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After Recorded Mail To:
Whispering Willows HOA, Inc.
Attn: Bobby Colson
1305 Commerce Dr. S-210
Saratoga Springs, UT 84043

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2007 Apr 05 10:54 am FEE 87.00 BY STL
RECORDED FOR PROVO LAND TITLE COMPANY

**WHISPERING WILLOWS PLAT H, LOTS 47-67, WHISPERING WILLOWS HOA,
INC. SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS.**

**THIS SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS (the "Declaration") made this 4th day of April, 2007, by
Whispering Willows, LLC a Utah limited liability company (Declarant "A").
(This declaration will supersede any previously recorded declaration per the date
of recordation.)**

RECITALS

- A. Declarant "A" is the owner of certain land in Spanish Fork City, Utah County, Utah, shown on the plat entitled, "Whispering Willows Plat H" to be recorded among the Recorder's Office of Utah County, Utah, Recorder's Office (the "Recorder's Office"), in Plat Book _____ No. 148390; 06 _____.
- B. It is the intention of Declarant "A" to develop the land as a residential community, and to insure therefore a uniform plan and scheme of development, and unto that end Declarant "A" has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:
 - i. To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined)
 - ii. To facilitate the sale by Declarant "A", its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.
 - iii. To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of Declarant "A", the Owners and any Mortgagee (as such capitalized terms are defined herein) and to all those who may in the future claim title through any of the above.
 - iv. To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces and common areas, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an association to be delegated and assigned the powers of maintaining and administering the Common Area (as hereinafter defined), and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.
- C. Spanish Fork City is included as a Declarant and a party for the purpose of enforcing the architectural guidelines and standards of the City only.

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NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT Declarant "A" does hereby establish and impose upon the Property (as hereinafter defined), the Covenants, for the benefit of and to be observed and enforced by Declarant "A", its successors and assigns, as well as by all purchasers of Lots.

ARTICLE I
DEFINITIONS

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

- 1.1. "Association" shall mean and refer to the Whispering Willows HOA, Inc.
- 1.2. "Builder" shall mean any person or entity other than Declarant "A", which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.
- 1.3. "Common Area" shall mean and refer to those areas of land, sometimes designated on the Plat as "Homeowners Association Open Space," intended to be devoted to the common use and enjoyment of the Owners of the Lots, including but not limited to reserved open spaces, maintenance areas, tot lots, not-tidal wetlands, recreational areas with any improvements located thereon, steep slopes, private streets, parking areas (including, without limitation, covered parking), storm water detention facilities, and any other real property or other facilities which the Association owns and/or in which the Association acquires a right of use for the benefit of the Association and its members, saving and excepting, however, so much of the land previously conveyed or to be conveyed to a governmental body.
- 1.4. "Community" shall mean and refer to all of the land herby made subject to the Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.
- 1.5. "Community Association" shall mean Whispering Willows HOA, Inc., Plat H, Lots 47-67, its successors and assigns.
- 1.6. "Declarant" shall mean Whispering Willows, LLC, its successors and assigns.
- 1.7. "Declarant "A" shall mean and refer to Whispering Willows, LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.
- 1.8. "Development Period" shall mean the time between the dates of recordation of this Declaration at the Recorder's Office and the date on which the Class B membership in the Association converts to Class A membership as described in Article IV.

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- 1.9 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground (exclusive of the Common Area) and designated by numerals on the Plat, on which a dwelling is proposed to be constructed.
- 1.10 "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.
- 1.11 "Mortgagee" means the person secured by a Mortgage.
- 1.12 "Plat" shall mean and refer to the plat entitled, "Whispering Willows Plat H" to be recorded among the Recorder's Office of Utah County, Utah, and any plats recorded among the Recorder's Office in substitution therefore or amendment thereof, plus any plats hereafter recorded among the Recorder's office of any Additional Property that may hereafter expressly be made subject to this Declaration by any instrument in writing, duly executed, and recorded among the Recorder's Office.
- 1.13 "Project Area" shall mean the aggregate of the Community Association Area, which is subject to the Community Declaration at any point in time, and the Annexable Area, which may at any time thereafter to be annexed to the Community Association Area and thereby be made subject to the Community Declaration.
- 1.14 "Property" shall mean and refer to all of the real property described in Exhibit A attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.
- 1.15 "Owner" or "Owners" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants in common, tenants by the entireties, or tenants in copartnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or otherwise, all of the same, as a unit, shall be deemed a single Owner shall be or become a single member of the Association by virtue of ownership of such Lot. The term "Owner," however, shall not mean, refer to or include any contract purchaser nor shall it include a Mortgagee.
- 1.16 "Structure" means any thing or device, the placement of which, upon the Property (or any part thereof), may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered, patio, clothesline, radio, television or other antenna or "dish", fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part

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thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of Property (or any part thereof) of more than six inches (6") from that existing at the time of first ownership by an Owner hereunder other than Declarant "A".

