection is made as required by law.

4.09 Quorum. Subject to Section 7.10 below, Owners present at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners present must be collectively entitled to cast at least twenty percent (20%) of the total Association votes eligible to vote.

4.10 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not more than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be deemed satisfied if those who appeared at the original meeting are in attendance at the time and place for the adjourned meeting. The foregoing procedure shall not apply if prohibited by Utah law. If prohibited, then applicable Utah law shall apply.

4.11 Officers. The Association shall have a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board. Only the offices of Secretary and Treasurer may be filled by the same person. The Board may appoint additional officers as it deems necessary. The officers shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which a new Board has been elected.

(a) President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties that are usually vested in the office of president of a similar type association and such other duties as may be directed by the Board.

(b) Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President

is able to act, the Board shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall be the custodian of such books and records, including membership records, as the Board may direct. He shall also serve notices on Owners, Officers and Directors. He shall, in general, perform all duties incident to the office of secretary of a similar type association.

(4) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping true and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board.

4.12 Initial Composition of the Board. Declarant alone shall have the right to select the initial members of the Board of Directors. The Board may be composed of not less than three (3) Directors, none of whom need be Owners. Such right of the Declarant to appoint the Board shall remain in Declarant until Declarant loses a majority of its voting interest as provided by Section 4.02.

4.13 Board of Directors: Composition, Quorum and Voting, Election and Vacancies, and Compensation. The Association, through its Board of Directors, is responsible for the maintenance of any Common Areas, the determination, imposition and collection of Assessments, the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. A majority of the members of the Board shall constitute a majority for all Board meetings. Each Director shall have one (1) vote and voting may not be done by proxy. Regular meetings may be held without notice. Subject to the provisions of Section 4.12, the Board shall be composed of three (3) Directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). At the first annual meeting of Owners after Declarant no longer owns any Class B membership, the Owners shall elect a Board of Directors with one (1) director elected to a three-year term, one (1) director elected to a two year term and one (1) director elected to a one-year term. As each Director's term expires, a new Director shall be elected for a three-year term and shall serve on the Board until his successor is elected. Vacancies on the Board shall be filled by the remaining Directors from among the Owners and such appointees shall serve for the unexpired term of the Director he was appointed to replace. The Board shall not be compensated.

4.14 Indemnification of Board. Each of the Directors shall be indemnified and held harmless by the Lot Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent and/or criminal actions) including, without limitation, attorney's fees reasonably incurred in connection with any proceeding in which such Director may become involved by reason of being or having

been a member of said Board. At the expense of the Association, the Board shall obtain directors and officers liability insurance in amounts and on such terms as it deems appropriate.

ARTICLE V

DUTIES AND POWERS AND PURPOSE OF THE ASSOCIATION

5.01 Duties of the Association. Without limiting any other duties that may be imposed upon the Association by its Articles, Bylaws or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall maintain, repair, replace and landscape the Common Areas, including the following described detention basin, as required by law:

Also commencing at a point located South 88°34'56" West along the section line 169.14 feet and North 1,853.91 feet from the South Quarter Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 89°20'08" West 114.64 feet; thence along a curve having a radius of 20.00 feet to the right 31.25 feet, (chord bears North 44°34'33" West 28.17 feet); thence North 00°11'01" East 89.87 feet; thence South 89°42'48" East 135.40 feet; thence South 00°39'52" West 110.59 feet to the point of beginning (also known as a detention basin defined in paragraph 2.16 below).

- (c) To the extent not assessed to or paid by the Owner directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (d) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.
- (e) The Association may employ any responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative duties and functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be reasonable as specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days' written notice thereof; and the term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of one (1) year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.
- (f) The Association and Declarant shall not be deemed in breach of this Declaration or other development obligation in the event of a drought or other act of God or force majeure.

5.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) At any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for:

(i) Construction, maintenance, repair and landscaping of the Common Areas on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) Such utility services for the Common Area as the Board may from time to time deem necessary or desirable;

(iv) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

(v) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

(vi) Such materials, supplies, equipment, services and labor as the Board may deem necessary.

5.03 Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of this Declaration, may adopt, amend, repeal and enforce reasonable rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the collection and disposal of refuse; (c) uses and nuisances pertaining to the Property; and (d) all other matters

concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development.

5.04 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee of the Board, or the Managing Agent.

5.05 Purpose. The purpose of the Duck Creek Owners Association is to protect and enhance value, desirability, attractiveness, and quality of the environment of Duck Creek as a residential high-density development and planned community.

