



DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS
(Including Bylaws)

AVANYU ACRES
(A Planned Residential Development)

Cedar Hills, Utah County, Utah

THIS DECLARATION (the "Declaration") is made this 12 day June, 2012 by AVANYU ACRES HOME OWNERS ASSOCIATION, a Utah Non-Profit Corporation (the "Declarant"), in its capacity as the community association of Avanyu Acres PRD, a Planned Residential Development in Cedar Hills Utah, and as the successor in interest of Bald Mountain Development LLC, former owner and developer of said development. This declaration expressly revokes any and all prior declarations and subsequent amendments made prior to the date of recording of this declaration, as executed against subdivision plats A, B, C, and D, covering the Property entitled Avanyu Acres, a Planned Residential Development.

ARTICLE I

PURPOSE AND EFFECTUATION

- 1.01 **Purpose.** The purpose of this instrument is to provide for the preservation of the values of Lots, and Common Areas within Avanyu Acres and for the maintenance of the roadways, sidewalks, amenities, open spaces, landscaping, trees, and all other Common Areas therein.
- 1.02 **Effectiveness.** From and after the effective date hereof: (a) Each part of the Development and each Lot within the boundaries of the Development and each Lot within the boundaries of the Development shall constitute but constituent parts of a single planned unit development; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the Avanyu Acres Subdivision Plats A, B, and D; (c) The Declaration of Easements, Covenants, Conditions, and Restrictions (Including Bylaws) for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions hereof; and (d) The Plats A, B, and D of the Development which is identified as "Avanyu Acres" A Planned Unit Development, Cedar Hills, Utah County, Utah, and filed for record in the office of the Utah County Recorder, Provo, Utah.

ARTICLE II

DEFINITIONS

ENT 52225:2012 PG 1 of 27
JEFFERY SMITH
UTAH COUNTY RECORDER
2012 Jun 22 4:28 pm FEE 131.00 BY ED
RECORDED FOR SORENSEN, CRAIG

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

- 2.01 **Additional Land** if any, shall, at any point in time, mean all of the land in Cedar Hills City, Utah County, State of Utah, set forth and described in an exhibit, attached hereto and made a part hereof.
- 2.02 **Articles** shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, and the same may be amended from time to time.
- 2.03 **Assessment** shall mean the amount which is to be levied and assessed against Lots and paid by each Owner to the Association for Association expenses as herein set forth.
- 2.04 **Association** shall Mean AVANYU ACRES HOME OWNERS ASSOCIATION, a Utah nonprofit corporation and its successors and assigns.
- 2.05 **Board** shall mean the Board of Directors of the Association.
- 2.06 **Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles XI, XII, XIII, as the same may be amended from time to time.
- 2.07 **Common Areas** shall mean all portions of the Development except the Lots and shall include all property owned by the Association for the common use and enjoyment of the Owners such as private undedicated roadways, parking, amenities, open spaces, landscaping, structural common areas, if any, and the like, together with all easements appurtenant thereto, as reflected on the Plat.
- 2.08 **Declarant** shall mean AVANYU ACRES HOME OWNERS ASSOCIATION, a Utah Corporation, its successors and assigns, if any, as the community association of the Avanyu Acres, a planned residential development.
- 2.09 **Declaration** shall mean this **Declaration of Easements, Covenants, Conditions, and Restrictions** of Avanyu Acres, as the same may be supplemented or amended from time to time.
- 2.10 **Development** shall mean the PRD known as **Avanyu Acres** as it exists at any given time.
- 2.11 **Lot** shall mean and refer to any of the separately numbered and individually described parcels of land within the Development as designated on the Plat, intended for single family residential use.
- 2.12 **Managing Agent** shall mean any person or entity appointed or employed as Managing Agent by the Association.
- 2.13 **Mortgage** shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and **Mortgagee** shall mean any mortgagee or beneficiary under a mortgage.
- 2.14 **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 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.

- 2.15 **Plat** shall mean and refer to the subdivision plats A, B, and D, covering the Property entitled **Avanyu Acres, Planned Residential Development, Cedar Hills, Utah County, Utah**, prepared and certified by duly registered Utah Land Surveyors, accepted by Cedar Hills City, and filed for record in the office of the County Recorder of Utah County, Utah.
- 2.16 **Property** shall mean all land and improvements covered by this Declaration, including Common Areas and Lots.
- 2.17 **Reimbursement Assessment** shall mean a charge against a particular Owner of 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, Bylaws, or rules and regulations of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration, the Articles, Bylaws 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.
- 2.18 **Unit** shall mean a structure which is designed, constructed, and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit (but designated and designed to serve only that Unit) such as patios, decks, appliances, electrical receptacles and outlets, and air conditioning compressors and other air conditioning apparatus.