- 1.17 "Association" shall mean any Utah corporation, or un-incorporated association, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations and of which the membership is composed of Owners or Privately Owned Sites within all or part of the area covered by the Supplemental Declarations.
- 1.18 "The City" or "The City of Spanish Fork" shall mean the City of Spanish Fork, a Utah municipal corporation.

ARTICLE II

COVENANTS, CONDITIONS AND RESTRICTIONS

- 2.1 ADMINISTRATION; ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee, which shall be appointed by Declarant "A" during the Development Period and thereafter by the Board of Directors of the Association (the "Architectural Review Committee") shall have all the rights, powers and duties granted to it pursuant to this Declaration. The initial members of the Architectural Review Committee are Chris Salisbury, Doug Page and Bobby Colson the Architectural Review Committee shall at all times be comprised of at least three (3) members. At any time, or from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation) with other individuals selected by Declarant "A" in its sole discretion. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural Review Committee now or hereafter appointed, shall act without compensation for services performed pursuant to this Declaration. Declarant "A" hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the community, (the "Design Guidelines") which shall be made available to all members and to waive such portion or portions of the Covenants numbered 2.3 through 2.25 of this Article. It as the Architectural Review Committee, in its sole discretion, may deem advisable and in the best interest of the Community. The Architectural Review Committee shall be bound by the Architectural Guidelines established by the Community Declaration. In any conflict between the Design Guidelines for this community and the design guidelines established by the Community Declaration, the design guidelines of the Community Declaration shall prevail.

2.2 ARCHITECTURAL REVIEW.

- a. No Structure (other than construction or development by, for or under contract with Declarant "A") shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively,

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"Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work have been submitted to and approved in writing by the Architectural Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all permits and approvals necessary for such Structure or Alterations.

- b. The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors; the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.
- c. The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and locations plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a processing fee, not in excess of \$50.00, for such requests, which shall be retained by the Association and not the Architectural Review Committee.

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- d. Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.
- e. If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefore and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefore from the Association, the Association may establish a lien therefore upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.
- f. Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

- 2.3 **LAND USE.** The Lots, except as hereinafter provided, shall be used for private and residential purposes only and no dwelling of any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the Lots shall at any time be used for apartments or other types of multiple housing units; it being the intention of Declarant "A" that each and every one of the Lots be used solely for one (1) single family attached dwelling, and no other purposes, except such purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted on any part of the Property, except that any part of any Structure now or hereafter erected on any Lot may be used as an office or studio, provided that (i) the person using such office or studio actually resides in the Structure in which such office or studio is located, (ii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iii) the operation of such office

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or studio does not involve the employment of any more than one (1) non-resident employee, (iv) the person owning such Lot has obtained the prior written approval of the Architectural Review Committee, and (v) such office or studio does not occupy more than thirty three and one-third percent (33.3%) of the total floor area of such Structure.

- 2.4 **SWIMMING POOLS.** No swimming pools, whether "in ground", "above ground" or other type, shall be permitted on any Lot.
- 2.5 **DRIVEWAYS.** No driveways or parking areas shall be permitted on any Lot in the Community, excluding, however, those Lots which have garages that have been constructed by Declarant "A" or Builder.
- 2.6 **EXTERIOR MATERIALS.** All exterior surfaces of any building shall be of materials and of colors approved by the Architectural Review Committee. Exterior Materials shall mean stone/rock, & stucco, or other similar materials but shall not mean cinder block or concrete block or aluminum vinyl/siding. Exterior residence materials shall be of a noncombustible material as approved by Spanish Fork City. The determination as to if any specific material constitutes an acceptable Exterior Material as its use is proposed in a given structure in Whispering Willows Flat H shall be made by the Architectural Review Committee.
- 2.7 **TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Restrictions are placed upon the storage items to be placed in the backyards and along the railings of the backyard decks.
- 2.8 **REAL ESTATE SALE OR CONSTRUCTION OFFICE.** Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and/or model home and related signs, may be erected, maintained and operated on any Lot in accordance with the sign ordinance adopted by the City of Spanish Fork or in any Structure now or hereafter located thereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales or constructed office, trailer, or sign after initial development, sales, and/or construction is completed. Except as expressly permitted herein above, neither any part of any Lot, nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.
- 2.9 **CLOTHES LINE.** No exterior clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.
- 2.10 **TRAFFIC VIEW.** No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than thirty feet (30') from either street line that will exceed two and one-half feet (2.5') in height (except shade trees which shall be trimmed so that a clear view may be maintained to the height of seven feet (7')).
- 2.11 **FRONT LAWN.** The area within the front of a dwelling shall be kept only as lawn for ornamental or decorative planting of grass, trees and shrubbery.