ARTICLE VI

DUTIES AND OBLIGATIONS OF OWNERS

6.01 Maintenance and Repairs. Each Owner shall, at his own cost, maintain and repair his Lot and any improvements constructed thereon in good repair at all times. Any wetlands located on a Lot shall be maintained by the Owner as required by law. In the event of damage or destruction of any improvement on any Lot, the Owner of the Lot shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed improvement in the Development. The painting or repainting, remodeling, rebuilding or modification of any Lot exteriors or parts thereof must be submitted to the Board for approval. So long as Declarant owns a Lot in the Duck Creek, Declarant shall maintain any detention basin not maintained by the Association or by the association for the future condominium project.

6.02 Insurance. Notwithstanding the insurance coverage required herein for the Association, each Owner shall obtain and maintain in force such homeowner content hazard and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances. This insurance coverage shall also name the Association as a loss payee.

6.03 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time.

6.04 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration, following such transfer.

ARTICLE VII

ASSESSMENTS

7.01 Personal Obligation and Liens. Each Owner shall, by acquiring or in anyway becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the Assessments and Reimbursement Assessments described in this Article, together with late payment fees, interest and costs of collection if and when applicable. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot from the time such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

7.02 Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the Development, the interests of the Owners therein, paying costs properly incurred by the Association, including costs of maintenance, operation and reparation of the Common Areas. The use made by the Association of funds obtained from assessments may include, but shall not be limited to, payment of the cost of: (a) taxes and insurance on the Common Areas and Units under any approved blanket coverage; (b) maintenance, repair, and improvement of the Common Areas, easements, and detention basin; (c) establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and (d) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles or By-laws.

7.03 Annual Assessments. Annual assessments shall be computed and assessed against all Lots in the Development based upon advance estimates of the Association's cash requirements to provide for payment of the cost of those items set forth in section 8.02, above.

7.04 Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following. The first fiscal year shall begin on January 1, 2006. On or before December 15 of each year, the Association shall prepare and provide, upon request, to each Owner an operating budget for the upcoming fiscal year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessments for the upcoming fiscal year and as the major guideline under which the Common Areas shall be maintained, repaired and operated during such annual period.

7.05 Notice and Payment of Annual Assessments. The Association shall notify each Owner as to the amount of the annual assessment against his Lot on or before December 15 of the year

preceding the year for which such annual assessment is made. Unless paid in a lump sum at the first of each fiscal year, each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year for which the assessment relates. The failure of the Association to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

7.06 Initial Assessment and Transfer Fees. At the time of initial purchase of an improved, residential Lot, each Owner shall pay to the Association a sum equal to the annual assessment for the year in which the purchase is made. After the initial payment, the Owner shall not be required to make another payment to the Association for the Annual Assessment until twelve (12) months after the initial payment, at which time the Owner shall resume payments at the then applicable annual assessment. In addition, whether as a first time purchaser of a Lot or a subsequent purchaser, each Owner shall pay the Association a transfer fee equal to two times the then monthly instalment of the annual assessment. Such transfer fees shall become part of the Association's general fund to pay for the cost of record keeping and to be utilized as the Board deems necessary under Section 7.02. Declarant shall not be assessed for any expenses of the Association.

7.07 Maximum Annual Assessment. After the Declarant no longer holds its Class B membership, the maximum annual assessment may be changed each calendar year by not more than five percent (5%) of the annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.

7.08 Special Assessments. The Association may levy special assessments for the purpose of defraying in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of the Common Areas. Any such special assessment shall be apportioned among and assessed to all Lots in the same manner as annual assessments. Such special assessments must be assented to by a majority of the votes of the membership, which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

7.09 Uniform Rate of Assessment. All Annual and Special Assessments shall be levied at a uniform rate for all Lots, except for Lots owned by Declarant. Therefore, notwithstanding anything to the contrary in this Declaration, Declarant shall not be responsible for any Assessment under this Declaration.

7.10 Quorum Requirements. The quorum at any Association meeting required for any action shall be as follows: At the first meeting called, the presence of Owners or or proxies entitled to cast sixty percent (60%) of the total votes of the Class A and Class B membership shall constitute a

quorum. Once Class B membership is dissolved, a quorum shall be established by the terms of Section 4.09 above. If a quorum is not present at the first meeting or any subsequent meeting, the meeting may be adjourned in accordance with Section 4.10 above or another meeting may be called (subject to the notice requirement set forth in Section 4.08, above) at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. Except for adjourned meetings, no such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

7.11 Reimbursement Assessment on Specific Lot. In addition to the annual assessment and any special assessment authorized pursuant to Sections 7.03 and 7.08 above, the Board may levy at any time Reimbursement Assessments: (a) on every Lot especially benefited (i.e., benefited to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, to maintain or repair the Lot or Unit thereon. The aggregate amount of any such Reimbursement Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs. The Reimbursement Assessment shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. This Reimbursement Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement, which is part of the general maintenance or operation of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefited.

