

Recorded OCT - 3 2008 Filing No. 75597  
At 11:00 AM/PM in Book R10 Page 0073  
Fee 57<sup>00</sup> Debra L. Ames Rich County Recorder  
Requested by Adamson & Hoggan, LLC

WHEN RECORDED RETURN TO:  
Debra Griffiths Handley  
Dart Adamson & Donovan  
370 East South Temple #400  
Salt Lake City, Utah 84111

**AMENDED AND RESTATED DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR SWAN CREEK VILLAGE**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swan Creek Village (the "New Declaration") is made and entered into by and among the Members of the Swan Creek Village Homeowners Association on this 18<sup>th</sup> day of September 2007 (the "Effective Date").

**RECITALS**

- A. Swan Creek Homeowners Association ("Declarant") is a Utah nonprofit corporation formed under the auspices of the Utah Revised Nonprofit Corporation Act ("the Act"), Utah Code Annotated section 16-6a-101, et seq. and the Utah Community Association Act, Utah Code Annotated, section 57-8a-101, et seq.
- B. The original Declaration of Reservations, Restrictions and Covenants of Swan Creek Village (the "Old Declaration") was recorded in the Office of the County Recorder, Rich County, Utah, on January 2, 1980, Entity No. F22,023, Book No. L3, starting at Page 109.
- C. The Old Declaration was amended on November 23, 1981, Entity No. 26928, Book No. G4, at Page 060 (the "First Amendment").
- D. The Old Declaration was further amended on March 18, 2005, Entity No. 65423, Book No. 29 at Page 1868 (the "Second Amendment").
- E. This New Declaration governs that certain real property located in Rich County, Utah, and more particularly delineated on the plats recorded concurrently with the Original Declaration, as amended, as Exhibit A (Plat 1 for Phase 1 of Swan Creek Village ) and Exhibit B (Phase 2 of Swan Creek Village).
- F. This New Declaration shall also ultimately govern that certain real property known as the El L Co Terrace Subdivision, located in Rich County, Utah, previously governed by the El Lco Terrace Homeowners Association. By a vote of its Members and Declarant's Members, the El L Co Terrace Homeowners Association, a Utah nonprofit corporation, shall merge into the Swan Creek Homeowners Association. El L Co Terrace consists of 21 Lots and will be formally annexed by Declarant under a separate Declaration of Annexation.
- G. Declarant desires and intends to continue developing the Swan Creek Village recreational housing project. Swan Creek Village Plat 1 was the first phase developed consisting

of 96 Lots. Phase 2 was developed thereafter, consisting of 470 Lots, however 28 lots owned by the CDRS Trust were excluded from membership in Declarant pursuant to the May 30, 1994 Settlement Agreement and Mutual Release between Declarant and the CDRS Trust. Any subsequent phases shall be built on land contiguous with and adjacent to the land included in these phases. It is Declarant's intent to subject the additional phases so developed by filing of an amendment to this New Declaration, or by filing such supplemental declarations as are necessary to accomplish that purpose.

H. This New Declaration has been duly approved, signed and acknowledged pursuant to the requirements of the Act and the Original Declaration, as amended, and;

I. This New Declaration fully incorporates and restates all unamended parts of both the Original Declaration and the First and Second Amendments, subject to certain amendments herein provided; therefore, the Original Declaration, as amended, is considered superseded by the provisions hereof.

### **DECLARATION WITNESSETH**

NOW, THEREFORE, for such purposes, Declarant hereby makes the following declaration, containing covenants, conditions, reservations and restrictions relating to the Swan Creek Village development, and hereby declares that all of said Lots and property described in Exhibits A and B attached hereto are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following restrictions, all of which are declared and agreed to be in furtherance of a plan for the Project, improvement and sale of said Lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described. All of the restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to the real, property or any part or parts thereof subject to such restrictions:

### **ARTICLE 1**

#### **DEFINITIONS**

1.1 **Architectural Committee**: The committee created pursuant to Article 2. The Old Declaration referred to this committee as the Planning and Environmental Control Committee.

1.2 **Articles**: The Articles of Incorporation of Swan Creek Village Homeowners Association as amended from time to time.

1.3 **Association or Declarant (synonymous)**: Swan Creek Village Homeowners Association, Inc., a Utah nonprofit corporation, and/or its successors and assigns.

1.4 **Board or Board of Trustees**: The Board of Trustees of the Association as established by the Bylaws of the Association.

1.5 **Common Area**: All areas not located within a Lot and so designated on any current or future recorded Plat, all of which shall be owned by the Association for the common use and enjoyment of the Owners and Members. Common Areas shall include, but not be limited to, any facilities, improvements, landscaping, private roadways and walkways.

1.6 **Common Expenses**: The actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Areas and of the exterior and structural components of the Association's Improvements, expenses of operating and maintaining the water system and private roadways throughout the Project, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board. Without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; the costs of trash collection and removal; the costs associated with snow removal; compensation paid by the Association to managers, accountants, attorneys and employees; the cost of all maintenance, gardening, security and other services benefiting the common area; the costs of fire insurance, errors and omissions and trustee, director, officer and agent liability insurance, and other insurance covering the Property and the trustees, directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, but for common benefit of the Owners.