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2.12 FENCES AND WALLS. Except for fences as may be installed and/or constructed by Declarant "A" or Builder simultaneously with the initial construction of a dwelling on a Lot by Declarant "A" and/or Builder, no fence, wall or other similar enclosure may be built on the front, side or rear yard of any Lot.

2.13 VEHICLES.

- a. Other than private passenger vehicles, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or repaired on any portions of the Property except in emergencies. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires, and is in such good condition and repair as may be necessary for any person to drive the same on a public highways.
- b. No commercial vehicles over $\frac{3}{4}$ ton rated capacity ("Commercial Vehicles") shall be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of Commercial Vehicles upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.
- c. Trailers, buses, tractors, or any type of recreational vehicle shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets or Common Areas.
- d. Notwithstanding the above, during construction of dwellings, Declarant "A" and any Builder may maintain Commercial Vehicles and trailers on the Property for purposes of construction and for use as a field or sales office.
- e. Unsightly Articles. No unsightly article shall be permitted to remain on any Lot or on streets and drives within the Whispering Willows Plat H Neighborhood, but must be stored in an off-site storage area. Without limiting the generality of the foregoing: trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups used solely for the private and non-business use of the residents of a lot), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, garden and maintenance equipment, and all commercial, farming and business vehicles, except when in actual use, shall be kept at all times in a an off-site storage facility. No repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure, or appropriately screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept

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within an enclosed structure or appropriately screened from view. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No materials or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or if appropriately screened from view. Liquid propane gas, oil and other exterior tanks approved by Spanish Fork Fire Department shall be kept within an enclosed structure or permanently screened from view. Vehicles may not be parked in the driveway at any time except entering and exiting the garage.

- 2.14 **LIGHTING AND WIRING.** The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground.
- 2.15 **ANTENNAE.** No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a dwelling, except on the following terms:
- a. An Owner may install, maintain and use on its Lot one (1) (or, if approved, more than one (1)) Small Antenna (as hereinafter defined) in the rear yard of a dwelling on the Lot, at such location, and screened from view from adjacent dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Review Committee, in accordance with Article II. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a dwelling would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antennae as are need to prevent such impairment (but such installation shall otherwise be made in accordance with this subdivision).
 - b. In determining whether to grant any approval pursuant to this Section, neither Declarant "A", the Architectural Review Committee nor the Board of Directors shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided however, that any Small Antenna shall be placed in the rear of each dwelling, notwithstanding any other provision in this Section 2.18.
 - c. External Television or Other Antennas. – Antennas for radio, television, or device for the reception or transmission of radio, microwaves or other similar signals are restricted to the attic or interior of the home. Satellite dish antennas shall be allowed provided they are located in such areas as may be designated by the Architectural Control Committee. In no event

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shall satellite dish antennas be visible from neighboring property or exceed 20 inches in diameter or width.

- 2.16 **SUBDIVISION.** No Lot shall be divided or subdivide and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose; provided, however, this shall not prohibit transfers of parts of Lots between adjoining Lot owners where the transfer is not for the purpose of creating a new building Lot. The provisions of this subsection shall not apply to Declarant "A" and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any person for any purpose.
- 2.17 **SIGNAGE.** Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" signs (not larger than two feet by three feet (2' x 3')), and except as provided in this Article II, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Structure. No signs may be posted that do not meet local government permits and approvals, if applicable. No sign of any kind shall be displayed to the public view on any Lot provided however, those signs which have received the prior approval of the Architectural Review Committee may be displayed on or from a residence advertising the residence for sale or lease. The Declarant at his/her sole discretion may place signs they he/she may deem necessary for marketing of the project.
- 2.18 **LEASE AGREEMENTS.** All lease agreements with respect to any Lot or any Structure located thereon shall be in writing. The minimum term of all lease agreements shall be one (1) year, and shall state that the lease agreements shall be subject to this Declaration and must list the association as an additional insured. Owners who do not reside on their Lot must provide current addresses and phone numbers to the Association. Failure to provide a copy of the lease agreement to the Association may be subject to a recurring fine until the agreement is provided.
- 2.19 **TRASH AND OTHER MATERIALS.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except (a) building material during the course of construction of any approved dwelling or other permitted Structure, and (b) firewood, which shall be cut and neatly stored at least six inches (6") off the ground and twelve inches (12") away from any wooden structure. No burning of trash shall be permitted on any Lot. All Owners shall place trash or other refuse into refuse containers provided by the Association at locations designated for trash deposits. Owners may not place any trash outside of such refuse containers or in any other locations or container, except as designated by the Association. The cost of refuse containers shall be included as an expense item in Annual Assessments. All outside storage of personal articles and property shall be contained within the privacy wall of each home and no personal articles of any kind shall be visible to the public from any public street.
- 2.20 **NON-INTERFERENCE WITH UTILITIES.** No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. No poles and wires for transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

