

When Recorded Return to:
Dixon, Truman, Fisher & Clifford
20 North Main Street, Suite 205
St. George, Utah 84770

TRACT DECLARATION FOR SIENNA HEIGHTS AT SIENNA HILLS

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as Sienna Heights at Sienna Hills.

RECITALS

A. Declarant owns certain real property in Washington City, Washington County, Utah, which is more particularly described on **Exhibit "A,"** which is attached hereto and incorporated herein by this reference. The Property is located within Sienna Hills, a planned community development in Washington City, which was established by the State of Utah, acting through the Utah State School and Institutional Trust Lands Administration ("SITLA"), AND Washington City Ordinance No. Z-2004-20.

B. The Master Declaration for Sienna Hills contemplates division of the real property that is subject to the Master Declaration into different tracts and/or neighborhoods. The Property is located within neighborhood 11A of Sienna Hills, as identified on the vicinity map contained on the Plat and such other documents of record relating to the Sienna Hills master planned community. The Master Declaration contemplates that each tract or neighborhood will be developed into separate neighborhoods, which may have tract declarations establishing covenants, conditions and restrictions specific to the particular neighborhood.

C. Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential community. Therefore, Declarant will convey the Property subject to the following covenants, conditions, restrictions, easements, which, along with the Articles and Bylaws, provides for a governance structure and a system of standards and procedures for development, maintenance and preservation of the Property as a residential community.

DECLARATION

Declarant hereby declares that all of the Property described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Plat recorded concurrently. This Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE 1
DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning. In the event the same term is defined in this Declaration and the Master Declaration, the term shall have the meaning set forth in the declaration being referred to.

1.1 Additional Property means and refers to any real property which is adjacent or continuous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Plat. When Additional Property is annexed to this Declaration, it shall become part of the Property.

1.2 Articles or Articles of Incorporation shall mean and refer to the instrument entitled "ARTICLES OF INCORPORATION OF SIENNA HEIGHTS AT SIENNA HIGHLANDS HOMEOWNERS ASSOCIATION, INC." which was filed for record in the office of the Utah Division of Corporations and Commercial Code on or about December 6, 2005.

1.3 Association shall mean and refer to the SIENNA HEIGHTS AT SIENNA HIGHLANDS HOMEOWNERS ASSOCIATION, INC., the Utah nonprofit corporation which is created by the filing of the Articles.

1.4 Board of Directors or Directors or Board means and refers to the governing board of the Association.

1.5 Bylaws mean and refer to the Bylaws of Sienna Heights at Sienna Hills Owners Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for example but not limitation) voting, elections, meetings and assessments.

1.6 Common Areas or Common Areas and Facilities shall mean and refer to all portions of the Property owned by the Association for the common use and enjoyment of the Owners.

1.7 Common Expenses means the actual and estimated expenses incurred or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs unless a majority of the Class A Members approve.

1.8 Community or Property means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration, and where the context requires includes any improvements thereon.

1.9 Declarant shall mean and refer to Sienna Heights, LLC and/or any successors to said limited liability company which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relationship to the Project.

1.10 Declarant Control Period means the period of time during which the Declarant has Class B membership status as provided for herein.

1.11 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof.

1.12 Dwelling Unit means a single family structure built on a Lot pursuant to the restrictions of the Governing Documents.

1.13 Entire Membership means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B members; provided however, that the term Entire Membership shall exclude the Class B membership when it relates to or calls for an assessment or charge to the Entire Membership.

1.14 Governing Documents means collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements thereto, and includes any rules, regulations, and resolutions established pursuant to the authority of this Declaration, Articles, or Bylaws.

1.15 Limited Common Areas and Facilities or Limited Common Areas shall mean and refer to those Common Areas designated in the Declaration or in the Plat as reserved for the use of a certain Lot or Lots or certain Dwelling Units to the exclusion of other Lots or other Dwelling Units

1.16 Lot means and refers to any of the separately numbered and individually described parcels of land shown on the Plat and intended for private use and ownership and excludes any Common Area.

1.17 Master Association means and refers to the Sienna Hills Community Association, a Utah non-profit corporation, its successors and assigns.

1.18 Master Declaration means and refers to the Declaration of Covenants, Conditions, Restrictions, and Easements for Sienna Hills, which were recorded in the Office of the Washington County Recorder on January 27, 2006, as Entry No. 00999848. at Book 1838, Pages 0798-0919. The Master Declaration was established by its declarant, as stated therein, the State of Utah, acting through the Utah School and Institutional Trust Lands Administration (“SITLA”) and any successors or assigns as referenced or provided for in the Master Declaration.

1.19 Member, Owner, Lot Owner, Unit Owner shall mean and refer to every person or entity who holds membership in the Association.

1.20 Mortgage shall mean a first mortgage or a first deed of trust on any Lot.

1.21 Mortgagee shall mean any person named as a first mortgagee under a first mortgage on any Lot or a beneficiary under or holder of a first deed of trust on any Lot.

1.22 Owner shall mean and refer to the person or entity, whether one or more, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.22.1 Plat shall mean and refer to the duly approved and recorded plat known as “Sienna Heights at Sienna Hills,” recorded concurrently with this Declaration.

1.23 Project shall mean and refer to Sienna Heights at Sienna Hills; a master planned development, as shown on the Plat and governed by this Declaration.

1.24 Property shall mean and refer to the tract of real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration, and, where the context requires, includes any improvements thereon.

ARTICLE 2 **PROPERTY RIGHTS**

2.1 Owner's Acknowledgment; Notice to Purchasers. All Owners are given notice that the use of their Lot(s) and Common Area and Limited Common Area is limited by the covenants, conditions, restrictions, easements and other provisions in the Governing Documents, as they may be amended, expanded or modified from time to time, as well as the Master Declaration. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot and any improvements thereon can be affected by said covenants, conditions, restrictions, easements and other provisions in the Governing Documents, as well as the Master Declaration. All purchasers of Lots are on notice that the Association may have adopted changes to the Governing Documents that might differ from those any purchaser might receive from or have disclosed by the Owner from whom the purchaser is purchasing his or her Lot. Copies of current Governing Documents may be obtained from the Association. Any issue or questions concerning the Master Declaration and any rule, regulation or other matter concerning the Master Declaration should be referred to the Master Association or SITLA, as the declarant under the Master Declaration.

2.2 Lots.

2.2.1 Ownership. Each Lot is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions and easements in this Declaration and other provisions of the Governing Documents.

2.2.2 Activities within Dwelling Units. No rule shall interfere with the activities carried on within the confines of a Dwelling Unit built on a Lot, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling or that create an unreasonable source of annoyance, all as may be determined by the Board or any committee designated by the Board or this Declaration to make such determinations, in their sole discretion.

2.2.3 Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Dwelling Unit on the basis of size and facilities of the Dwelling Unit and its fair use of the Common Area.