ARTICLE III PROPERTY DESCRIPTION

3.01 **Inclusion.** The Property subject to the provisions of this Declaration consists of the following described real property in the City of Cedar Hills, Utah County, State of Utah:

- (a) Lots 1-38, 100-102, AVANYU ACRES PUD, Plat A; Map Filing 8948; Also described as:

COMMENCING AT A POINT WHICH IS SOUTH 331.71 FT. AND WEST 281.21 FT FROM THE WEST QUARTER CORNER OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE S 26 DEG 34' 07" E 155.38 FT; S 24 DEG 23' 03" E 94.50 FT; S 22 DEG 21' 14" E 498.47 FT; S 0 DEG 57' 43" E 903.46 FT; S 89 DEG 41' 53" W 524.34 FT; NORTH 111.13 FT; N 16 DEG 53' 27" W 126.26 FT; S 73 DEG 16' 47" W 218.30 FT; N 17 DEG 56' 20" W 70.03 FT; N 18 DEG 18' 32" W 534.51 FT; N 72 DEG 16' 24" E 115.62 FT; S 18 DEG 17' 28" E 193.42 FT; N 72 DEG 33' 03" E 269.34 FT; N 18 DEG 51'

42" W 318.31 FT; S 89 DEG 38' 39" W 77.60 FT; N 48 DEG 47' 16" W 91.56 FT; NORTH 72.44 FT; N 45 DEG 17' 51" W 102.07 FT; N 89 DEG 59' 59" W 34.37 FT; N 17 DEG 39' 00" W 431.69 FT; S 89 DEG 59' 42" E 587.02 FT; S 89 DEG 59' 58" E 118.70 FT TO THE POINT OF BEGINNING. AREA- 25.821 ACRES.

(b) Lots 1-16, 101-103, AVANYU ACRES PUD Plat B; SEC 8-5-2E; Map Filing 10445; Also described as:

BEGINNING AT A POINT LOCATED N 89 DEG 59'59" W, 446.89 FT ALONG THE SECTION LINE (BASIS OF BEARING) FROM THE NORTH QUARTER CORNER OF SECTION 8, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE S 26 DEG 34'07" E, 257.20 FEET; THENCE S 65 DEG 36'57" W, 74.76 FT; THENCE S 00 DEG 10'01" W, 20.81 FT; THENCE S 00 DEG 00'07" W, 50.04 FT TO A POINT ON THE NORTH LINE OF AVANYU ACRES PLAT A SUBDIVISION; THENCE N 89 DEG 59'58" W, 8.86 FT ALONG THE NORTH LINE OF SAID AVANYU PLAT A SUBDIVISION TO THE NORTHEAST CORNER OF LOT 23, AVANYU ACRES PLAT A; THENCE S 14 DEG 24'34" E, 172.00 FT TO THE SOUTHEAST CORNER OF SAID LOT 23; THENCE S 75 DEG 35'26" W, 158.34 FT ALONG THE SOUTH LINE OF SAID LOT 23 TO AVANYU DRIVE; THENCE N 19 DEG 34'03" W, 100.35 FT ALONG SAID AVANYU DRIVE TO THE INTERSECTION OF 9530 NORTH/MAYAN LANE; THENCE S 80 DEG 25'57" W, 133.61 FEET ALONG THE CENTERLINE OF 9530 NORTH/MAYAN LANE; THENCE S 21 DEG 03'17" E, 108.15 FT ALONG THE EAST LINE OF LOT 32 OF AVANYU ACRES PLAT A SUBDIVISION TO THE SOUTHEAST CORNER OF SAID LOT 32; THENCE S 67 DEG 27'37" W, 108.79 FT TO THE SOUTHWEST CORNER OF SAID LOT 32; THENCE N 48 DEG 26'03" W, 64.11 FT TO THE SOUTHEASTERLY CORNER OF LOT 27 AVANYU PLAT A SUBDIVISION; THENCE THE FOLLOWING THREE COURSES ALONG THE SOUTHERLY LINE OF SAID LOT 27: 1) S 67 DEG 26'55" W, 18.00 FT; 2) S 22 DEG 32'23" E, 15.00 FT; 3) S 67 DEG 26'55" W, 96.24 FT TO THE SOUTHWEST CORNER OF SAID LOT 27; THENCE N 17 DEG 39'00" W, 305.86 FT TO THE NORTHWEST CORNER OF LOT 26 OF SAID AVANYU PLAT A SUBDIVISION; THENCE N 14 DEG 52'42" W, 10.69 FT TO A POINT ON THE EXTENSION OF A BOUNDARY LINE AGREEMENT BETWEEN THE CLEGG AND FOX PROPERTY AS RECORDED IN BOOK 5212, PAGE 155 IN THE OFFICE OF THE UTAH COUNTY RECORDER; THENCE S 64 DEG 06'30" W, 19.58 FT FOLLOWING SAID BOUNDARY LINE AGREEMENT; THENCE N 48 DEG 32'34" W, 239.03 FT; THENCE S 89 DEG 59'59" E, 174.79 FT; THENCE N 17 DEG 35'38" W, 180.09 FT TO THE SECTION LINE; THENCE S 89 DEG 59'59" E, 619.11 FT ALONG THE SECTION LINE TO THE POINT OF BEGINNING. CONTAINING 7.850 ACRES, MORE OR LESS.