2.21 PARTY WALLS.

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- a. Each wall that is built as a part of the original construction of the dwellings upon the Lots and placed upon the dividing line between the Lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- b. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- c. If a party wall is destroyed or damaged by fire or other casualty, and Owner who has used the wall may restore it, and if the other Owners(s) thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner(s) to call for a larger contribution from the other(s) under any rule of law regarding liability for negligence or willful acts or omissions.
- d. Notwithstanding any other provisions of this section, any Owner who by its negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- e. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to each Owner's successors in title.
- f. In the event of any dispute arising concerning a party wall, or under the provisions of this Section, each party shall choose one (1) arbitrator, and such arbitrators shall jointly choose one (1) additional arbitrator, and the decision shall be by the majority of the three (3) arbitrators.
- g. The rules applicable to party walls shall also apply to any party fences.

- 2.22 ANIMALS. Animals kept on any Lot shall be properly sheltered and cared for. All dogs shall be kept on a hand-held leash outside of the owner's unit. Each Owner shall maintain and clean the facilities for their pets and prevent objectionable odors, pests, insects, etc. No animal or other pet of any kind other than common domesticated animals shall be allowed, including, but not limited to, cats and dogs which, in the opinion of the Association's Board, might be dangerous or which make an unreasonable amount of noise, odor, or is otherwise a nuisance. Each Owner of pets and animals shall be financially responsible and liable for any damage caused by said Owner's pets and animals and shall be responsible for the pickup and disposal of any excrement deposited by his pets and animals. No breeding or boarding of any pet shall be permitted within the association. No more than two domestic animals may be kept within any one unit.

ARTICLE IIIPROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

- 3.1 PROPERTY. The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Community, and is described

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on Exhibit A attached hereto, all of which real property is referred to herein as the "Property."

3.2 ADDITIONS TO PROPERTY.

- a. Declarant "A", its successors and assigns, shall have the right for seven (7) years from the date of this Declaration to bring within the scheme of this Declaration Additional Property within the Community (the "Additional Property") without the consent of the Class A members of the Association provided that the annexation is in accordance with the general plan heretofore approved. The general plan of development is shown on the Plat, but the plan shall not bind Declarant "A", its successors or assigns, to make the proposed additions, or to adhere to the plan in any subsequent development of the land shown thereon. The Additional Property that may be annexed to the Community is described on Exhibit B attached hereto.
- b. The additions authorized under this subsection shall be made by filing a supplemental declaration of record with respect to the Additional Property which shall extend the scheme of the Declaration to such Additional Property, and which Additional Property shall thereupon become part of the Property. Upon the filing of any supplemental declaration, Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property. Such supplemental declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Property not inconsistent with the scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the Covenants established by this Declaration for the Property as of the date hereof.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

- 4.1 MEMBERSHIP. Every Owner of a Lot that is subject to assessment shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

4.2 CLASSES OF MEMBERSHIP.

- a. The Association shall have two (2) classes of voting membership;
 - (i) Class A. Except for Declarant "A" and any Builder, which shall initially be the Class B members, the Class A members shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who holds such interest solely as security for performance of any obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to

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one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

- (ii) Class B. The Class B members shall be Declarant "A" and any Builder. The Class B members shall be entitled to three (3) votes per Lot for each Lot owned by them, in all proceedings in which actions shall be taken by members of the Association. Notwithstanding anything contained herein to the contrary, during the Development Period each Builder shall be conclusively deemed:

- a. To have given Declarant "A" an irrevocable and exclusive proxy entitling Declarant "A", at each meeting of the Membership held while such Builder holds such title, to cast the votes in the Association's affairs which such Builder holds under the foregoing provisions of this Section on each question which comes before such meeting;
 - b. To have agreed with Declarant "A" that such proxy is given to and relied upon by Declarant "A" in connection with Declarant "A's" development, construction, marketing, sale and leasing of any or all of the Property and is couple with an interest; and
 - c. To understand that such proxy shall cease with respect to the votes appurtenant to a Lot when a dwelling has been constructed on such Lot and legal title to such Lot is conveyed to a person who intends to occupy such dwelling as a residence.
- b. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, holds the record title to any Lot, all of the same, as a unit, and not otherwise, shall be deemed a single member of the Association. The vote of any member comprised of two (2) or more persons, firms, corporation, trustees, or other legal entities, or any other combination, thereof, shall be cast in the manner provided for in the Articles of Organization and/or Operating Agreement of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one (1) vote per Lot for each Lot owned by them.

