

**RESTATED AND AMENDED DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS
 OF
 SOUTH MOUNTAIN PHASE 9**

THIS RESTATED AND AMENDED DECLARATION (the "Amended Declaration") is made by Perry Development, LLC, a Utah limited liability company, hereinafter referred to as "Declarant".

WITNESSETH

WHEREAS Declarant's predecessor in interest, L.H. Perry Investments, Ltd. recorded the Declaration of Covenants Conditions and Restrictions of South Mountain Phase 9 in the records of the Salt Lake County Recorder's Office on August 30, 2001 as Entry No. 7989550 in Book 8494 at pages 9107-9112 (the "Original Declaration") intending to effect certain real property in Draper City, Salt Lake County, State of Utah, more particularly described as:

All of Lots 1 through 87 ("Lot[s]"), South Mountain Planned Unit Development, Phase 9, according to the official plats thereof, the first of which was filed with the Salt Lake County Recorder in Salt Lake County, State of Utah, on August 13, 2001 as Entry No. 797293 in Book 200P at page 223, and any subsequent plats which may be recorded and which pertain to Lots 1 through 87 of the South Mountain Planned Unit Development, Phase 9 (the "Recorded Plats").

WHEREAS Declarant has discovered certain errors and inconsistencies in the Original Declaration;

WHEREAS Article VI, Section 4 of the Original Declaration allows for amendment upon the consent of two-thirds (2/3) of all the votes entitled to be cast by Lot owners or their proxies at a meeting duly called for such purpose;

WHEREAS Declarant has conducted such a meeting in accordance with Article VI, Section 4 of the Original Declaration and has secured the necessary votes required to amend the Original Declaration

WHEREAS the amendments to the Original Declaration shall more accurately express the intent of the provisions of the Original Declaration, shall correct the discovered errors, shall more accurately reflect the existing circumstances or information now relevant to the Lots, and shall establish the workability of the arrangements initially contemplated by the Original Declaration.

NOW THEREFORE, Declarant hereby amends and restates the Original Declaration and declares, for the purpose of protecting the value and desirability of the Lots, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots, and be binding on all parties

having any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

HOMEOWNERS ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Declarant, as an owner of Lots, and every other owner of a Lot shall be a member of the South Mountain Phase 9 Homeowners' Association to be established by Declarant at such time as the Declarant deems advisable, but in any event, no later than on a date prior to which the last Lot owned by Declarant is conveyed to a third party, the ("Association").

SECTION 2. The voting rights of the Association members shall be as specified in the Articles of Incorporation filed by the Declarant with the Utah Division of Corporations and Commercial Code and /or in the ByLaws of the Association initially adopted by Declarant acting as incorporator of the Association.

ARTICLE II

ASSESSMENTS

SECTION 1. Creation of Lien and Personal Obligation for Special Assessments. Declarant and each owner of any Lot by accepting a deed to or executing a contract for a Lot (whether or not it shall be so expressed in such instrument), shall be deemed to covenant to pay the Association special assessments as hereinafter described. Such assessments, together with interests, costs, and reasonable attorney's fees, shall be a personal obligation of the owner of each Lot at a time when the assessment is due. Delinquent assessments, together with interest, costs, and reasonable attorneys' fees, shall become a lien upon the Lot if the Association files a Claim of Lien describing the Lot with the Salt Lake County Recorder's Office. The priority of such lien shall be based upon the date the Claim of Lien is filed.

SECTION 2. Purpose of Special Assessments. Any special assessments levied by the Association shall be used exclusively to administer and enforce the Residential Area Covenants described in Article V hereof, to preserve the quality of the Phase 9 development and generally to promote the health, safety, comfort, convenience, and welfare of the owners of Lots in Phase 9. Specifically, without limitation, the special assessments may be used to engage legal counsel to file such actions as may be necessary to enforce the Residential Area Covenants.

SECTION 3. Approval of Special Assessments. Any such assessment shall have the consent of sixty percent (60%) of the votes entitled to be cast by the owners of the Lots or their proxies at a meeting duly called for this purpose. Such assessment shall be separately billed and accounted for by the Association.

SECTION 4. Quorum for Approval of Special Assessments. Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all owners of the Lots not less than ten (10) days nor more than fifty (50) days in advance of the meeting. The presence of persons or their proxies entitled to cast forty percent (40%) of all votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such subsequent meetings shall be one-half of the required quorum at the preceding meeting.