2.3 Common Area.

2.3.1 Ownership. Prior to the expiration of the Declarant Control Period, the Declarant will convey the Common Area, including

any Limited Common Area, which is a portion of the Common Area, to the Association, free and clear of all encumbrances and liens, but subject to this Declaration, and the easements and rights-of-way of record. The Association shall accept the deed of conveyance of the Common Area upon Declarant's presentment of the same.

- 2.3.2 Rights of Use and Rules and Regulations Concerning the Common Area. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Area, including but not limited to rights of use, hours of use, delegation of use, and standards of conduct. Additional rights to establish rules and regulations governing the Common Area may be set forth and established elsewhere in the Governing Documents.
- 2.3.3 Board Authority and Rights in the Common Area. The Board shall have the right, for and on behalf of the Association, to:
- 2.3.3.1 Enter into agreements or leases which provide for the use of the Common Area by a similar association in consideration for use of the common areas and facilities or the other association or for cash consideration, or for use by third parties for consideration;
- 2.3.3.2 With the approval of at least seventy-five percent (75%) of Lot Owners to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;
- 2.3.3.3 Grant easements for public utilities or other public purposes consistent with the intended use of the Common Area;
- 2.3.3.4 Take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure; and
- 2.3.3.5 Take such other actions with respect to the Common Area which are authorized by or otherwise consistent with the Governing Documents.
- 2.3.4 Declarant's Right of Use. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area, including community buildings, without charge during the Declarant Control Period to aid in its marketing activities.

2.4 Delegation of Use. Any Lot Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association and other Governing Documents. The Board may, by rule, require Lot

Owners to forfeit their right of use in the Common Areas for so long as the Lot Owner has delegated his right of use in the Common Areas to his or her tenant. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by a Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be a specific assessment charged to the Lot Owner.

2.5 Declarant's Right to Develop. No rule or action by the Association shall unreasonably impede or interfere with Declarant's ability and right to develop the Property.

ARTICLE 3 **ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership. Every Owner is a Member of the Association. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

3.2 Voting Rights. The Association has two classes of voting membership, Class A and Class B.

3.2.1 Class A. Every Owner is a Class A Member with the exception of the Declarant, until Declarant's membership converts to Class A membership as provided for herein. Class A Members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Unit concerned unless written objection is made prior to that meeting or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote shall not be counted for any purpose except to determine whether a quorum exists.

3.2.2 Class B. The Class B member is the Declarant. The Class B member is entitled to five votes for each Lot owned, however, Declarant's Class B membership status is not dependant or contingent upon Declarant's ownership of any Lot within the Property. Class B membership will cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier: (i) the expiration of ten years from the date of recording of this Declaration or (ii) by Declarant's express surrender of Class B membership status, which surrender must be in a written instrument signed by Declarant and recorded in the Office of the Washington County Recorder. Unless the instrument specifies a different date of surrender of Class B membership shall be the date of recording of the instrument.

3.3 Declarant's Voting Rights in Expansion Area. In the case of expansion (as provided under this Declaration), the class of voting membership appurtenant to Lots owned by Declarant in the Additional Property shall be Class B.

3.4 Change of Corporate Status. The Association has been set up and established as a non-profit corporation under Utah law. However, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Lot Owner may escape or avoid any assessment, charge, lien rule or other matter contained in the Governing Documents by virtue of such change of corporate status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members to re-incorporate under the same or a similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

3.5 Validity of Votes and Consents. Any consent or vote given by a Lot Owner on any matter in the Governing Documents shall be valid for a period of ninety (90) days and shall be binding on any subsequent Lot Owner who takes title of the Lot during that period of time.

3.6 Indemnification. The Board, and each member thereof shall be indemnified by the Association against any loss, damage, claims or liability, including reasonable attorney fees, suffered or incurred by reason of such position, except to the extent such damage, claim, loss or liability is covered by any type of insurance; provided however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of that person's own willful misconduct or gross negligence.

3.7 Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents, adopt, amend and repeal rules and regulations governing, among other things, the use of any Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Community, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

3.8 Notice; Promulgation of Rules. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Lot Owner and May, but need not be, recorded. Upon such mailing or other delivery, said rules and regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice by electronic means such as electronic mail (e-mail) to Lot Owners and may require that Lot Owners, in addition to keeping the Board informed as to their current mailing address, maintain a current e-mail address with the Board for such purpose.

3.9 Management Agreement. The Board may engage for the Association the services of a property manager to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Act, and those services to which the Board itself may perform under the Governing Documents or as otherwise as provided by law. Any contract or agreement for services entered into by the Board for and on behalf of the Association and the property manager shall not exceed a term of two (2) years. Fees, costs and other charges of the property manager shall be Common Expenses. The property manager may also provide services to individual Lot Owners, such as leasing individual Dwelling Units as may be determined between the property manager and the Lot Owner; provided however, that services performed for individual Lot Owners which are not performed for the Association shall not be Common Expenses but shall be charged to the Lot Owners as the Lot Owners and the property manager may determine.

ARTICLE 4 **FINANCES AND ASSESSMENTS**

4.1 Assessments; Authority. The Association is hereby authorized to levy assessments against the Owners as provided for herein. The following are types of assessments that may be levied by the Association, which are more particularly described below: (i) annual assessments or charges (ii) special assessments; (iii) specific assessments; (iv) emergency assessments; (v) any other amount or assessment levied or charged by the Board pursuant to this Declaration; and (vi) interest costs of collection and reasonable attorney fees, as hereinafter provided.

4.2 Creation of Lien and Personal Obligation of Assessments. Excepting Declarant, each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges, however denominated, which are authorized in the Governing Documents. All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged, which lien shall arise when the Owner fails or refuses to pay an assessment when due. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. No Owner may exempt himself from liability for assessments by non-use of the Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board, or Declarant to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs of improvements, or from any other action it takes.

4.3 Purpose of Assessments. The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing documents. The assessments may provide for, but are not limited to the payment of taxes on Association property and insurance maintaining by the Association; the payment of the cost of repairing, replacing, maintaining and constructing

or acquiring additions to the Common Area and/or Limited Common Area; the payment of administrative expenses of the Association, the payment of insurance deductible amounts, the payment of assessments levied against the Association by the Master Association pursuant to the authority of the Master Declaration, the establishment of capital and operation reserve accounts; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Directors shall determine to be necessary to meet the primary purpose of the Association. The assessments may provide at the discretion of the Directors, for the payment of other charges including (without limitation) maintenance, management, and utility charges.

4.4 Initial Annual Assessments. The Declarant shall initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 4.5.

4.5 Annual Assessments.

4.5.1 Adoption of a Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that year for the purpose of calculating and establishing the annual assessments for the subsequent fiscal year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds; and common lighting with the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities from previous assessment period; the payment of any "hi-tech" and telecommunications services; the supplementing of the reserve fund for general, routine maintenance repairs, and replacement of the Common Area.