- 4.3 **CONVERSION.** The Class B membership in the Association shall cease and be converted to Class A membership in the Association subject to being revived upon Additional Property being annexed to the Property pursuant to this Declaration, upon the earlier to occur of (i) _____, 200.; provided, however, that the Developer shall transfer control of the Association after 90% of the Units in the Association have been conveyed to Class A members; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Association equals or exceeds the total number of votes entitled to be cast by the Class B members of the Association.

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ARTICLE V
DECLARANT "A"'S RESERVED RIGHTS AND OBLIGATIONS

5.1 **RESERVED RIGHTS OF DECLARANT "A"**. The Association shall hold the Common Area conveyed to it pursuant to Article IV hereof and each Owner shall own its Lot subject to the following:

- a. The reservation to Declarant "A", its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road or Common Area on the Property, and over those strips of land running along the front, rear, side, and other Lot lines of each Lot shown on the Plat, except for the common side lines on the Lots, for the purposes of proper surface water drainage, for ingress and egress, for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant "A" necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes. Within the aforesaid easement areas, 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 change the direction of the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The reserved easement areas of each Lot and all improvements therein, except improvements for which a public authority or utility company is responsible, shall be maintained continuously by the Owner for the Lot.
- b. The reservation to Declarant "A" and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services, and related services and facilities.
- c. The designation of streets, avenues, roads, courts and places upon the Plat is for the purpose of description only and not dedication, and the rights of Declarant "A" in and to the same are specifically reserved, and Declarant "A" hereby reserves unto itself, and its successors and assigns, the right to grade, regrade and improve the streets, avenues, roads, courts and places as the same may be located on the Plat, including the creation or extension of slopes, banks, or excavation in connection therewith and in the construction of and installation of

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drainage structures therein. Declarant "A" further reserves unto itself, and its successors and assigns, the bed, in fee, of all streets, avenues and public highways in the Community, as shown on the Plat.

- d. Declarant "A" further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other license or permits as Declarant "A" may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in the Declaration or as shown on the Plat.
- e. Declarant "A" further serves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way easements, including easements in the areas designated as "open space" and stormwater management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Architectural Review Committee.
- f. Declarant "A" further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of the Structure built on such Lot, but Declarant "A" shall not be under any obligation or duty to do such grading or to maintain any slope. Similarly, Declarant "A" reserves the right unto itself, and its successors and assigns, and, without limitation, the Association, to enter on any Lot during normal business hours for the purpose of performing the maintenance obligations of the Association, as more particularly described in Section 6.4; provided, however, that Declarant "A" shall have no obligation to perform such maintenance. No right shall be conferred upon any Owner by the recording of any plat relating to the development of the Property in accordance with such plat, Declarant "A" expressly reserving unto itself the right to make such amendments to any such plat or plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof.
- g. Declarant "A" further reserves unto itself and any Builder and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association for all purposes necessary or appropriate to the full and final completion of construction of the Community. Specifically, none of the provisions of Article II concerning architectural control

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or use restrictions shall in any way apply to any aspect of Declarant "A"'s or Builder's activities or construction, and notwithstanding any provisions of this Declaration, none of Declarant "A"'s or Builder's construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Community shall be deemed noxious, offensive or a nuisance. Declarant "A" reserves the right for itself and any Builder, and their successors and assigns, to store materials, construction debris and trash during the construction period on the Property without keeping same in containers. Declarant "A" will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.

- h. All of the utility rights-of-way and easements necessary for water, sewer, power, natural gas, and telephone services installed, reconstructed, used, or otherwise designated on the plat, shall be and are hereby assigned to the City of Spanish Fork for the provision of municipal utilities to the lots and common areas.

- 5.2 INCORPORATION BY REFERENCE; FUTHER ASSURANCES. Any and all grants made to the Association with respect to any of the Common Area and all grants made with respect to any Lots shall be conclusively deemed to incorporate the foregoing reservations, whether or not specifically set forth in such instruments. At the request in writing of any party hereto, any other party shall from time to time execute, acknowledge and deliver such further assurances of such reservations as may be necessary.