7.12 Certificate Regarding Payment or Non-Compliance. Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot and upon the payment of a reasonable fee to the Association to cover administrative costs, the Association shall issue a certificate stating whether or not payments of all assessments respecting such Lot are current and if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith. If an Owner fails to maintain his Lot and keep his Lot in good condition and repair, the Association may file a Certificate of Non-Compliance with the Utah County Recorder. The Certificate may list each failure to comply with this Declaration. Each Reimbursement Assessment shall constitute a lien as of the earlier of either the recordation of the Certificate or the incurring of expenses to remedy the breach by the Owner. If the expenses arise after the recording of the Certificate, the lien for the Reimbursement Assessment shall relate back to the date and time of the recording of the Certificate.

7.13 Effect of Nonpayment - Remedies. Any Assessment (whether Annual, Special or Reimbursement) not received within ten (10) days of the date on which it becomes due shall be subject to a late charge equal to the greater of \$15.00 or 15% thereof, which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Lot. If any Assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 ½%) per

month, before and after judgment, until paid in full. The Association may bring an action against the Owner, who is personally liable therefor, or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorneys fees, court costs and every other reasonable expense incurred by the Association in enforcing its rights.

7.14 Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any Mortgage duly recorded before any Assessment is made and becomes due and payable. If a foreclosure occurs, the Mortgagee, who becomes the Owner of a Lot, shall take free of such assessment lien that accrues or becomes due after the due recording of its Mortgage. Once the foreclosure is completed, the successful bidder at the foreclosure sale shall become immediately responsible for all assessments then or thereafter due. The Association's lien shall attach to all excess proceeds remaining after the foreclosure of such Mortgage. No Owner can escape personal liability for unpaid assessments by transferring his interest in his Lot.

7.15 No Abatement. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from any construction within the Development, the making of any repairs or improvements to or maintaining of the Development, or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE VIII

PROPERTY RIGHTS AND CONVEYANCES

8.01 Easement Concerning Common Areas. Each Lot shall have appurtenant thereto a non-exclusive, perpetual right and easement of use and enjoyment in and to the Common Areas for their intended purposes and an exclusive right and easement to appurtenant Limited Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot, whether or not it is described, and shall in no event be separated therefrom. This easement right shall also be appurtenant to that part of the Property designated for the condominium project.

8.02 Form of Conveyancing. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot may describe the interest or estate involved as follows:

Lot _____, Plat ____ of Duck Creek Subdivision, according to the official plat thereof on file and of record in the office of the Utah County Recorder. TOGETHER WITH an undivided interest in and to the Common Areas described, and as provided for, in said Declaration of Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

All provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot even if the description employed in any such transfer instrument

is not in the above specified form. Whether mentioned or not, the interest in the Common Areas shall transfer automatically to the grantee on a conveyance that describes the Lot in the Development.

8.03 Title to Common Areas. Pursuant to Utah Code Ann. §17-27-806.5 (1953, as amended), each Owner of a Lot shall own an undivided fee interest, with others, in the Common Areas whether or not included in the conveyance.

8.04 Limitation on Common Area Rights. Each Owner's interest in the Common Areas shall be subject to the following:

(a) The right of the Association to govern by reasonable rules and regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all the Owners.

(b) The right of the City of Springville, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over open space contained within the Common Areas for the purpose of providing police and fire protection and any other governmental or municipal service.

(c) After the filing of a subdivision plat for any phase of the Development, the right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by all Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

8.05 Utility Easements. Each Lot has appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of open space and landscaped areas. If any Owner utilizes his rights in the Common Areas, he shall be responsible for the restoration to its former state of any portion of the Common Areas that may have been disturbed or damaged resulting from his use.

8.06 Easements for Encroachments. If any structure (including without limitation, roof overhangs) constructed on any Lot encroaches in a minor way upon any portion of another Lot, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments, for any reason, of such structure upon any portion of another Lot shall be permitted and valid easements for such encroachments and the maintenance thereof so long as they continue.

ARTICLE IX

USE RESTRICTIONS

9.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots set forth herein.