4.5.2 Notice of Budget and Assessment. The Board shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budgets. The budget shall automatically become effective unless disapproved in writing by Members representing at least seventy-five percent (75%) of all eligible votes in the Association. Any such petition must be presented to the Board within ten days after notice of the budget and assessment. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for in special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Board is thereafter authorized to levy the assessment as provided for herein.

4.6 Failure or Delay in Adopting Budget. The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses and in the event of such failure or delay all Owners shall continue to pay assessments on the same basis as during the last year for which an assessment was made until notified of the amount of the new annual assessment which is due on the first day of the next payment period which begins more than thirty (30) days after such new annual or adjusted budget is adopted and the Owners receive notice as provided herein.

4.7 Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment no greater than five percent (5%) more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon thirty (30) days notice.

4.8 Adjustment of Budget and Assessment. The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in this Section 4.5.2, provided however, that such an adjustment is exempt from the requirements of Section 4.5.2 if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than 3.25%.

4.9 Special Assessments. In addition to the annual assessments, the Board may levy in any assessment year a special assessment applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of Common Area or Limited Common Area and any structures, fixtures and personal property related thereto. Any such special assessment may be levied against the Entire Membership, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.10 Specific Assessments. The Association shall have the power to levy specific assessments against a particular Lot to cover costs incurred in bringing any Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Dwelling Unit, their agents, contractors, employees, licensees, invitees, or guest; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing in accordance with the Bylaws, before levying any specific assessment under this subsection.

4.11 Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently

reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds: (a) an expenditure in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interest of the Association.

4.12 Uniform Rate of Assessment. Unless otherwise provided for in this Declaration or elsewhere in the Governing Documents, assessments must be fixed at a uniform rate for all Lots, provided however, that no assessments shall accrue against the Declarant for Lots owned by Declarant so long as the Declarant has Class B membership.

4.13 Declarant's Option to Fund Budget Deficits. During the Declarant Control Period, Declarant may, but is not obligated to fund any budget deficit of the Association, including, without limitation, funding any initial capital or operation reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

4.14 Payment; Due Dates.

4.14.1 The assessments provided for herein shall commence to accrue against a Lot upon conveyance of the Lot to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year.

4.14.2 Due dates shall be established by resolution of the Board, with such resolution. Installments of assessments may be levied and collected on a monthly, quarterly, semi-annual, or annual basis, as determined by resolution of the Board.

4.14.3 The Board may require advance payment of assessments at closing of the transfer of title to a Lot.

4.15 Payment of assessments shall be applied first to any accrued interest, then to any accrued costs, charges, and fees, and then to the principal amount of the assessment. No Lot Owner shall have the right to direct the Association or its agents or employees to apply payments in any other manner or method and any such attempt to do so will not be recognized.

4.16 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to fifteen percent (15%) of the annual assessment per Lot for that year or in such other amount as the Board may specify which may be a flat rate from year to year approximating fifteen percent (15%) of the annual assessment per Lot levied during the

first year in which the Association adopts a budget. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

4.17 Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid in full. In addition, the Directors may assess a late fee for each delinquent installment that shall not exceed ten percent (10%) of the installment.

4.18 Remedies. To enforce this Article, the Board may in the name of the Association:

- 4.18.1 Bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the Association's lien for the assessment;
- 4.18.2 Foreclose the lien against the Unit in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deed of trust or to the foreclosure of mortgages, or in any other manner permitted by law;
- 4.18.3 Restrict, limit or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;
- 4.18.4 Terminate, in accordance with state law, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities;
- 4.18.5 If the Owner is leasing or renting his Dwelling Unit, the Board may, in accordance with state law, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;
- 4.18.6 Exercise any other rights authorized by state law to collect for non-payment of assessments and other charges;
- 4.18.7 Suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid; and/or
- 4.18.8 Accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period

become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period.

4.19 Attorney Fees and Costs. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

4.20 Power of Sale. A power of sale is hereby conferred upon the Association, which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to the deeds of trust as if said Association were a beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure.

4.21 Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all Common Area and Limited Common Area; (c) all Lots or other real property owned by Declarant; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

4.22 Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage held by a Mortgagee if the Mortgage was recorded prior to the date the assessment became due.

4.23 Termination of Lien. Sale or transfer of any Lot shall not affect the assessment line. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

4.24 Assessment and Other Charges Levied by the Master Association. Any assessments, fees or other charges levied by the Master Association pursuant to the authority of the Master Declaration against any individual Lot Owner shall, if not levied specifically against the Association passed through to the Members as a Common Expense, be paid directly to the Master Association as required by the Master Declaration and shall not be the responsibility of the "Association." Lot Owners shall receive no offset in any assessments by the Association as a result of any assessment, fee or charge levied against them individually, by the Master Association.

4.25 Books Records and Audit.

4.25.1 The Association shall maintain current copies of the Governing Documents and other similar documents, as well as its own books, records and financial statements, which shall all be available for inspection by Owners and insurers as well as by

holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. An Owner or holder, insurer or guarantor of a first Mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

- 4.25.2 The Association shall prepare a roster of Owners in the Property and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payment of assessments and shall allow inspection of the roster by any Member at reasonable times.
- 4.25.3 The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment for any assessment or fractional part thereof, which is therein shown to have been paid.

ARTICLE 5 **INSURANCE**

5.1 Casualty Insurance on Insurable Common Area.

- 5.1.1 The Directors shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against which other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular assessments made by the Association.
- 5.1.2 In addition to casualty insurance on the Common Area, the Directors may elect to obtain and continue in effect on behalf of

all Owners, adequate blanket casualty and fire insurance in such form as the Directors deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all the Lots, including the structural portions and fixtures thereof. Insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Lots shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners.

- 5.1.3 The Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard that the loss is a result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner and the Owner's Lot.

5.2 Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot Owner. In the event that the Association is maintaining a blanket casualty and fire insurance on the Common Area and appurtenant structures, the Association will repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the Property covered by insurance written in the name of the Association, the Directors are empowered and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this Purpose.

5.3 Liability Insurance. The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damages that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.4 Fidelity Insurance. The Directors may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall

seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of the persons who serve without compensation from any definition of "employee".

5.5 Annual Review of Policies. The Directors shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article 5 without the necessity of amending this Declaration.