SECTION 5. Creation of Special Lien and Personal Obligation for Landscaping Maintenance Assessment. Each owner of Lots 1, 3-11, 24-45, 55-58, 60, 62-87 (the "Landscape Maintenance Lot(s)") by accepting a deed to or executing a contract for such Lot (whether or not it shall be so expressed in such instrument), shall be deemed to covenant to pay the Association landscaping maintenance assessments as described in Article IV below (the "Landscape Maintenance Assessment(s)"). Such Landscape Maintenance Assessment, together with interests, costs, and reasonable attorney's fees, shall be a personal obligation of the owner of each Landscape Maintenance Lot at a time when the assessment is due. Delinquent Landscape Maintenance Assessments, together with interests, costs, and reasonable attorneys' fees, shall become a lien upon a Landscape Maintenance Lot if the Association files a Claim of Lien describing such Lot with the Salt Lake County Recorder's Office. The priority of such lien shall be based upon the date the Claim of Lien is filed.

SECTION 6. Purpose of Landscape Maintenance Assessment. The Landscape Maintenance Assessment shall be used exclusively to administer and enforce the Special Landscape Maintenance Covenant described in Article IV, below, to preserve the quality of the Phase 9 development and generally to promote the health, safety, comfort, convenience, and welfare of the owners of all Lots in Phase 9. Specifically, without limitation, the Landscape Maintenance Assessments may be used to engage legal counsel to file such actions as may be necessary to enforce the Special Landscape Maintenance Covenant.

SECTION 7. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment permitted by this Article II not paid by the due date as established by the Association, is delinquent and shall bear interest from that date at the rate set forth in the ByLaws. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose any lien against the Lot in the same manner as an action to foreclose a mortgage on real property. No owner subject to assessments may waive or otherwise escape liability for the assessments provided for herein by abandonment of his or her Lot.

ARTICLE III

ARCHITECTURAL CONTROL

SECTION 1. The initial Architectural Control Committee ("Committee") shall be composed of William O. Perry, III and Kenneth M. Dyer. Upon and following formation of the Association, the Association shall appoint one of its members to act as the third member of the Committee. In the event of death or resignation of any members of the Committee, the remaining members of the Committee shall have full authority to select a successor. Neither members of the Committee, nor designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

SECTION 2. The Committee's approval or disapproval as required in these covenants shall be in writing on the owner's plans or in a letter from. The owner must submit a set of formal plans, specifications, and site plan to the Committee before the review process may commence. In the event the Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with. Provided however, nothing herein shall be deemed to release or discharge the owner's obligations to comply with the covenants described in Article V hereof. This section does not apply to homes built by Perry Homes, Inc., Perry Homes Utah, Inc., or any of its affiliated companies, so long as Perry Development, LLC or any of its affiliated companies continues to own any of the Lots.

SECTION 3. No building or other structure shall be commenced, erected or maintained upon the Project, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, exterior color combinations and location of the same shall have submitted to the Committee in compliance with Section 2 of this Article III.

SECTION 4. No fence shall be commenced, erected or maintained upon the Lots in the Project unless the plans meet the local zoning safety requirements of Draper City and comply with the conditions of approval and development standards of the South Mountain Planned Unit Development.

ARTICLE IV

SPECIAL LANDSCAPE MAINTENANCE COVENANT

SECTION 1. Parking Strip Maintenance Along Mike Wier Drive. The owners of the Landscape Maintenance Lots, as described in Article II, Section 5 above, shall be responsible for the costs associated with maintaining and irrigating the landscaped parkstrip area along Mike Wier Drive between Mike Wier Drive and the boundary of the Project, including any entry monument features and landscaping at the entrance roads of

the Project that are not contained within the boundaries of any Lot (the park strip and such other areas being referred to herein as the "Common Landscaping"). The Association shall contract with a landscape maintenance company to maintain the landscaping features and sprinkler systems in the Common Landscaping and shall also contract with the relevant utility company to provide metered water to the Common Landscaping. The Association shall bill each owner of a Landscape Maintenance Lot its prorata share of such costs in accordance with the provisions of Article II, above.

SECTION 2. Declarant's Option to Assume Duties. Declarant shall have the option at its sole discretion and not by way of obligation, to assume the duties and pay the costs for such duties set forth under this Article IV until such time as it gives written notice to the Association that it no longer shall perform and pay for such duties, and in any event for a period no longer than the period that lasts until it conveys its' last Lot owned in the Project. At such time as the Declarant ceases to assume the duties and pay the costs for such duties set forth under this Article IV, the Association and the owners of the Landscape Maintenance Lots shall immediately assume the obligations required hereunder and shall take all necessary steps to transfer any obligations under such contracts for landscaping, sprinkler maintenance and irrigation water for the Common Landscaping from the name of the Declarant to the name of the Association at which time the Declarant shall have no further contractual obligations to perform the duties hereunder and no further obligation to the Association for the performance of such duties.

ARTICLE V

RESIDENTIAL AREA COVENANTS

SECTION 1. Quality of Construction of the Project.