9.02 Residential Use. Each Lot is restricted to single-family residential use. The Development is also subject to applicable provisions of Springville City Ordinances and each Lot and Owner are subject to the uses and restrictions imposed thereby. RV Parking is permitted on the driveway appurtenant to any Lot if permitted by and in accordance with the ordinances of Springville City. No Lot shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

9.03 Prohibited Uses and Nuisances. In addition to any prohibitions the Board may adopt pursuant to Section 5.03 of this Declaration, the following uses and practices are specifically prohibited:

- (a) No Lot or any part thereof shall be used or occupied by any person in a manner inconsistent with the zoning regulations applicable to the Property.
- (b) No lease of any Lot shall be for less than the whole thereof
- (c) No animals, livestock, or poultry of any kind shall be permitted on any Lot except such domesticated, non-exotic household pets or birds allowed pursuant to the rules and regulations, including leash laws, adopted by the Board pursuant to Section 5.03 of this Declaration.
- (d) No parking of vehicles of any kind on the streets or parking areas within the Development shall be permitted except as permitted by applicable governmental law. Notwithstanding anything to the contrary herein, no parking shall be allowed on the roadways in the Development during or immediately prior to or after a winter storm.
- (e) No outside full-size satellite dish, television or radio aerial or antenna, or other similar device for reception or transmission shall be permitted on any Lot or the exterior of any structure except pursuant to written approval of the Board pursuant to rules and regulations adopted by it or as set forth in this Declaration.
- (f) No Lot within the Development shall contain any coal or wood burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only.

9.04 Rubbish and Garbage. Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner. Containers or other equipment for the storage or disposal of garbage, trash, rubbish or other refuse shall be kept in a clean, sanitary condition. All garbage or trash containers shall be kept in an inconspicuous place on the Lot so that they are not obvious from other Lots or

from the streets. No trash, litter, junk, equipment, boxes or other such items shall be permitted to remain exposed upon any Lot and visible from the streets or from other Lots within the Development.

9.05 Fences. Fences will be permitted around each Lot consistent with the ordinances of Springville City so long as the height does not create a safety risk. Fences shall be no higher than six feet (6') unless the height creates a safety risk. Fences may be constructed of any material approved by the Architectural Control Committee.

9.06 Improvements in Common Areas. Any Owner who installs or constructs improvements or any apparatus in the Common Areas shall be responsible for all loss or damage caused by the improvement or apparatus. The Association shall have the right to remove the improvement or apparatus at the Owner's expense. Failure to immediately remove the improvement or apparatus or to object to it shall not mean that the Association consents to it.

ARTICLE X

ARCHITECTURAL CONTROL

10.01 Architectural Control Committee. The Board may act as the Architectural Control Committee or it may appoint a three-member Architectural Control Committee (as used in this Article, either the Board or the separate Architectural Control Committee shall hereinafter be referred to as the "Committee"), the function of which shall be to assist the Board in ensuring that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If a Committee is not appointed, the Board itself shall perform the duties required of the Committee. The Committee shall make recommendations to the Board and the Board shall make the final decisions.

10.02 Submission to Committee. No Lot, accessory, or addition to a Lot which is visible from the Common Areas, shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Lot shall be performed, unless complete plans and specifications therefor have first been submitted to the Committee and approved by the Board.

10.03 Standard. In deciding whether to approve or disapprove plans and specifications submitted, the Committee and Board shall use their reasonable judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Development conform to and harmonize with existing surroundings and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architecture style and be approximately the same size as the prior structure; and if the plans and specifications therefor meet such criteria, the Board must approve the same.

10.04 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by the Board in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in

substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Board fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

10.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Board shall be diligently pursued to completion. The project shall be completed within one (1) year from the date of its commencement.

10.06 Liability for Damages. Neither the Board, the Committee, nor any member thereof shall be held liable for damages by reason of any action, inaction, approval or disapproval taken or given without malice by such member or the Board or the Committee with respect to any request made pursuant to this Article X.

ARTICLE XI

INSURANCE

11.01 Hazard Insurance. Each Owner shall procure and maintain from a reputable company or companies, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of each Owner's respective Lot including the driveway and sidewalk to the Lot. The policy of insurance shall include an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as any first Mortgagee of a Lot shall reasonably require. Such insurance policy or policies shall name the Association as an additional insured and shall afford protection, to the extent applicable, against at least the following:

- (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and
- (b) such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

11.02 Liability Insurance. The Board shall procure and maintain from a reputable company or companies, a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in the County of Utah nor less than \$1,000,000 for personal injury and property damage arising but arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and

hired automobile, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use. The Policy shall contain a "Severability of Interest" endorsement, which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners, and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The Policy shall provide that the Policy may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

11.03 Additional Insurance: Further General Requirements. The Board shall also procure and maintain from a reputable company or companies, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value of all Common Areas and Common Elements owned or controlled by the Association. This coverage shall, at a minimum, meet the requirements set forth in Section 11.01 above for hazard insurance maintained by the various Owners. The Board may also procure insurance, which shall insure the Common Areas and the Association or the Owners and others, against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or then Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

- (a) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;
- (b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;
- (c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and
- (d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

11.04 Fidelity Coverage. The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, directors, managing agents, directors and employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. In that event, such fidelity bonds shall:

- (a) name the Association as an obligee;
- (b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated minimum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Lots plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium without at least thirty (30) days' prior written notice to the insured.