ARTICLE 6

ARCHITECTURAL CONTROLS AND STANDARDS

6.1 Architectural Control Committee. For a period of time beginning with the date of this Declaration and terminating on the sooner to occur of (i) 5 years from the date this Declaration is recorded with the Washington County Recorder, or (ii) the date on which Declarant, its successors and assigns as to the development of the Project, has transferred to Lot purchasers 90% of the Lots within Sienna Heights at Sienna Hills (the "Termination Date"), Declarant shall have the right to appoint, and shall appoint, and after the foregoing Termination Date, the Board of Directors of the Association shall appoint, a three member Architectural Control Committee (the "Committee"), the function of which shall be to insure that all Dwelling Units and other improvements within the Lots harmonize with existing surroundings and structures and comply with the requirements set forth in these Articles, and the requirements set forth in that certain document entitled "Design Guidelines for Sienna Heights at Sienna Hills" (the "Design Guidelines"). The Design Guidelines have been or will be established and developed by the Declarant as part of the development and formation of the Project, and from the date of the Declaration the Committee shall have the responsibility and obligation to administer said Design Guidelines on behalf of and for the benefit of the Association and all of the Owners in the Project. The Committee shall have the right to amend the Design Guidelines from time to time as they may deem reasonably appropriate. Any amendment to the Design Guidelines shall be approved by the Board of Directors (the "Board") of the Association. In addition, the Board shall have the right to amend the Design Guidelines without the recommendation or approval of the Committee. Further, the Committee shall have the right to grant variances or exceptions to the Design Guidelines with respect to individual Owners, where to enforce the Design Guidelines as written would impose an unreasonable and unnecessary hardship on the Owner, and provided the variance granted does not substantially or materially deter from the Project and the ambiance and character of the Project as contemplated by the Design Guidelines and this Declaration. Any decision of the Committee with respect to a variance or exception may be appealed to the Board, and the Board may override the decision of the Committee. An individual may be a member of both the Committee and the Board. The Committee need not be composed of Owners. If such a Committee is not so appointed, the Board itself shall perform the

duties required of, and shall constitute the Committee. Each member of the Committee shall serve until he or she resigns or until Declarant or the Board, as appropriate, replaces him or her with a new member.

6.2 Standards for Approval. In deciding whether to approve or disapprove plans and specifications, or any other matter, submitted to it, the Committee shall use its best judgment to insure that all improvements and construction on Lots within the Property conform to and harmonize with existing surroundings and structures and comply with the requirements of these Articles, and the Design Guidelines.

6.3 Submission to Committee. No Dwelling Unit, accessory or addition to a Dwelling Unit, other structure or balloting, or fence shall be constructed or maintained, and no grading or removal of natural vegetation shall occur, on a Lot unless approved in advance by the Committee. In addition, each Owner desiring to construct any Dwelling Unit or any other structure or making any other improvement on any Lot or otherwise anywhere in the Project as a minimum shall make all of the submissions to the Committee as required by the Design Guidelines, as the same may be amended from time to time.

6.4 Meetings. The Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by the Declaration or the Design Guidelines. The Committee shall keep and maintain a record of all actions from time to time taken by the Committee at such meetings.

6.5 Compensation. Unless authorized by the Board, the members of the Committee shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the Committee shall be paid such compensation as the Committee determines.

6.6 Amendment of Design Guidelines. The Committee may, from time to time and in its sole discretion, promulgate, adopt, amend, and repeal by unanimous vote amendments to the Design Guidelines, which, among other things, interpret, supplement, implement or delete other provisions of the Design Guidelines. All such amendments by the Committee shall be approved by the majority vote of the Board of Directors. In addition, the Board of Directors may, from time to time and of its own volition without request, recommendation or approval of the Committee, promulgate, adopt, amend and repeal, by majority vote of all members of the Board, amendments to the Design Guidelines. All such amendments, as they may from time to time be adopted, shall be appended to and made a part of the Design Guidelines and shall thereupon have the same force and effect as if they were set forth in and were a part of the Design Guidelines. Each Owner is responsible for obtaining from the Committee a copy of the most recently revised Design Guidelines.

6.7 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after compliance with the requirements of paragraphs 6.7.1 through 6.7.4 of this Section. In the event the committee fails to take any action (which action may include notice of reasonable extension of time for the committee to complete its review) within such

period, it shall be deemed to have approved the material submitted. Approval is conditioned upon compliance with the following procedures:

- 6.7.1 The Owner concerned signing a notice indicating that he has read and understood this Declaration and the Design Guidelines.
- 6.7.2 The Owner concerned depositing with the Committee a Three Hundred and Fifty Dollars (\$350.00) security deposit to insure compliance with the provisions of this Declaration. Two Hundred Dollars (\$200.00) of such deposit shall be refundable if all provisions of this Declaration are complied with through the completion of the Dwelling Unit or other structure or building concerned. One Hundred and Fifty Dollars (\$150.00) of said deposit shall be retained by the Committee to reimburse it for plan approval costs. The amount of said security deposit and the amount to be retained by the Committee may be increased by the Board of Directors of the Association without a vote of the Members and without amending this Declaration, as may be reasonable in light of the cost of the Committee performing its duties.
- 6.7.3 The Owner concerned submitting such site layout plans, architectural plans, landscaping plans and other plans and materials as required by the Design Guidelines.
- 6.7.4 Any subsequent changes, improvements, or alterations in such plans must be submitted to the Committee for written approval.

6.8 Dwelling Unit Restrictions. The types and colors of materials used in the construction of a Dwelling Unit, including without limitation the roofing material, siding material and windows, the landscaping, the minimum and maximum floor areas of Dwelling Units, the minimum and maximum floor areas and sizes of garages, the height of Dwelling Units, the location on a Lot of a Dwelling Unit, and the type and location of fences, shall all be governed by and shall meet the requirements set forth in the Design Guidelines. Generally, Dwelling Units shall be Mediterranean style and comprise of the color schemes selected by the Declarant. The foregoing shall also be subject to the following, unless otherwise revised by the Design Guidelines:

- 6.8.1 Location of Structures. The location of any structure on a Lot as to its setback requirements shall be in compliance with the established zoning ordinance for Sienna Heights at Sienna Hills.
 - 6.8.1.1 Minimum setback requirements:
 - 6.8.1.1.1 Front 20 feet from back of curb.
 - 6.8.1.1.2 Side 5 feet.
 - 6.8.1.1.3 Side 5 feet.
 - 6.8.1.1.4 Rear 10 feet (or 20 feet if adjacent to a road or street).
- 6.8.2 Building Type. Each Lot shall contain no more than one detached single family dwelling not to exceed two stories in height above ground with an enclosed private garage. Two story homes may only be constructed with approval from the Committee or until the Committee is formed, the Declarant. One additional outbuilding