(c) Lots 1-5, AVANYU ACRES PUD Plat D; Map 11003; Also described as:

BEGINNING AT THE INTERSECTION POINT OF THE WESTERLY BOUNDARY LINE OF CANYON HEIGHTS AT CEDAR HILLS PLAT D SUBDIVISION AND THE SOUTH SECTION LINE OF SECTION 5, SAID POINT BEING LOCATED 468.17 FT N 89 DEG 59'59" W ALONG THE SECTION LINE FROM THE SOUTH QUARTER CORNER OF

SECTION 5, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE N 89 DEG 59'59" W, 629.75 FEET ALONG THE SECTION LINE TO THE SOUTHEAST CORNER OF LOT 1, CANYON HEIGHTS AT CEDAR HILLS PLAT F; THENCE N 46 DEG 21'44" E, 329.86 FT ALONG THE SOUTHEASTERLY LINE OF SAID PLAT F TO THE WESTERLY RIGHT OF WAY LINE OF AZTEC DRIVE; THENCE N 69 DEG 49'12" E, 38.00 FT TO THE EASTERLY RIGHT OF WAY LINE OF AZTEC DRIVE; THENCE ALONG THE EASTERLY RIGHT OF WAY OF SAID AZTEC DRIVE ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 286.00 FEET, PASSING THROUGH A CENTRAL ANGLE OF 7 DEG 21'22", A LENGTH OF 36.72 FT, CHORD BEARS N 16 DEG 30'07" W, 36.69 FT; THENCE CONTINUING ALONG SAID EASTERLY RIGHT OF WAY OF AZTEC DRIVE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FT, PASSING THROUGH A CENTRAL ANGLE OF 88 DEG 00' 22", A LENGTH OF 23.04 FT, CHORD BEARS N 31 DEG 10'45" E, 20.84 FT TO THE SOUTHERLY RIGHT OF WAY OF BOX ELDER DRIVE; THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY OF BOX ELDER DRIVE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 329.00 FT, PASSING THROUGH A CENTRAL ANGLE OF 14 DEG 32'48", A LENGTH OF 83.30 FT, CHORD BEARS N 67 DEG 54'33" E, 83.30 FT; THENCE S 27 DEG 56'59" E, 158.73 FT; THENCE N 65 DEG 17'42" E, 107.52 FT TO THE WESTERLY BOUNDARY OF CANYON HEIGHTS AT CEDAR HILLS PLAT D; THENCE S 24 DEG 42'18" E, 252.97 FT ALONG SAID BOUNDARY OF CANYON HEIGHTS AT CEDAR HILLS PLAT D TO THE POINT OF BEGINNING. CONTAINING 2.550 ACRES, MORE OR LESS.

3.02 Exclusions. The Property excluded from the provisions of this Declaration, (but still subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the real property described in this section, or any portion thereof, including, without limitation, any Mortgage, and nothing in this paragraph shall be deemed to modify or amend such Mortgage; all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plats or otherwise existing; an easement for each and every pipe, line, cable, wire; utility line, or similar facility which traverses or partially occupies the said real property; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities;) consists of the following described real property in the City of Cedar Hills, Utah County, State of Utah:

(a) AVANYU ACRES PUD, Plat C; Section 8, Township 5S, Range 2E; Map 10546;
Also described as:

BEGINNING AT A POINT LOCATED NORTH 89 DEG 59'59 W, 267.72 FEET ALONG THE SECTION LINE (BASIS OF BEARING) AND SOUTH 171.66 FEET FROM THE NORTH QUARTER MERIDIAN AND RUNNING THENCE SOUTH 89 DEG 59'59" E, 81.36 FEET; THENCE SOUTH 48 DEG 32'34" E, 239.03 FEET TO A POINT ON THE

EXTENSION OF A BOUNDARY LINE AGREEMENT BETWEEN THE CLEGG AND FOX PROPERTY AS RECORDED IN BOOK 5212, PAGE 155 IN THE OFFICE OF THE UTAH COUNTY RECORDER; THENCE SOUTH 64 DEG 06'30" W, 206.06 FEET FOLLOWING SAID BOUNDARY LINE AGREEMENTARY LINE; THENCE N 16 DEG 50'09" W, 259.35 FEET TO THE POINT OF BEGINNING. CONTAINING 0.754 ACRES, MORE OR LESS.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcels of real property, whether or not the same are reflected on the Plat.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, without limitation, any Mortgage (and nothing in this paragraph shall be deemed to modify or amend such Mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plats or otherwise existing; an easement for each and every pipe, line, cable, wire; utility line, or similar facility which traverses or partially occupies the said real property; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities; and excepting those properties described in section 3.02 Exclusions, **TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

3.03 Division into Lots. The Development is hereby divided into Lots, as set forth and described on the Plats A, B, and D, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc, all as set forth in this Declaration.