11.05 Review of Insurance. The Board shall periodically, and whenever requested by Owners entitled to exercise at least twenty percent (20%) of the outstanding votes in the Association, review the adequacy the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner.

11.06 Other Insurance Provisions. All insurance required pursuant to this Article shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article to the contrary, any insurance required to be obtained by the Association pursuant to Sections 11.01, 11.02, 11.03 or 11.04 of this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas and Lots or risks being insured.

ARTICLE XII

CONDEMNATION

If at any time an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements to the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

ARTICLE XIII

RIGHTS OF MORTGAGEES

13.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession of or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any,

concerning a consent of approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment

13.02 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

- (a) there is any material default by the Owner of the Lot subject to the Mortgage if performance of any obligation under this Declaration or the Articles which is not cured within sixty (60) days after default occurs; or
- (b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or
- (c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

13.03 Notice of Meetings. The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings of the Association, and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

13.04 No Priority Accorded. No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

ARTICLE XIV

MISCELLANEOUS

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

14.02 Amendment. Except as provided below, this Declaration may be amended by Owners (including Declarant) who collectively hold at least sixty-seven percent (67%) of the total

outstanding votes in the Association. Without the consent of any Owner or Mortgagee and in accordance with Article III, the Declarant may amend this Declaration at any time if the amendment expands this Declaration to include additional property arising from the recording a subdivision plat for a new phase in Duck Creek. After execution and notarization, the Amendment shall be filed with the Utah County Recorder.

14.03 Consent in Lieu of Vote. In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 14.03:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.
- (b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.
- (c) Any change in ownership of a Lot which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

14.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property or the Additional Land may be assigned.

14.05 Interpretation. The captions, which precede the Articles and Sections of this Declaration, are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

14.06 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants that run with the land and shall be binding upon and shall inure to the benefit of Declarant, and all parties who heretofore acquired or hereafter acquire any interest in a Lot, and all of their respective grantees, transferees, heirs, devisees, personal representatives, agents, tenants, guests, invitees, successors, and assigns. By acquiring any interest in a Lot or Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.07 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration: (a) any Owner; (b) the Association; or (c) any Mortgagee. The

prevailing party in an action for the interpretation or the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to recover from the defaulting party costs of court, including a reasonable attorney's fees.

14.08 Duration. This Declaration shall remain in full force and effect for twenty-five (25) years from the date these covenants are recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless revoked as provided herein for its amendment. All amendments shall be certified by the Association's President and Secretary as complying with this Section, and the certified amendment shall be recorded in the real property records of Utah County.

14.09 Waiver. The failure of the Association to act to enforce the provisions of this Declaration does not prevent the Association from exercising its right to prevent future or ongoing violations of this Declaration.

IN WITNESS WHEREOF, the undersigned have executed this Declaration the day and year first above written.

DUCK CREEK DEVELOPMENT, L.L.C., a Utah limited liability company

By [Signature]
Dee Thatcher, Manager

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 24 day of August, 2005, by Dee Thatcher, the Manager of Duck Creek Development, L.L.C., a Utah limited liability company.

My Commission Expires:
7-9-2007.

[Signature]
Notary Public
Residing at: _____



CONSENT

The undersigned hereby consents to this Declaration as a covenant running with the land agrees to its terms, covenants and conditions as they relate to land owned by the undersigned.

Dated this 26 day of August, 2005.

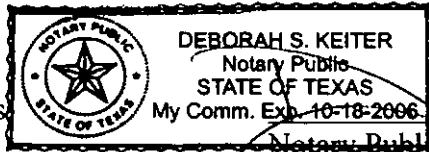
The Rigtrup Family Trust established November 18, 1998 by Rowena H. Rigtrup

By Brent Reed Rigtrup
Brent Reed Rigtrup, Trustee

STATE OF TEXAS)
)
COUNTY OF WILLIAMSON)

The foregoing instrument was acknowledged before me this 29 day of August 2005 2005, by Brent Reed Rigtrup the Trustee of The Rigtrup Family Trust established November 18, 1998 by Rowena H. Rigtrup.

My commission Expires
10-18-2006



Deborah Keiter
Notary Public
Residing at: Georgetown Texas