- may be constructed of materials with a finish matching the primary dwelling structure. Basement homes are not recommended.
- 6.8.3 Minimum Square Footage. No single unit shall have less than one thousand two hundred seventy five (1,275) square feet of living area on the main level for a one story dwelling exclusive of porches, balconies, patios and garages. Construction of all homes with more than one level above the street level must be approved by the Committee prior to commencing construction. The minimum living area for homes with more than one level shall not be less than a total of fifteen hundred (1500) square feet of living area, with a minimum of nine (900) hundred square feet on the main level with a minimum of two hundred and fifty (250) square feet on the second level. Notwithstanding the minimum gross living area in no event shall the combined total of the main level plus the second level equal less than fifteen hundred (1500) square feet of living areas, exclusive of porches, balconies, patios and garages. In addition, each Dwelling Unit shall have a garage comprising of not less than four hundred (400) square feet.
- 6.8.4 Building Materials. In order to promote a harmonious community development and protect the character of the neighborhood, all homes must be constructed onsite. Pre-fabricated, modular, manufactured or mobile homes are not allowed.
- 6.8.5 Exterior Finish Materials. The exterior walls of all structures on a Lot are preferred to be made of a combination of stucco type materials, stone, and brick. The Declarant shall designate eight color palates consisting of various combinations of stucco, stone and brick that each Owner may choose. Should the colors selected by Declarant become unavailable, the Declarant or the ACC may select a replacement color, design and style of stucco, stone and brick to replace the original selection of the Declarant.
- 6.8.6 Roof and Roofing Materials. All structures on a Lot shall be required to use concrete tile type roofing consisting of "S-type" tiles, which shall be selected by the Declarant and complement the color of the structure. The pitch of all roofs within the Project must not exceed 6/12, provided however, no roofs shall be flat.
- 6.8.7 Unused Building Materials. Once a dwelling is occupied or made available for sale, all unused building materials and debris shall be removed from the Lot or stored inside.
- 6.8.8 Fences. Unless permission is obtained from the Committee, all rear yards, including side yards up to the front of the home must be fenced with fencing approved by the Committee, at the time of occupancy. Fencing between the front setback and the side or rear yards must be obscure. All fencing shall be of the same material. The Declarant shall select the color of all fencing within the Project. In the event the color selected by the Declarant is no longer manufactured, the Committee shall select a similar color

- that matches and blends with the existing fence. The cost of fencing between Lots shall be split equally between adjacent Lot Owners. Notwithstanding, the Lot Owner that first commences with construction on a Lot (“First Lot Owner”) shall initially pay all costs to install fences. The adjacent Lot Owner shall reimburse the First Lot Owner for half of that portion of the fence that is adjacent to the First Lot Owner’s Lot within fourteen (14) calendar days from the date a building permit is issued on the adjacent Lot.
- 6.8.9 Retaining. The cost of any retaining that is necessary between Lots shall be split equally between the adjacent Lot Owners. Notwithstanding, the Lot Owner that first commences with construction on a Lot (“First Lot Owner”) shall initially pay all costs to install necessary retaining walls. The adjacent Lot Owner shall reimburse the First Lot Owner for half of that portion of retaining wall that is adjacent to the First Lot Owner’s Lot within fourteen (14) calendar days from the date a building permit is issued on the adjacent Lot.
- 6.8.10 Exterior Lighting. Exterior lighting should be directed away from adjacent residences and away from the vision of passing motorists.
- 6.8.11 Antenna. Antennas or satellite dishes must be placed on the back or side of the house so as not to be obtrusive from the street.
- 6.8.12 Heating & Air Conditioning. Roof mounted heating, ventilating and air conditioning (HVAC) systems or evaporative coolers are not allowed. HVAC or evaporative coolers visible from the street are not allowed.
- 6.8.13 Driveways. All driveways shall be constructed of Portland Cement Concrete.
- 6.8.14 RV Pads. RV Pads and side driveways are allowed provided that the RV Pad is behind a privacy gate and fenced yard.
- 6.8.15 Landscaping.
- 6.8.15.1 Prior to the occupancy of the home, the Owner of such Lot shall have completed the minimum lot landscaping, which shall consist of one tree in the front yard setback area, and exclusive of the driveway and sidewalk all of the landscape in the front setback line is to be planted. Additionally, landscaping in the rear set back must be installed by the time the Lot Owner occupies the home.
- 6.8.15.2 Landscaping must be maintained to a high standard. Noxious plants as defined by the Washington County Weed Control Board must be controlled, and the Owner of each Lot is responsible for removing them from their Lot. In the event an Owner fails to maintain his/her Lot, he/she will be notified by the Architectural Control Committee, or the Homeowners Association, via certified mail, of the requirement to remedy the failure within 21 days. After the

21 days, the Architectural Control Committee, or the Homeowners Association shall have the authority to maintain the landscape or remove the noxious plants and charge the Owner thereof the incurred expenses, fees and costs, including attorneys' fees, if applicable. Such expenses, fees and costs shall constitute a lien on said Lot, shall be the personal obligation of the Owner of the Lot, and shall be enforceable at law.

6.9 Dwelling Unit Construction. Construction of a Dwelling Unit shall be completed within one (1) year of the time such construction is commenced.

6.10 Exceptions for Declarant. Declarant shall be exempt from the provisions, restrictions, and requirements of this Article.

6.11 No Liability for Damages. The ACC shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Article.

6.12 Governmental Approval. No Dwelling Unit, accessory or addition to a Dwelling Unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns shall occur on a Lot until any required permit or required approval therefore is obtained from the City of Washington or Washington County, as appropriate (or any successor municipality) following submission to the appropriate governmental entity of such information as it may reasonably require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Committee to refuse to approve any such matter.

6.13 Option Right of Declarant. In the event an Owner of a Lot does not commence construction of a Dwelling Unit thereon within two years from the date the Owner acquired title to the Lot, then the Declarant shall have an option to repurchase the Lot from the Owner for a purchase price equal to the purchase price paid by the Owner for the Lot. The Declarant may exercise this option by giving written notice to the Owner at any time after termination of said two year period and before the Owner commences construction of a Dwelling Unit, and closing shall occur within thirty days after such notice is given. The Declarant shall have the right to specifically enforce this provision in court in the event the Owner refuses to honor the option herein granted. Upon any such purchase, the Declarant shall immediately make all normal and reasonable efforts to resell the Lot, subject to the same restriction as set forth herein for the original sale of a Lot by the Declarant.

6.14 Lease. Any lease or rental agreement for any Dwelling Unit shall be in writing and specifically subject to the provisions, restrictions, and requirements of this Declaration, the Design Guidelines, the Plat, and the Articles. The Association shall not create or enforce any other restriction relating to the term of a lease or rental agreement of any Lot in the Project.

ARTICLE 7 **MAINTENANCE**

7.1 Association's Responsibility. The Association shall be responsible for maintenance of the Common Area. The cost of such maintenance shall be a Common

Expense. This maintenance includes but is not limited to upkeep of all landscaping, upkeep of all roadways, streets, street lights, sidewalks and parking areas, and upkeep and maintenance of all buildings and facilities which constitute part of the Common Area. The Association shall not have any responsibility for upkeep and maintenance of the Dwelling Units, unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration.

7.2 Owner's Responsibility. Each Owner shall be responsible for maintenance of his or her Dwelling Unit and Lot, in a manner consistent with all applicable provisions of the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association by the Governing Documents. The Board shall, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Dwelling Unit and Lot and shall charge the Lot Owner the costs of such maintenance as a specific assessment.

7.3 Access at Reasonable Hours. For the sole purpose of performing the maintenance required or otherwise authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Dwelling Unit or Lot at reasonable hours.