ARTICLE IV

DUTIES AND OBLIGATIONS OF OWNERS

4.01 Maintenance and Repairs. Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good condition and repair at all times.

- (a) Each owner shall at his own cost maintain his Lot in accordance with the provisions in the Use Restrictions below.
- (b) Each owner shall at his own cost maintain his Lot, including the front, sides and backyards thereof, and any improvements constructed thereon in good condition and repair at all times. All such areas shall be reasonably free of clutter, car parts, weeds,

trash and other debris. Toys and other non-permanent structures and items are permitted in such areas but shall not remain in an unused condition for longer than twenty one days, so as to permit an unsightly appearance.

- (c) In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated 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 building in the Development.
- (d) Violation of this provision will result in all enforcement remedies vested in the Association, including removal of the offensive materials and levying of fines.

4.02 Insurance. Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall procure and maintain in force hazard insurance on personal contents and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances.

4.03 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 covenants, conditions, restrictions defined in this Declaration, as well as rules and regulations promulgated by the Association from time to time.

4.04 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 operations of law, shall be relieved of all obligations under this Declaration following such transfer.

ARTICLE V

PROPERTY RIGHTS AND CONVEYANCES

5.01 Easement Concerning Common Areas. Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

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

Lot No. _____ as identified in the Plat recorded in the office of the Utah County Recorder as Entry No. _____ and Map Filing No. _____ contained within Plat _____ of Avanyu Acres, A Planned Residential Development, SUBJECT TO the Declaration of Easements, Covenants, Conditions and Restrictions of Avanyu Acres, A Planned Residential Development recorded in the office of the Utah County Recorder in Book _____, at

Page _____, as Entry No. _____ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, 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.

5.03 Limitation on Easement. Each Lot's appurtenant right and easement of use and enjoyment concerning 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 of the Owners;
- (b) The right of the City of Cedar Hills, Utah, and any other governmental or quasigovernmental body having jurisdiction over the Property to enjoy access and rights of ingress and egress over and across any street or driveway, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and
- (c) 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 the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

5.04 Utility Easements. Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways and landscaped areas. If any Owner utilizes such easement rights with respect to his Lot or Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas which may have been disturbed or damaged as a result.

5.05 Easement for Encroachments. If any structure or Unit improvement (including without limitation, roof overhangs) constructed on any Lot whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the Common Areas, 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 of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structure's being in a slightly

different location than its predecessor shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

ARTICLE VI

USE RESTRICTIONS

- 6.01 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 and Units set forth herein. Pet owners must adhere to city ordinances and codes pertaining to pet ownership, including leash laws and pet waste disposal.
- 6.02 Residential Use.** The Property is zoned and is restricted to single family residential use pursuant to applicable provisions on Cedar Hills City ordinances. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning and no Lot or Unit 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.
- 6.03 Prohibited Use and Nuisances.** The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to Section 11.03 of this Declaration:
- (a) No Unit or any part thereof, including accessory apartments as defined by Cedar Hills city code, shall be used or occupied by any persons not coming within the definition of "Family" as such term is defined and intended in the most recent Cedar Hills City ordinances.
 - (b) No lease of any Unit shall be for less than the whole thereof, excluding accessory apartments.
 - (c) No animals, livestock, or poultry of any kind shall be permitted on any Lot or within any Unit except such domesticated household pets or birds as are allowed pursuant to the rules and regulations, including leash laws, adopted by the Board pursuant to Section 11.03 of this Declaration.
 - (d) No overnight parking of vehicles of any kind on the streets or in front yards. Daytime street parking is permitted for visitors, parties and other events hosted by owners and residents for short durations up to one day. Prolonged daytime street parking over multiple days is likewise not permitted. All owner and resident parking is limited to driveways and approved neighborhood parking areas. Limited exceptions can be made at the Board's discretion. In addition, the parking of boats, trailers, commercial trucks, truck campers, motor homes and like vehicles and equipment shall be allowed only within the confines of a garage or behind the front

edge of the home. Violation of this provision will result in all enforcement remedies vested in the Association, including removal of the vehicles and levying of fines.