1. No Lot shall be used except for residential purposes
2. Each dwelling constructed on a Lot shall have an attached garage for a minimum of two (2) vehicles and may have a detached garage with a maximum of three (3) vehicles; provided that neither may encroach upon any easement.
3. No dwelling constructed on a Lot shall exceed two stories in height, not including any basement or areas within a roof structure.
4. All new construction shall be comprised of new materials, except that used brick may be used with the prior written consent of the Committee.
5. The main exterior materials used on any dwelling constructed on a Lot shall be brick, stucco, stone or artificial stone. No aluminum, vinyl or wood siding shall be used as an exterior wall finish. Any other exterior wall finish shall be first approved by the Committee.
6. All dwellings constructed on a Lot shall comply with the January 4, 2000 Development Standards adopted for the South Mountain Planned Unit Development and any amendments thereto all of

which as recorded in the offices of the Salt Lake County Recorder (“South Mountain Development Agreement”).

SECTION 2. Dwelling Size. The following dwelling sizes apply to any dwelling structure constructed on a Lot at the Project, exclusive of garages and porches.

1. Rambler: 1,500 square foot minimum on the main level.
2. Tri-Level: 1,250 square foot minimum on a combination of the main level and the upper level
3. Two Story: 1,800 square foot minimum on a combination of the main level and the upper level

SECTION 3. City Ordinances. All improvements on a Lot shall be completed and maintained in accordance with the South Mountain Development Agreement, the laws and ordinances of the City of Draper, Salt Lake County and the State of Utah that may be applicable, including without limiting the generality of the foregoing, all applicable zoning and land use ordinances. Notwithstanding the foregoing, in the event of any conflict between the South Mountain Development Agreement and any other applicable law or ordinance, the South Mountain Development Agreement, as amended from time to time, shall in all instances control.

SECTION 4. Easements. Easements necessary for the installation and maintenance of utilities and drainage facilities are reserved as shown on the Recorded Plats. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

SECTION 5. Nuisances. No obnoxious or offensive activity shall be carried out upon any Lot that is contrary to generally acceptable standards of conduct, nor shall anything be done upon any Lot that shall constitute a nuisance. Without limiting the generality of the foregoing, no driveway or front yard area of any Lot shall be used to store for any period of time longer than ninety-six (96) hours any automobile or recreational vehicle that is in a dilapidated or broken down condition. Moreover, unless extenuating circumstances as are acknowledged and approved by the Committee render it otherwise impossible, all recreational vehicles or vehicles for use in conjunction with any particular vocation shall be stored on RV Pads constructed on the sides of dwelling structures or in garages that are a part of such dwelling structure or constructed for such storage purposes.

SECTION 6. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

SECTION 7. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. Declarant, Perry Homes, Inc., Perry Homes Utah, Inc. or related companies may temporarily store construction related materials on a Lot during the construction of a dwelling structure in a manner that is consistent with construction industry practices.

SECTION 8. Landscaping. All front and side yards of a Lot must be landscaped within one (1) year following the initial permanent occupancy of any dwelling structure.

ARTICLE VI

GENERAL PROVISIONS

SECTION 1. Enforcement. Any owner of a Lot shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by any owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right of the Lot owner or any other Lot owner to enforce the same at a later time.

SECTION 2. Severability. Invalidation of any portion or provision of this Amended Declaration by judgment or court order shall in no way affect any other provision hereof which shall be deemed to remain in full force and effect.

SECTION 3. Covenants Run with the Land. The covenants, conditions and restrictions of this Amended Declaration are intended to and shall run with the land, and shall be binding upon and shall inure to the benefit of the Declarant and all other owners of any Lot and their respective grantees, transferees, heirs, devisees, personal representatives, agents, successors and assigns.

SECTION 4. Amendments. Any amendment to this declaration shall have the consent of two-thirds (2/3) of all the votes entitled to be cast by the owners of any Lots or their proxies at a meeting duly called for this purpose. Written notice of such meetings shall be sent to all Lot owners not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of persons or their proxies entitled to cast forty percent (40%) of all votes entitled to be cast shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any amendment approval shall be reduced to writing, signed, and recorded against the Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this 19 day of July, 2004.

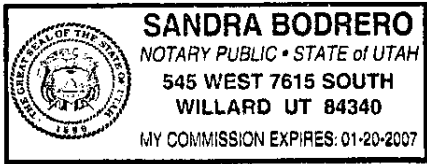
DECLARANT:

PERRY DEVELOPMENT, LLC,
A Utah limited liability company

By: *William O. Perry, III*
William O. Perry, III, its Manager

STATE OF UTAH)
)ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me William O. Perry, III, the Manager of the Declarant.



Sandra Bodrero
NOTARY PUBLIC