7.4 Other Services Provided by the Association. To the extent determined to be necessary or desirable by the Board, the Association may provide additional services to the Lot Owners as a Common Expense or specific assessment as appropriate.

7.5 Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the Common Area may be altered by rule of the Association.

ARTICLE 8

CONDEMNATION; PARTITION

8.1 Condemnation. Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board and the Declarant during the Declarant Control Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

8.1.1 If the taking involves a portion of the Common area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant during the Declarant Control Period, and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Section 5.2 regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

8.1.2 If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net

funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

8.2 No Partition. Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not be construed to prohibit the Board from acquiring and disposing of title to real property which may or may not be subject to this Declaration.

ARTICLE 9

USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS

The following use and other restrictions shall apply to the Community. These restrictions are in addition to those established by federal, state or local law and ordinance and those which may be set forth elsewhere in the Governing Documents, or in the Master Declaration.

9.1 General Use Restrictions. All of the Property, which is subject to this Declaration, is hereby restricted to residential dwellings and buildings in connection therewith, including, but not limited to community buildings on the Common Area, if any. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be removed from other locations to the Property. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initial construction shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

9.2 Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Lot Owners or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

9.3 Parking.

9.3.1 No motor vehicle which is inoperable shall be allowed within the Property, and any motor vehicle which remains parked on any street within the Property for over 72 hours shall be subject to removal by the Association, at the vehicle Owner's expense. Upon demand, the owner of the vehicle shall pay any expense incurred by the Association in connection with the removal of that owner's vehicle. If the vehicle is owned by a Lot Owner any amounts payable to the Association shall be secured by the Lot and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

9.4 Timeshares Prohibited. No Lot Owner shall offer or sell any interest in his Lot under a "timesharing" or "interval ownership" plan, or any similar plan.

9.5 Signs. The Board shall have the right to regulate the display, use, size, and location of signs within the Property. The right to regulate includes the right of

prohibition. Notwithstanding the Board's right of regulation, no signs, advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed or permitted to remain on the exterior of any Dwelling Unit, within or upon the Common Area, or any portion of the Property. Nor shall such signs, billboards, objects of unsightly appearance, or nuisances be placed or permitted or remain within any Dwelling Unit where the same are visible from the streets or roadways. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of Declarant or its agents during the Declarant Control Period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time.

9.6 Compliance with Laws. No Lot Owner shall permit anything to be done in his Dwelling Unit or any part of the Property that is in violation of any applicable federal, state, or local law, ordinance, or regulation.

9.7 Commercial Activity. No commercial activities of any kind whatever shall be conducted on any portion of the Property, including an in-home business as defined in local ordinances. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time.

9.8 Pets and Animals.

9.8.1 Restrictions. The Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets within Dwelling Units. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. The Board may also establish procedural rules and regulations to implement its rules which should include provisions for notice and hearing. Commercial breeding of pets and animals is prohibited and may not be allowed or authorized by Association rule or resolution.

9.8.1.1 Until such time as the Board adopts a policy expressly authorizing the keeping of pets and animals, an Owner may keep no more than two small animals on a Lot. Owners must keep pets on a leash at all times when the pet is not contained within the Owner's Lot. In the event an Owner's pet creates a nuisance as determined by the Declarant, the Declarant shall send written notice to the Owner and the Owner shall have three days to remedy the nuisance. If the Owner is unable to remedy the nuisance within such time, the Declarant shall send a written notice to the Owner and the Owner shall permanently remove the pet from the Lot.

9.8.2 Owner Responsibility. In the event the Board authorizes the keeping of pets and animals, Lot Owners must take due care to ensure that their pets and animals do not make excessive noise, cause any offensive smell, or create any physical threat to the safety of any Lot Owner or person within the Property or the safety of any guests, lessees, or invitees, particularly among children. Lot Owners are responsible for any property damage, injury, or disturbance that their pet may

cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make a claim against the Lot Owner. Lot Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, costs, and expenses incurred by the Association.

9.9 Hazardous Activities and Substances. No Owner shall engage in or permit any of said Owner's guests, visitors, tenants, or invitees to engage in any activity that will cause an increase in insurance premiums for insurance coverage on the Property nor shall any Owner or any Owner's guests, visitors, tenants or invitees engage in any activity that will cause or permit any hazardous substance or material to be stored, used or disposed of on or within the Property.

9.10 External Apparatus. No Lot Owner shall cause or permit anything (including without limitation, awnings or canopies) to hang, be displayed or otherwise affixed to or placed on the exterior of a Dwelling Unit so as to create an overhang or encroachment onto the adjacent Lot.

9.11 Exterior Television or Other Antennas. Notwithstanding satellite dishes that are less than twenty-four (24) inches in diameter and to the extent not prohibited by law, no television, radio, or other electronic antenna or device or any type shall be erected, constructed, affixed, placed or permitted to remain on the exterior of any Lot or Dwelling Unit. The Board is hereby authorized to establish and promulgate rules and regulations to govern the placement and installation of antennas covered by the Federal Communications Commission's rules on "Over-the-Air Reception Devices," which requires such antennas to be screened from street level view.

9.12 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lot and Dwelling Unit and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage shall be kept inside the fenced area of the Lot.

9.13 Pest Control. No Lot owner or occupant shall permit any thing or condition to exist within or upon the Lot which would induce, breed or harbor insects, rodents or other pests. In addition each Lot owner shall perform such pest control activities within and upon the Lot and Dwelling Unit as may be necessary for insects, rodents, and other pests from being present in his Dwelling Unit.

9.14 Oil and Mining Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

9.15 Utilities. An Owner shall do no act to any work that will impair any easement or hereditament nor do any action nor allow any condition to exist which will adversely affect other Lot Owner's utilities.

9.16 Skateboards and Rollerblades. Skateboarding and rollerblading are not prohibited within the property.

9.17 Off-Road Vehicles. Vehicles specifically designed to be driven off-road and those vehicles not permitted to drive on public roads shall not be driven within the Property.