1.7 **Declaration**: This instrument which may be amended from time to time.

1.8 **Deed of Trust**: A mortgage or a deed of trust as the case may be.

1.9 **Developer**: Swan Creek Village, Inc., a defunct Utah corporation, served as the initial developer of Swan Creek Village.

1.10 **Dwelling**: That portion of any building (including garage and other improvements) which is located on a single Lot and which is designed and intended for use and occupancy as a residence by a single-family unit.

1.11 **E Lot**: Specific type of Lot designated on the Plat, also known as "Estate" Lot. There are 109 E Lots.

1.12 **Improvement**: All structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures and equipment.

1.13 **Lot**: The separately numbered and individually described parcels of land shown on the Plats, not including any portion of the Common Area or any portion of the Lot which becomes Restricted Common Area.

1.14 **Manufactured Home**: a dwelling produced and often delivered in prefabricated sections that can be quickly erected to a conventional basement or crawl space foundation on-site; usually placed by crane; any wheels, axles and/or hitches previously installed for purposes

of transportation have been removed and conform to the June 1976 Safety Standards and evidenced by appropriate HUD Certification Label permanently affixed to each transportable section of the unit.

1.15 **Member**: Every person who holds membership in the Association.

1.16 **Mobile Home**: a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within one unit, which when erected on a site, may be used with or without a permanent foundation. *See definition from Utah Code Ann. 57-1603(4).* Not considered a Recreational Vehicle for the purposes of this Declaration.

1.17 **Modular Home, Log Home Kit or Factory-Built Homes**: Modular Homes are built in sections in a factory setting, indoors, and not subjected to adverse weather conditions. Lot Home Kits are pre-engineered to each plan, the finished modules or kits are transported to the site, placed on a pre-made foundation, joined together and completed by a contractor on site who will then install heating, plumbing pipes and fixtures, electrical wiring and fixtures and roofing materials. The contractor will also follow state, city and county building codes.

1.18 **Mortgage**: Any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconveyed upon the completion of such performance. The term "deed of trust" or "trust deed" when used herein shall be synonymous with this term.

1.19 **Mortgagee**: A person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust.

1.20 **Mortgagor**: A person or entity who mortgages his or its property to another (i.e. the maker of a mortgage and shall include the trustor of a deed of trust.

1.21 **Owner**: The person(s) or other legal entity, including Declarant, who is the owner of record in the Office of the County Recorder of Rich County, Utah, of a fee or an undivided fee interest in any Lot, but excluding those having such interest merely as security for the performance of an obligation.

1.22 **Person**: A natural individual or any entity with a legal right to hold title to real property.

1.23 **Phase**: A particular parcel of real property which is or shall become part of the Project.

1.24 **PH Lot**: Specific type of Lot designated on the Plat, also known as "patio home" Lot. There are 102 PH Lots.

1.25 **Plat**: The subdivision plats covering the Property, executed and acknowledged by the Developer or the Declarant and filed or to be filed for record in the Office of the County Recorder of Rich County, Utah, concurrently with the filing of the plats.

1.26 **Prefabricated Home or Manufactured Home (synonymous)**: see definition of Manufactured Home.

1.27 **Property or Project (synonymous)**: The real property covered by this New Declaration, together with all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon, which shall be known as Swan Creek Village.

1.28 **Record, Recorded, Filed and Recordation**: The recordation of any document in the Office of the County Recorder of the County of Rich, State of Utah.

1.29 **Recreational Vehicle or "RV"**: A Motor Home, Fifth Wheel or Travel Trailer that is self-contained and considered a primary residence that must be able to be connected to the Project's main sewer system. Mobile Homes, Manufactured Homes and Prefabricated Homes are not considered Recreational Vehicles.

1.30 **RV Lot**: Specific type of Lot designated on the Plat, also known as "Recreational Vehicle" Lot. There are 95 RV Lots.

1.31 **Restricted Common Area**: Those portions of Common Area set aside for exclusive use of an Owner(s).

1.32 **Rich County**: Rich County, Utah.

1.33 **T Lot**: Specific type of Lot designated on the Plat, also known as "Third Acre" Lot. There are 164 T Lots.

1.34 **Unit**: All elements of individual ownership of a residential interest in the Project, including ownership of a Lot and Dwelling thereon, designed and intended for use and occupancy as a single-family residence, exclusive use of the appurtenant Restricted Common Area, nonexclusive use of the remainder of the Common Area, and all rights of membership in the Association, subject to the provisions herein.

1.35 **Vehicle**: Any gas, diesel, or electrical powered vehicle, i.e. automobiles, trucks, ATVs, motorcycles, golf carts, scooters, etc.

## **ARTICLE 2**

### **ARCHITECTURAL CONTROL**

2.1 **Architectural Committee**. For the purpose of further insuring the development of the lands so platted as an area of high standards, there shall be formed an Architectural Committee (hereinafter sometimes referred to as "Committee") which shall have the power to control the Improvements placed on each Lot as well as to make such exceptions to these reservations and restrictions as the committee hereinafter designated, shall deem necessary and proper. From time to time, the Committee shall prepare and disseminate architectural and landscape guidelines.