ARTICLE VI COMMON AREA

- 6.1 GRANT OF COMMON AREA. The Association shall take title to the Common Area that is part of the Property free and clear of all encumbrances, except non-monetary title exceptions and this Declaration not later than the date the first Lot is conveyed to an Owner (other than Declarant "A" or a Builder). The Covenants are hereby imposed upon the Common Area for the benefit of Declarant "A, the Builder, the Association and the Owners, and their respective personal representatives, successors and assigns, to the end and intent that the Association shall have and hold the said Common Area subject to the reservations set forth in Article V hereof, and to the Covenants herein set forth.
- 6.2 MEMBER'S RIGHT OF ENJOYMENT. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Area and such non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth. Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community sue, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or

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topography of the area, or for aesthetic reasons. No portion of the Common Area may be used exclusively by any Owner for personal vegetable gardens, storage facilities or other private uses.

- 6.3 **NUISANCE.** No noxious or offensive activity as defined by the Board of Directors or civil law shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Community.
- 6.4 **MAINTENANCE OBLIGATIONS OF THE ASSOCIATION.** The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area (including, without limitation, covered parking, if applicable), and the front and rear yards of Lots for purposes of lawn care and sprinkler systems located thereon (subject, however, to the provisions of Section 2.13), area drainage systems, retaining walls, private courts and street lighting located within private courts, and any area dedicated to a public or governmental entity if such entity fails to properly maintain such area, as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense, and shall levy against each member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Common Area, which proportionate share shall be determined based on the ratio which the number of Lots owned by the member bears to the total number of Lots then laid out or established on the Property.
- 6.5 **RESTRICTIONS.** The right of each member of the Association to use the Common Area shall be subject to the following:
- a. Any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;
 - b. The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Area;
 - c. The right of the Association to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure;
 - d. The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration;
 - e. The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of Utah County; provided, however, that no dedication, transfer, mortgage or determination as to the purposes or as the conditions thereof, shall be effective unless two-thirds (2/3) of the Class A members (excluding Declarant "A" if Declarant "A" is a Class A

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- member) of the Association consent to such dedication, transfer, purpose and conditions; and
- f. The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, Declarant "A" or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.
- g. All of the foregoing shall inure to the benefit of and be enforceable by the Association and Declarant "A", or either of them, their respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, to enforce performance of any term, condition, provision, rule or regulation. Further, the Association and Declarant "A" shall have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.
- 6.6 **DELEGATION OF RIGHT OF USE.** Any member of the Association may delegate its rights to the use and enjoyment of the Common Area to family members who reside permanently with such member and to its tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.
- 6.7 **RULES AND REGULATIONS.** Each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area. Further, each Owner shall comply with the Covenants imposed by this Declaration on the use and enjoyment of the Common Area.

ARTICLE VII **ENCROACHMENTS**

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot or any Structure encroaches upon any Common Area, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

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ARTICLE VIII
COVENANT FOR ASSESSMENT

- 8.1 COVENANT FOR ASSESSMENT. Declarant "A" for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot do it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for annual assessments or charges, and (b) special assessments or charges, for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided. The annual and special assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VIII and shall be construed as a real covenant running with the land. Such assessments or charges, together with interest at a rate of twelve percent (12%) per annum, and costs and reasonable attorneys fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successor in the title unless expressly assumed by such successor or successors.
- 8.2 USE OF ASSESSMENTS. The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and in particular for (a) the improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area as well as fees paid to any management agent; (b) the payment of taxes on Common Area may be levied against all Lots Laid out on the Property by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots; (c) the payment of insurance premiums on the Common Area; (d) the costs of repair, replacement and additions to the Common Area and improvements thereon; (e) the cost of obtaining planting and thereafter maintaining street trees throughout the Community if required by Utah County, whether or not such street trees are located in the Common Area; (f) the costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association; (g) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (h) the cost of refuse containers, as described in Section 2.22; (i) the cost of semi-annual maintenance for blowouts on the ends of the water lines serving the Community, as referenced in Section 6.4; (j) the cost of maintenance, insurance and replacement of covered parking; and (k) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements.
- 8.3 MAXIMUM ANNUAL ASSESSMENT
- a. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant "A" or a Builder, the

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maximum annual assessment shall be the aggregate of \$_____ for each Lot, payable at the rate of \$_____ per month.