ARTICLE 10
EASEMENTS

10.1 Easement of Enjoyment. Each Owner shall have an equal, undivided, and nonexclusive right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas and Facilities. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated there from. Any Owner may delegate the right and easement of use and enjoyment described in this Section to any family member, household guest, tenant, lessee, contract purchaser, or the person who resides on such Owner's Lot. The Association shall have an easement over, across, under and through the Lots for the maintenance of the Lots, Dwelling Units, and Common Areas and Facilities. Easements for installation and maintenance of utilities, drainage facilities, and ingress and egress are reserved as shown upon the recorded plat. No structure, planting, or other material shall be placed, or permitted to remain, within these easements which may damage or interfere with the installation and maintenance of utilities or which may change the direction of the flow of drainage channels in the easements or which may impede ingress and egress. The easements and all improvements thereon shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

10.2 Encroachments. If any portion of a Dwelling Unit or improvement, or any portion of a Dwelling Unit reconstructed so as to substantially duplicate the Dwelling Unit, encroaches upon the Common areas or other Lots, as a result of shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

10.3 Form for Convincing. Any deed lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

10.3.1 Lot No. _____, SIENNA HEIGHTS AT SIENNA HILLS, a Master Planned Community, as said Lot is identified in the Plat recorded in Washington County, Utah on _____, as Entry No. _____, and in the "Declaration of Covenants, Conditions, and Restrictions of Sienna Hills, a Master Planned Community" recorded in Washington County, Utah on _____, 2007, as Entry No. _____, in Book _____, beginning at Page _____, and amended and supplemented; TOGETHER WITH an equal undivided, and nonexclusive right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Plat and said Declaration of Covenants, Conditions and Restrictions, as both of said Plat and said Declaration may have been amended or supplemented from time to time; AND SUBJECT TO all covenants, conditions, restrictions, reservations in said Plat and Declaration of Covenants, Conditions and Restrictions; all rights, rights-of-way, easements, obligations and liabilities and other matters of record or to which reference is made in the public record; rights of use, enjoyment and ingress and egress on, over, under, through and across the Lot as described and provided for in said Plat and Declaration of Covenants,

Conditions and Restrictions, as both of said Plat and said Declaration may have been amended or supplemented from time to time.

10.3.2 Whether or not the description employed in any such instrument is in the above-specified form, however, this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. The right and easement of use and enjoyment to the Common Areas and Facilities shall not be separated from the Lot to which they appertain and even though not specifically mentioned in the instrument of transfer, such nonexclusive right and easement of use and enjoyment to the Common Areas shall automatically accompany the transfer of the Lot to which they relate

10.4 Transfer of Title. Declarant agrees that on or before December 31, 2017, it will convey by quit-claim deed to the Association good and marketable title to the Common Areas, free and clear of all monetary liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities). Notwithstanding that the Declarant has not yet conveyed the common areas to the Association; the Association shall be treated as the owner of the common areas for purposes of paying all taxes, charges, fees, costs etc., associated with the common areas and ownership of the common areas.

10.5 Limitation on Easement. A Member's nonexclusive right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

10.5.1 The right of the Association to suspend a Member's voting rights and right to use the Common Areas for any period during which an assessment of the Association pertaining to such Member's Lot remains unpaid, or for a period not exceeding ninety (90) days for any infraction of the provisions of this Declaration or of any rule or regulation promulgated by the Association;

10.5.2 The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

10.5.3 The right of the Association (without the consent of Owner, Members, Mortgagees, or any other persons or entities) to grant permits, licenses, and easements over, across, through, and under the common Areas to any governmental or quasi governmental authority, to any public or private utility company, or to any other person or entity for the purpose of installing, maintaining, or providing utilities and related facilities or roads or for such other purposes reasonably necessary or useful for the proper maintenance or operation of the Project; and

10.5.4 The right of Washington County, Washington City, and any other governmental or quasi governmental body having jurisdiction over the Property, and any private or public utility company serving the Project to access, and rights of ingress and egress over, across, through, or under, the Common Areas for purposes of providing police and fire protection, transporting school children, and providing any other governmental, municipal, or utility service to the Project or the Additional Land.

10.6 The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such

conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be approved by a majority of the Voting Power, as explained by Article 3. Notwithstanding the foregoing, the Declarant, at its sole discretion, may dedicate or transfer all or any part of the Common Areas without the approval of the Voting Power. However, prior to any action, the Members shall be notified of the intended dedication or transfer and a meeting shall be conducted to notify the Members of the intended dedication or transfer. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all members at least ten (10) days but not more than fifty (50) days prior to the meeting date.

10.7 The right of Washington City to levy taxes and issue bonds.

10.8 Access to Lots. Each Owner's nonexclusive right and easement of use and enjoyment in and to the Common Areas shall include (without limitation) the right of ingress and egress to such Owner's Lot, which right shall be irrevocable, perpetual, and appurtenant to such Lot.

ARTICLE 11 **MISCELLANIOUS**

11.1 Enforcement. The Declarant, the Association, and any aggrieved Owner shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, the Plat or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Declarant, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto shall be entitled to costs and reasonable attorney fees.

Every act or omission whereby any restriction, condition or covenant as set forth in this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by the Declarant or by affected Owners, and such remedy shall be deemed to be cumulative and not exclusive.

11.2 Declarant's Right to Amend. Until December 31, 2017 or until the Declarant has sold all of the Lots and no longer retains an interest in any of the Lots or Common Area, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration or the Plat, or both, as may be reasonable, necessary or desirable (i) to adjust the boundaries of the Lots, including adding or deleting Common Area (by filing an appropriate amended plat) to accommodate design changes or changes in type of Homes or adjustments to Lot configuration; (ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (iii) to better ensure, in light of existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project; or (v) to accomplish those things the Declarant deems appropriate in its sole and absolute discretion.

11.3 Unanimous Written Consent in Lieu of Vote. In any case in which the Declaration requires for authorization or approval of a transaction or matter the assent or

affirmative vote of a stated percentage of the votes of the Association, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from every Member entitled to cast a vote. The following additional provisions shall govern any application of this Section.

11.3.1 All necessary consents must be obtained prior to the expiration of one hundred eighty (180) days after the first consent is given by any Member.

11.3.2 Any change in ownership of a Lot which occurs after consent has been obtained from the member having an interest therein shall not be considered or taken into account for any purpose.

11.4 Amendment. Except as provided in and/or subject to the term (a) below, the consent of a majority of the Voting Power, as explained by Article 3, shall be required and shall be sufficient to amend this Declaration, the Plat or the Articles. Notice of the substance of the proposed amendment shall be sent to all Members at least ten (10) but not more than fifty (50) days prior to the meeting date. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Board of Directors of the Association, or executed by the Owners of not less than a majority of the Lots. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment shall, however, be subject to the following:

11.4.1 The consent of at least seventy-five percent (75%) of the Voting Power, as explained by Article 3 and the consent of Mortgagees holding Mortgages on at least seventy-five (75%) percent of the Lots which are then subject to Mortgages shall be required for any amendment which would terminate the legal status of the Project as a planned unit development.

11.4.2 The vote and consent requirements set forth in this Declaration shall not be applicable to additions or amendments to this Declaration, the Plat, or the Articles which implement a decision concerning whether or not Restoration of the Common Areas should be undertaken or concerning the nature of such Restoration in accordance with the provisions of this Declaration in the event of Partial or Substantial Destruction or Condemnation. In addition, the granting by the Association of any permit, license, or easement for utility or similar purpose shall not require an addition or amendment to this Declaration, the Plat, or the Articles and shall not be restricted in any way by the provisions and requirements of this Section.