- (e) Outside television or radio aerial antenna, satellite dishes or other similar devices for reception or transmission are permitted on any Lot, or on the exterior of any Unit, provided such devices are for personal, non-commercial use only and installed pursuant to rules and regulations adopted by the Architectural Controls Committee and/or set forth in this declaration.
- (f) No Unit within the Development shall be constructed, altered, placed, or permitted to remain on any Lot unless the square footage of the Home, exclusive of open porches and garages, conforms to the following minimum standards.
 - (1) Single story homes. The main floor area shall be 1,600 square feet or greater above grade.
 - (2) Two Story homes. The _ floor on a two story home shall be 1,100 square feet or greater and the second floor shall be 800 square feet or greater.
- (g) Each dwelling shall have at least a two car garage.
- (h) Materials. No aluminum or vinyl siding may be used on the exterior construction of a dwelling. All dwellings must use only brick, stucco, or stone; and the front elevation of each dwelling must contain a minimum of 25% brick or stone. All roofs must have a minimum pitch of 5/12 and shall use 25 year architectural grade shingles or better. Alternative siding and roofing materials may be approved pursuant to rules and regulations adopted by the Architectural Controls Committee.
- (i) No chain link fences are to be used on any property within the development with the exception of dog runs provided in 6.03(r). Fences shall be constructed of vinyl, concrete, wrought iron or block. Any other material must be approved by the ACC or Board before installation. .
- (j) Central Heating and Cooling devices and related devices shall not be located in front of dwellings, and side yard installations must be reasonably screened from view. No evaporative or "Swamp" coolers are allowed.
- (k) All homes must be within the setbacks established on the official plat.
- (l) All structures shall be completed within one year following commencement of construction. If not completed, the Board, may, at its option, make arrangements to complete the structure and lien the property to seek reimbursement.
- (m) All landscaping of front and side yards of each lot shall be substantially landscaped with grass, trees, bushes, flowers, etc. within a period of one year following completion or occupancy of each dwelling, whichever shall occur first.

- (n) The back yards of each lot shall be substantially landscaped within 18 months of the issuance of the certificate of occupancy, or the transfer of legal title to Owner, whichever occurs first. Substantially landscaped back yards may include grass, sod, or other aesthetically pleasing alternatives such as native hillside, zero-scaping, desert-scaping or the use of colored mulches, decorative gravels or any combination of the above. Bare earth, loose fill or other unfinished surfaces are not considered substantially landscaped. Other clarifications may be defined by rules and regulations set forth by the Architectural Controls Committee.
- (o) Deviations. Deviations from the standards herein outlined may be allowed by the Architectural Control Committee only for good cause shown. The decisions of the Committee on matters affecting aesthetics for the overall development shall be final.
- (p) Fire Protection. Each residence shall have installed surrounding it a sprinkler system for irrigation purposes which shall water the outside perimeter of their property, up to, but excluding native hillside abutting property boundaries, to also assist in fire protection. This sprinkler system must be installed in the same time frame as the landscaping. All residents shall strictly comply with all state and city ordinances pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Each residence shall have and maintain in operable condition at least 50 feet of garden hose, readily accessible, connected or immediately adjacent to a year-round water source. Exterior fires are limited to the following: 1) fires authorized by city permit on city burn days, 2) fires in fire pits or patio fireplaces specifically designed for that purpose, 3) barbeque fires fueled by natural gas or charcoal briquettes, and 4) fires contained within smokers or other enclosed cooking devices.
- (q) Nuisances, Unreasonable Annoyance, and Noxious Activities. No noxious or offensive activity shall be carried on upon any lot nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance, or danger to the neighborhood, except for legitimate construction and maintenance purposes performed during city-defined work time periods. No excessively loud noises shall be permitted in the Development.
- (r) Dog Runs. Chain link dog runs are permitted subject to the following: Dog runs must be contained behind a solid 5 foot fence of approved material. Dog runs, their location and materials, must be approved in advance by the ACC or board. Violation of this provision, including failure to seek approval from the ACC before installation, will result in all enforcement remedies vested in the Association, including removal of the structure and levying of fines.
- (s) No owner shall permit any vehicle, vehicle accessory, construction equipment or trailer which is in an extreme state of disrepair to be abandoned or to remain parked within any part of the development longer than twenty one days, unless such item is within a garage. A vehicle or item is deemed in an "extreme state of disrepair" when the Board reasonably determines that its presence offends the occupants of the other lots.

- (t) No owner shall permit the accumulation of debris, surplus building materials, scrap metal, old machinery, vehicle accessories, construction equipment, excess landscaping or fill material, or any other condition deemed reasonably unsightly by the Board.

6.04 **Remedies.** If any item contained in Article IV or VI not completed as required herein, the Board may at its option, make arrangements to complete the structure and/or landscaping, or remediate the violation, and lien the property to seek reimbursement.

ARTICLE VII

ARCHITECTURAL CONTROL

- 7.01 **Architectural Control Committee.** The Board of Directors of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.
- 7.02 **Submission to Committee.** No Unit, accessory of or addition to a Unit, substantial landscaping, fence, or outbuilding shall be constructed, altered, refurbished, repainted, unless complete plans and specifications therefore have first been submitted to and approved by the Committee.
- 7.03 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best 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 architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefore meet such criteria, the Committee must approve the same.
- 7.04 **Approval Procedure.** Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within 10 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 10 days after submission. In the event the Committee 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.
- 7.05 **Construction.** Once begun, and approved by the Architectural Control Committee, any improvements, construction, landscaping, or alterations shall be diligently prosecuted to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they

shall promptly restore such areas to their prior condition when the use thereof is no longer required.

- 7.06 Liability for Damages.** Neither the Committee nor any member thereof shall be held liable for damages by reason of action, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to Article VII.
- 7.07 Declarant's Obligation.** Declarant hereby covenants in favor of each Owner (a) that all Units to be erected by it and all improvements of the Common Areas to be accomplished by it in the Development will be architecturally compatible with respect to one another; and (b) that on the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, all Lots and Common Areas of the Development will be located in the locations shown on the Plat.