- b. From and after such date, the maximum annual assessment may be increased each year by not more than ten percent (10%) of the maximum annual assessment for the previous year without a vote of the membership of the Association.
- c. From and after such date the maximum annual assessment may be increased above the ten percent (10%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.
- d. Neither Declarant "A", nor a Builder, nor any Lot to which Declarant "A" or Builder holds record title, shall be exempt from any assessment hereunder, however, notwithstanding anything elsewhere set forth herein, the following allowance shall be made by the Association to Declarant "A" and Builder in each instance; annual assessments or charges made or levied against any Lot to which Declarant "A" or Builder hold record title shall equal twenty-five percent (25%) of the annual assessment or charge made or levied against any other Lot laid out on the Property, to the end and intent that Declarant "A" or Builder shall not pay more, or less, than twenty-five percent (25%) of the per Lot annual assessment established by the Association under this Section.
- e. The Board of Directors of the Association may fix the annual assessment or charges against each Lot at any amount not in excess of the maximum. Subject to the limitations set forth in this Section 8.3, and for the periods therein specified, the Association may change the maximum and the basis of the assessments fixed by Section 8.3 hereof prospectively for any period provided that any such change shall have the assent of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purposes.

8.4 **SPECIAL ASSESSMENTS.** In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of each class of members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

8.5 **NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 8.3 AND 8.4.** Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Section 8.3 and 8.4 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at such a meeting shall be necessary and sufficient to 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 any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding

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meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.6 COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.

- a. The Annual Assessments as to any Lot shall commence on the earlier of (i) the date the Lot is conveyed to any person or entity other than Declarant "A" or a Builder or (ii) the date a Use and Occupancy Permit is issued by the proper authorities of Utah County to Declarant "A" or a Builder. The annual assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, and shall be a lien for any month after the fifteenth (15th) day of that month.
- b. The due date of any special assessment under Section 8.4 shall be fixed in the resolution authorizing such special assessment.

8.7 DUTIES OF THE BOARD OF DIRECTORS.

- a. The Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis herein above provided for. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.
- b. The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the management, operation and maintenance of the Common Area. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner upon reasonable notice to the Board of Directors. Written notice of the annual maintenance assessments shall thereupon be sent to all members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of the Article or a release of any member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No member may exempt itself from liability for maintenance assessments by abandonment of any Lot owned by such member or by the abandonment of such member's right to use and enjoyment of the Common Area

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- c. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed ten dollars (\$10.00) may be levied in advance by the Association for each certificate issued.
- 8.8 **ADDITIONAL ASSESSMENTS.** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.
- 8.9 **PAYMENT OF ASSESSMENT.** Any assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall and shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or without waiving any other right, and at equity to foreclosure the lien against the Lot in the same manner and subject to the same requirements as are specified by the law of Utah for the foreclosure of mortgages or deeds of trust containing a power of sale or an assent to a decree, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the complaint of such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees and reasonable attorneys' fees to be fixed by the court together with the cost of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.
- 8.10 **SUBORDINATION OF LIEN TO MORTGAGE.** The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such or transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessments.
- 8.11 **ENFORCEMENT OF LIEN.** The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damage, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.
- 8.12 **EXEMPT PROPERTY.** The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessment created herein.
- 8.13 **RESERVES FOR REPLACEMENTS.**

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- a. The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.
- b. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE IX
INSURANCE AND CASUALTY LOSSES

9.1 TYPES OF INSURANCE MAINTAINED BY ASSOCIATION. During the Development Period, the Association may obtain the following types of insurance;

- a. insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement of such improvements in the event of damage or destruction;
- b. a public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a Five Hundred Thousand Dollar (\$500,000) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;
- c. workers' compensation insurance, if and to the extent required by law; and
- d. fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

After the conclusion of the Development Period, the Board of Directors shall have the authority to and shall obtain the insurance described above.

9.2 PREMIUMS FOR INSURANCE MAINTAINED BY ASSOCIATION. Premiums for all insurance and bonds required to be carried under Section 9.1 hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the annual assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

9.3 DAMAGE AND DESTRUCTION OF COMMON AREA.

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- a. Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.
 - b. Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstruction unless at least seventy-five percent (100%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.
 - c. If, in accordance with subsection (b), the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.
- 9.4 **REPAIR AND RECONSTRUCTION OF COMMON AREA.** If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against all Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.
- 9.5 **HAZARD INSURANCE ON IMPROVED LOTS.** Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.
- 9.6 **OBLIGATION OF LOT OWNER TO REPAIR AND RESTORE.**
- a. In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved, Lot, unless retained by Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by Declarant "A" or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the

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- improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.
- b. If any Owner of any improved Lot fails to maintain the insurance required by Section 9.5 of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance, to the same extent as such costs within ten (10) days after such Owner's receipt of a written demand therefore from the Association, the Association may establish in a lien therefore upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

ARTICLE X
RIGHTS OF MORTGAGEES

10.1 GENERAL

- a. Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, and any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner thereof.
- b. Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the time.