11.5 Mortgagee Protection. The lien or claim against a Lot for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such assessments or charges become due. In the event that the State of Utah should enact any statute applicable to planned unit developments with a provision that would allow such assessments or charges, including special assessments, to have limited priority over a Mortgage recorded before such assessments or charges become due, or in the event that the State of Utah should enact any law which would allow a lien for unpaid assessments or charges to survive foreclosure or exercise of a power of sale, all such assessments and charges, including special assessments, shall after the date of such enactment be made due and

payable to the Association on a monthly basis and the lien for any fees, late charges, fines, or interest that may be levied by the Association in connection with such unpaid assessments or charges shall be deemed subordinate to the Mortgage on a Lot upon which such assessments or charges are levied.

Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Lot from liability for, nor such Lot from the Lien of, any assessments or charges becoming due thereafter.

The Association shall make available to Lot Owner, to Mortgagees, and to holders, insurers, or guarantors of any Mortgage, current copies of this Declaration, the Design Guidelines, the Plat, the Articles, and any rules and regulations concerning the Project, and the books and records and financial statements of the Association.

“Available”, as used in this paragraph, shall mean available for inspection upon request during normal business hours or under other reasonable circumstances.

11.6 Indemnification.

11.6.1 The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director or officer of the Association, against expenses (including attorneys’ fees), judgment, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action or proceeding, and had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he believed to be in and not opposed to the best interests of the Association and, which respect to any criminal action or proceeding, shall not, of itself, create a presumption that the person had reasonable cause to believe that his conduct was unlawful.

11.6.2 The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that said person is or was a Director or officer of the Association against expenses (including attorneys’ fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he believed to be in and not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue, or other matter if he has been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

11.6.3 The following provisions shall govern and apply to the right of indemnification set forth in this Paragraph:

11.6.3.1 Any person seeking indemnification from the Association as a result of being made a party or being threatened to be made a party to any action, suit or proceeding shall, within a reasonable time and before taking any significant or material action with respect to such action, suit, or proceeding, notify the Association in writing with respect to thereto and provide to the Association the opportunity to reasonably participate in such person's defense thereto and any settlement thereof. Failure to comply with the requirements of this subparagraph shall bar any claim of such person for indemnification by the Association.

11.6.3.2 To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in this Article, or in the defense of any claim, issue, or other matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under this Article shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in this Declaration. Such determination shall be made either by the Board of Directors of the Association or by the affirmative vote of at least a majority of the Association at any meeting duly called for such purpose.

11.6.3.3 Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a determination by the Board of Directors of the Association by the affirmative vote of at least a majority of the disinterested Directors and upon receipt of an Undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

11.6.3.4 The indemnifications provided for by this Article shall not be deemed exclusive of any other rights to which those persons indemnified may be entitled under any agreements, by a vote of disinterested Members or Directors, or otherwise, as to action in such persons official capacity. The indemnification authorized by this Article shall apply to all present and future Directors and officers of the Association and shall continue as to such persons who cease to be Directors or officers of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

11.6.3.5 The Association may purchase and maintain insurance on behalf of any person who was or is a Director or officer of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

11.6.4 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance transfer or assignment.

11.6.5 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provisions hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or enforce ability of the remainder hereof.

11.6.6 Quorum Requirements. The quorum required for any action authorized by this Declaration, except those Sections which specifically set forth otherwise, shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast at least a majority of all the Voting Power of the Association, as explained by Article 3, shall constitute a quorum. If a quorum is not present at the first meeting or any adjournment thereof, another meeting may be called at which meeting a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the immediately preceding meeting.

Except as specifically set forth otherwise in this Declaration, all decisions shall require the affirmative vote of at least a majority of the Voting Power present at any meeting duly called.

11.6.7 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common areas, and there respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot or Dwelling Unit shall comply with, and all interests in all Lots and the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot or in the Common areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provisions of this Declaration.

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11.6.8 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment to the Plat shall take effect upon its being filed or recorded in the Office of the County Recorder of Washington County, Utah.

EXECUTED by the undersigned this ____ day of _____, 2007.

SIENNA HEIGHTS, LLC

By: _____
Its: _____

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this ____ day of _____, 2007, before me personally appeared _____ whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who being by me duly sworn (or affirmed) did say that he is the _____ of Sienna Heights, LLC a Utah limited liability company (the “Company”) and that the foregoing document was signed by him on behalf of that Company by proper authority and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.

NOTARY PUBLIC
Address: _____
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

SIENNA HEIGHTS SUBDIVISION BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE EAST RIGHT OF WAY LINE OF WASHINGTON PARKWAY, SAID POINT BEING S 89°14'27" E 355.99 FEET ALONG THE SECTION LINE AND S 0°00'00" E 67.42 FEET FROM THE N 1/4 CORNER OF SECTION 13, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE N 87°13'55" E 43.12 FEET TO A POINT ON A 150.00 FOOT RADIUS CURVE TO THE RIGHT (BEARING TO RADIUS POINT IS S 29°19'00" E); THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 37°21'39" AND 97.81 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 135.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 28°52'32" AND 68.04 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 80.00 FOOT RADIUS COMPOUND CURVE TO THE LEFT; THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 55°18'07" AND ALONG THE ARC OF SAID CURVE 77.22 FEET TO THE POINT OF A 42.50 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 96°29'28" AND 71.57 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 220.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 54°25'23" AND 208.97 FEET ALONG THE ARC OF SAID CURVE; THENCE N 11°34'24" W 67.40 FEET ON A RADIAL BEARING TO A POINT ON A 105.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 73°20'33" AND 134.41 FEET ALONG THE ARC OF SAID CURVE TO A POINT ON THE WEST RIGHT OF WAY LINE FOR RED STONE ROAD; THENCE ALONG SAID RIGHT OF WAY LINE FOR THE FOLLOWING SIX COURSES: S 34°14'48" E 173.73 FEET TO THE POINT OF A 765.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 65°40'24" AND 876.86 FEET ALONG THE ARC OF SAID CURVE TO A POINT OF TANGENCY; THENCE S 31°25'36" W 108.66 FEET TO THE POINT OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 55°09'00" AND 24.06 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 80.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 47°18'41" AND 66.06 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF A 25.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 51°45'12" AND 22.58 FEET ALONG THE ARC OF SAID CURVE TO A POINT OF TANGENCY ON THE NORTH RIGHT OF WAY LINE FOR RIDGE VIEW DRIVE; THENCE N 88°58'52" W 547.12 FEET ALONG SAID RIGHT OF WAY LINE TO THE POINT OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY THROUGH A CENTRAL ANGLE OF 90°00'00" AND 39.27 FEET ALONG SAID ARC TO A POINT ON THE EAST RIGHT OF WAY LINE FOR WASHINGTON PARKWAY; THENCE N 1°01'08" E 198.15 FEET ALONG SAID RIGHT OF WAY LINE; THENCE N 4°41'30" W 190.95 FEET TO A POINT ON A 2442.00 FOOT RADIUS CURVE TO THE RIGHT (BEARING TO RADIUS POINT IS S 88°58'52" E); THENCE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 9°21'14" AND 398.67 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF BEGINNING.

CONTAINING: 16.483 ACRES