ARTICLE VIII

INSURANCE

- 8.01 Hazard Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, 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 the Common Areas owned by the Association and of all the structures on said Common Areas, with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners 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.
- 8.02 Liability Insurance.** The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (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 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 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.

8.03 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association of 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 of their 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.

8.04 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 maximum 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 w/o 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 30 days' prior written notice to the insured.

8.05 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 of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Unit 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.

8.06 Other Insurance Provisions. All insurance required pursuant to this Article VIII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article VIII to the contrary, any insurance required to be obtained by the Association pursuant to Sections 8.01, 8.02, 8.03, or 8.04 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 Units or risks being insured.

ARTICLE IX

RIGHTS OF MORTGAGEES

- 9.01 Title and Mortgage 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 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 or 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.
- 9.04 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.

ASSOCIATION BYLAWS

THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES X, XI, AND XII. THE MISCELLANEOUS PROVISIONS OF ARTICLE XIII OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE DECLARATION AND BYLAWS PROVISIONS, AS THE CASE MAY BE.

ARTICLE X

BYLAWS

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

- 10.01 Membership.** Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Lot ceases for any reason, at which time his membership in the

Association with respect to such Lot shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory, shall be appurtenant to and may not be separated from the ownership of a Lot.

- 10.02 **Voting Rights.** Each Lot Owner shall have one Vote for each Lot in which he holds an interest in.
- 10.03 **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 the total number of votes appurtenant to such Lot 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 which event no vote will be counted with respect to such Lot except to determine the presence or absence of a quorum.
- 10.04 **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 Utah County Recorder. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owners and Mortgagees of Lots.
- 10.05 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.
- 10.06 **Annual Meetings.** Annual meetings of the membership of the Association shall be held in the month of September of each year beginning in 2001 on such a day and time as is set forth in the notice thereof, provided that after the first such annual meeting, a month other than September may be chosen if it is deemed by the membership to be more convenient. 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.
- 10.07 **Special Meetings.** The President 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 thirty percent (30%) of the total votes of the Association, and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice thereof unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.
- 10.08 **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.
- 10.09 **Quorum.** Owners present in person or by proxy 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 collectively be entitled to cast at least forty percent (40%) of the total Association votes eligible to vote. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 10.08, above) at which a quorum shall be one-half of the

- quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than 45 days following the immediately preceding meeting.
- 10.10 **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 less than 48 hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 10.9.
- 10.11 **Officers.** The Association shall have a President, a Vice President and a Secretary/Treasurer, all of whom shall be elected by and from the Board. One Board member may serve simultaneously as Secretary and Treasurer. The Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Committee immediately following each annual meeting of Owners at which the 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.
 - (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. The Secretary shall have charge of such books and records as the Board may direct and he shall, in general, perform all the duties incident to the office of secretary of a similar type association.
 - (d) **Treasurer.** The Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer 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.
- 10.12 **Board of Directors.** Composition, Election, Vacancies. The Board shall be composed of five directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The Owners may increase the maximum number of Directors to seven at any meeting of Association members. Directors shall be elected to the Board by Owners in staggered three year terms. As Directors' terms expire, new Directors shall be elected for three-year terms and shall serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Directors from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Directors they were appointed to replace.
- 10.13 **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, attorneys fees reasonably

incurred in connection with any proceeding in which such Trustee may become involved by reason of being or having been a member of said Board.

- 10.14 **Board Meetings, Quorum, Board Action.** The Board of Directors may establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum. The action of a majority of those Directors attending a meeting at which a quorum is present shall be sufficient to constitute the action of the Board. Action by consent without a meeting shall require the unanimous consent of all current Directors.

ARTICLE XI

BYLAWS

DUTIES AND POWERS OF THE ASSOCIATION

- 11.01 **Duties of the Association.** 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 subsequent rules and regulations issued by the Board or Architectural Control Committee, and in general, the preservation of the residential quality and character of the Development, to the benefit and general welfare of the Owners. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the 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 accept title to all Common Areas conveyed to it, whether by Declarant or by others, provided the same is free and clear of liens and encumbrances.
 - (c) The Association shall maintain, repair, replace, and landscape the Common Areas.
 - (d) To the extent not assessed to or paid by the Owners 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.
 - (e) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.
 - (f) The Association may employ a 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 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 30 days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive periods of one year each. Any Managing Agent may be an agent or employee of the Association or an independent contractor, as the Board deems appropriate.