10.2 INSPECTION; STATEMENT AND NOTICE. A Mortgagee shall, upon delivery of a written request to the Association, be entitled to:

- a. Inspect the Association's books and records during normal business hour;
- b. receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;
- c. be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;
- d. be given timely written notice of the occurrence of any substantial damage to or destruction of the Common Area, or if the Common Area is made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and
- e. be given timely written notice by the Association of the failure to pay an assessment by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to

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give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

- 10.3 APPROVAL BY FEDERAL HOUSING ADMINISTRATION AND VETERANS ADMINISTRATION. Until the Class B membership terminates pursuant to the provisions of Article IV, Section 4.3, the consent or approval of the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development shall be obtained with respect to any of the following actions taken while a Mortgage is in effect which is insured by such entity:

- a. A dedication of any portion of the Common Area to public use;
- b. An amendment of this Declaration; and
- c. Annexation of additional properties.

ARTICLE XI MISCELLANEOUS

- 11.1 TERM. This Declaration shall run with the land and shall be binding for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 11.9.

11.2 ENFORCEMENT.

- a. Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses incurred as a result of the said violation or attempted violation, including, but not limited to, court costs and attorneys' fees.
- b. These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

- 11.3 NO WAIVER. The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- 11.4 INCORPORATION BY REFERENCE ON RESALE. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

- 11.5 NOTICES. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when

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mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

- 11.6 **NO DEDICATION TO PUBLIC USE.** Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Area by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area.
- 11.7 **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.
- 11.8 **CAPTIONS AND GENDERS.** The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.
- 11.9 **AMENDMENT.**
- a. For long as there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by Declarant "A" and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of (i) at least two-thirds (2/3) of the Class A members of the Association, if any, and (ii) Declarant "A" shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of the Association at a meeting of the Association duly called for such purposes.
 - b. An amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office of Utah County. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording which instrument, each Owner, other than Declarant "A", hereby grants to the President or Vice President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant "A's" rights or privileges under the Articles of Incorporation or By-Laws of the

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Association or this Declaration be terminated, altered or amended without Declarant "A"s prior written consent.

- c. The provisions of this Declaration requiring compliance with the architectural guidelines and standards of the City of Spanish Fork and assigning all rights-of-way for provision of municipal utilities to the City of Spanish Fork shall not be amended without the express written consent of the City of Spanish Fork.

11.10 **ASSOCIATION'S GOVERNING DOCUMENTS.** Members of the Association are bound in all respects by the provisions, terms and conditions set forth in the Association's Articles of Organization and Operating Agreement.

11.11 **Common Area.** The Association shall improve, develop, supervise, manage, operate, exanine, insure, inspect, care for, repair, replace, restore and maintain the Common Area, including, without limitation, snow removal from the streets for all Lots and snow removal from the streets and sidewalks for all Townhouse Lots.

11.12 **Townhouse Lots.** The Association shall provide exterior maintenance upon each Townhouse Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roof, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. In the event that the need for maintenance or repair of a Townhouse Lot or the improvements thereon is caused by the willful or negligent acts of an Owner or through the willful or negligent acts of the family, guests, invitees or Lessees of the Owner of the Townhouse Lot needing such repair, the cost of such maintenance and repair shall be added to and become part of the assets to which such Townhouse Lot is subject in this Declaration.

(a) **Owner's Responsibility.** Owners are responsible for the cleaning and maintenance of air conditioning units, all glass surfaces, windows and window screens. Any repair and maintenance work must be as the original, or approved in advance, by the ARC. Owner's are also responsible for all interior components of their Townhome.

11.13 **General Provisions Regarding Party Walls.** Each wall which is built as a part of the original construction of the Townhouse Lots upon the Properties and placed on the dividing line between Townhouse Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party wall and liability for property damage due to negligence or willful acts or omission shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make sue of the wall in proportion to such use. However, if one Owner is negligent or willfully damages a party wall, that Owner shall bear the whole cost of repairing the wall. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use with prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

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WITNESS the hand and seal of Declarant "A" hereto on the day herein above first written.

WITNESS/ATTEST;

DECLARANT "A"

By: Whispering Willows, LLC
Its Managing MemberBy: *Rick Salisbury*
Rick Salisbury

ATTEST:

STATE OF UTAH)

ss.

COUNTY OF UTAH)

The foregoing instrument was subscribed and sworn to before me this 3rd day of April
2007 2006, by Rick Salisbury, manager of Whispering Willows, LLC*Douglas Pinder*
Notary PublicMy commission expires: 11-3-2009

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EXHIBIT A

WHISPERING WILLOWS PLAT H - PROPERTY DESCRIPTION

Located in Spanish Fork City, Utah County, Utah:

Plat "H"

Lots 47 thru 67, Plat "H", Whispering Willows Townhomes, Spanish Fork Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.