11.02 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, 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 the Declaration or the Bylaws, 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 as required herein. 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 the Declaration, the Bylaws or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction, or otherwise all of the provisions of the Declaration, the Bylaws and such rules and regulations.
- (b) In fulfilling any of its duties under the Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots (the latter to the extent necessitated by the failure of the Owners of such Lots to comply with the covenants, conditions, restrictions set forth herein, or the rules and regulations adopted by Architectural Controls Committee) 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:
 - (1) construction, maintenance, repair and landscaping of the Common Areas or Lots on such terms and conditions as the Board shall deem appropriate;
 - (2) such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, members of the Board and Owners;
 - (3) such Common Area related utility services as the Board may from time to time deem necessary or desirable;
 - (4) the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
 - (5) 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
 - (6) such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

11.03 Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of the Declaration or the Bylaws, shall adopt, amend, repeal and enforce reasonable rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) uses and nuisances pertaining to the Property; (e) architectural control within the Development; (f) monitoring compliance with the covenants, conditions and restrictions within this Declaration, and rules and regulations adopted by the Board or its committees; (g) the undertaking of enforcement actions

designed to remedy such non-compliance within the Development and (g) all other matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development.

- 11.04 **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.

ARTICLE XII

BYLAWS

ASSESSMENTS & FINES

- 12.01 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the annual and special 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 with respect to which 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 of 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 attorney's 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.
- 12.02 **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, and the maintenance, operation and carrying 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: taxes and insurance on the Common Areas and Units under any approved blanket coverage; maintenance, repair, and improvement of the Common Areas; establishment and funding of a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Declaration or its Articles of Incorporation, Bylaws or rules and regulations.
- 12.03 **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 12.02, above.
- 12.04 **Annual Budget.** Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following; provided the first fiscal year shall begin on the date of recordation of this Declaration. On or before December 15 of each

- fiscal year the Association shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. The operating budget for the first fiscal year shall be prepared and furnished to each Owner within 30 days of such Owner's initial purchase. 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 Development shall be operated during such annual period.
- 12.05 **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. Each annual assessment shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to 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 the 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 15 days after notice of such assessment shall have been given to the Owner in the manner provided in the Declaration.
- 12.06 **Initial Fees.** In addition, each Owner shall be required to prepay at the time of purchase of his Unit, whether as a first time or subsequent Owner, a sum equal to twice the then monthly installment of the annual assessment, which sum shall be in addition to any proration of assessment which may be due for the month in which such purchase takes place. Such fees shall become part of the Association's general fund to be utilized as necessary.
- 12.07 **Maximum Annual Assessment.** Until January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$1,200 per Unit. From and after January 1 of the calendar year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each calendar year thereafter by not more than fifteen percent (15%) above the maximum annual assessment for the previous year without the vote of Owners entitled to cast a majority of the Association votes.
- 12.08 **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 10 but not more than 30 days prior to the meeting date.
- 12.09 **Uniform Rate of Assessment.** All monthly and special assessments authorized by Sections 12.03 and 12.08, respectively, shall be fixed at a uniform rate for all Lots.
- 12.10 **Quorum Requirements.** Notwithstanding Section 10.09, the quorum at any Association meeting required for any action authorized by Section 12.08, above, shall be as follows: At the first meeting called, the presence of Owners of or proxies entitled to cast sixty percent

(60%) of the total votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 12.08, above) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than 45 days following the immediately preceding meeting.

- 12.11 **Reimbursement Assessment on Specific Lot.** In addition to the annual assessment and any special assessment authorized pursuant to Section 12.08, above, the Board may levy at any time Reimbursement Assessments (a) on every Lot especially benefitted (i.e., benefitted to a substantially greater degree than any other Lot) by any improvement to adjacent roads, sidewalks, planting areas or other portions on 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, pursuant to any of the provisions of the Declaration. 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, and 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, and such 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 obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.
- 12.12 **Fines for Non-Compliance.** The Board may assess Owners, and collect therefrom, fines for violations of covenants, conditions, or requirements specified within this Declaration, or of any rules or regulations promulgated by the Board or its Committees. All such fees must be adopted and published by the Board, in a Fee Schedule, which may be updated by the Board from time to time, as needs require. Under no circumstances shall any fee schedule be adopted or enforced by the Board unless authorized by the Owners at a Board meeting, subject to the quorum requirement specified in Section 10.09 herein. Owners must be given notice of all approved changes to the fee schedule. The fee schedule must be recorded with the Utah County Recorder at Provo, Utah, pursuant to state law, and is herein incorporated in this Declaration as Exhibit A.
- 12.13 **Hearing.** An owner who is assessed a fine under sec. 12.12 may request an informal hearing to protest or dispute the fine within 14 days from the date the fine is assessed. A hearing will consist of a minimum of three board members or two board members and one ACC member. The three member panel will hear the owner and render a decision to enforce the fine, reduce the fine, or waive the fine. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered by the panel, and notice of that decision has been made to the owner. The decisions of the panel are final.
- 12.14 **Certificate Regarding Payment.** 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.

- 12.15 **Effect of Nonpayment; Remedies.** Any assessment (whether annual, special or Reimbursement Assessment) or fine not received within 10 days of the date on which it becomes due shall be subject to a late charge equal to five percent (5%) thereof; which together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Lot until paid. If any assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the "due date at the rate of one percent (1%) per month; and the Association may bring an action against the Owner who is personally liable therefore 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 expense incurred by the Association in enforcing its rights.
- 12.16 **Subordination of Lien to First Mortgages.** The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Lot by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply such excess. No sale or transfer of a Lot in connection with any foreclosure of a first Mortgage shall relieve any Lot from the lien of any assessment installment thereafter becoming due.
- 12.17 **No Abatement.** No diminution or abatement of any assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from (a) any construction (or lack of construction) within the Development; (b) the making of (or failure to make) any repairs or improvements to, or the maintenance of any Common Areas of the Development, or any part thereof; or (c) from any action taken to comply with the provision of the Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE XIII

MISCELLANEOUS

- 13.01 **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 latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any officer or board member 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 of the Association, any board member or any member of the Architectural Control Committee.


- 13.02 **Amendment.** Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in Utah County, Utah, which is executed by Owners who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association.
- 13.03 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number or 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 13.03:
- (a) All necessary consents must be obtained prior to the expiration of 90 days after the first consent if 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.
 - (d) Unless the consent of all Owners whose memberships are appurtenant to the same Lot are secured, the consent of none of such Owners shall be effective.
- 13.04 **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.
- 13.05 **Condemnation.** If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the 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 on 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.
- 13.06 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of all parties who heretofore acquired or hereafter acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. 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.

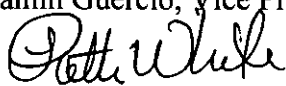
- 13.07 **Enforcement of Restrictions.** Any Owner, The Association, or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration. The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.
- 13.08 **Duration.** This Declaration shall remain in effect until such time as there is recorded in Utah County, Utah, an instrument of termination which is executed by all of the parties required by Section 13.02 hereof, plus the Mortgagee of each and every Lot.
- 13.09 **Effective Date.** This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah

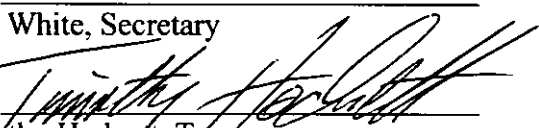
EXECUTED by Declarant on 6/12/2012.


AVANYU ACRES HOME OWNERS
ASSOCIATION

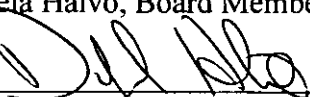
BY: 
C. Mathew Sorensen, President

BY: 
Benjamin Guercio, Vice President

BY: 
Patti White, Secretary

BY: 
Timothy Hodnett, Treasurer

BY: 
Pamela Halvo, Board Member

BY: 
Donald Halvo, Board Member

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

On this 12 day of June, 2012, personally appeared before me C. Mathew Sorensen, Benjamin Guercio, Tim Hodnett, Patti White, Pamela Halvo, and Donald Halvo, who, being by me duly sworn, did say that each is a member of the Board of Directors of Avanyu Acres Home Owners Association, a Utah Corporation; that said instrument was signed by each in behalf of said corporation pursuant to authority; and that said corporation executed the same.



NOTARY PUBLIC

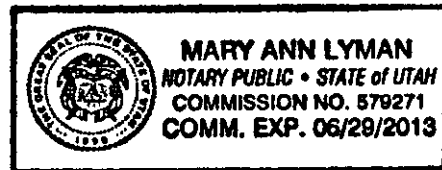


EXHIBIT A

PENALTIES & FEE SCHEDULE

- 4.01 Failure to maintain Lot and any improvements constructed thereon: \$10 per day.
- 6.01. Abuse and Misuse of Common Area: \$50 per infraction, plus cost of cleanup.
- 6.03(a). Violation of leasing (to non-family, as defined by Cedar Hills code): \$10 per day.
- 6.03(c). Animals, livestock, or poultry. \$10 per day.
- 6.03(d). Parking Violation. \$30 per vehicle, per day, plus cost of vehicle removal after five days.
- 6.03(e). Antenna, Dish violation. \$50 per incident plus cost of remediation.
- 6.03(h). Materials Violation: \$100 per month, per occurrence, plus costs of remediation after one year.
- 6.03(i). Fencing violation: \$100 per month, plus costs of remediation after one year.
- 6.03(j). Central Heating and Cooling devices violation: \$50 per month, plus cost of remediation after one year.
- 6.03(m). Failure to substantially landscape within one year (front of lot) or 18 months (back and sides) of joining Association: \$10 per day, plus cost of remediation.
- 6.03(q). Nuisances, Unreasonable Annoyance, and Noxious Activities. \$50 per incident, or \$10 per day, whichever is greater.
- 6.03(r). Dog Run Violation. \$10 per day, plus cost of remediation after 30 days.
- 6.03(s). Junk Vehicle Violation & \$30 per day, plus cost of remediation after 30 days.
- 6.03(t). Debris and Unsightly Condition Violation: \$30 per day, plus cost of remediation after 30 days.
- 7.02. Failure to submit to Architectural Controls Committee: \$250 per incident.
- 7.05. Failure to complete construction within one year. \$10 per day, plus cost of remediation.