2.2 The Architectural Committee shall be organized to act under the authority and pleasure of the Association. Committee Members shall be subject to removal by the Board of Trustees of the Association, and any vacancies from time to time existing shall be filled by appointment by the Association's Board of Trustees.

2.3 Whether or not a provision is specifically stated in any conveyance of a Lot made by the Declarant, the Owner or occupant of each and every Lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no Dwelling, building, wall, or other structure shall be placed upon a Lot unless and until the plans and specifications therefore and Lot plans have been approved in writing by the Committee. Each such Dwelling, building, wall, or structure shall be placed on the premises only in accordance with the plans and specifications and Lot plans so approved. Refusal of approval of plans and specifications by such committee may be based on any ground, including purely esthetic grounds which, in the sole and uncontrolled discretion of the Committee shall seem sufficient. No alteration in the exterior appearance of the buildings or structures shall be made without like approval.

2.4 There shall be submitted to the committee a building application on forms approved by the Committee together with two (2) complete sets of plans and specifications for any and all proposed improvements, the erection or alterations of which is desired, and no structures or improvements of any kind shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specifications therefore have received such written approval as herein provided. Such plans shall include Lot plans showing the location on the Lot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with the scheme for roofs and exteriors thereof and proposed landscaped planting. The Committee shall set a filing fee which from time to time may be increased or decreased as needed.

2.5 The Committee shall approve or disapprove plans, specifications and details within 30 days from the receipt thereof. In the event that the committee fails to take any action within the time provided herein, the plans shall be deemed to be disapproved.

2.6 The Architectural Committee must submit a positive recommendation to the Board of Trustees and the Board must ratify the recommendation before any application for new construction, improvements or additions obtains final approval.

2.7 Neither the Committee nor any architect or agent thereof or of Declarant shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

2.8 The Board of Trustees may provide by resolution that Members of the Architectural Committee shall be paid specified and reasonable compensation for their service as committee members. Unless provided, no salaries shall be paid.

2.9 Variances. The Board of Trustees may allow reasonable variances and adjustments of these restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however,

that such is done in conformity with the intent of this Declaration and adjustment will not be materially detrimental or injurious to the other property or improvements in the neighborhood, the subdivision or the development. The Member seeking the variance must have prior written approval from Rich County and/or any necessary governmental regulatory body before any variance will be approved by the Board of Trustees.

### ARTICLE 3

#### LAND USE RESTRICTIONS

3.1 Mutuality of Benefit and Obligation. The restrictions and agreements set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Project and are intended to create mutual, equitable servitudes upon each Lot in favor of all of the other Lots therein; to create reciprocal rights between the respective Owners of all said Lots; to create a privity of contract and estate between the grantees of said Lots; their heirs, successors and assigns, and shall, as to the Owner of each such Lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other Lots in the subdivision and development and their respective Owners.

3.2 Land Use and Improvements. The land comprising the Project, and each and every Lot therein, shall be used for single family Dwellings and structures customarily incidental to single family Dwellings. Golf courses, country clubs, parks, playgrounds and other community or recreation centers may only be constructed under the auspices of the Association. Owners, except those owning RV lots, may lease or rent their property for periods greater than thirty (30) days. No rentals of any kind shall be permitted for RV lots.

3.2.1 In addition, all Owners, their lessees and other occupants or users shall be subject to this Declaration, and all rules and regulations established by the Association and any of its committees.

3.3 Set-Back Requirements. By this Declaration, Declarant, and all Owners agree to be subject and comply with any and all applicable zoning ordinances and set-back requirement ordinances of Rich County. *See Rich County Development Code.*

3.4 None of the Lots shall at any time be divided into as many as two building sites and no building sites shall be less in area than the area of the smallest lot platted for the development herein.

3.5 "RV" series Lots. "RV" series Lot use shall be limited to seasonal use. The seasonal time frame shall be dependant upon weather-related factors, including road accessibility, and shall be determined annually by the Board of Trustees. Snow removal will not be provided to "RV" series Lots or the "RV" Park.

### ARTICLE 4

#### GENERAL PROHIBITIONS AND REQUIREMENTS

The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any Lot in the Project or development.

4.1 Access to Lots. Vehicular access to Lots shall be limited to designated roadways and thoroughfares. It is strictly prohibited to access any Lot from another Lot, Common Area, or open space. No Lot may be used for the purposes of accessing adjoining properties to the Project.

4.2 Act of God. Any Dwelling or outbuilding on any Lot in the Project which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than sixty (60) days.

4.3 Animals. No horses, cattle, swine, goats, poultry, or fowl shall be kept on any Lot.

4.4 Clothes lines. No clothes lines or drying yards shall be permitted unless concealed by hedges, lattice work, or screening acceptable to the Architectural Committee.

4.5 Commercial Parking. No commercial type truck shall be parked for storage overnight or longer, on any Lot in the Project in such a manner as to be visible to the occupants of the other Lots on the Property or the users of any street, waterway, or golf course within the Project, unless the prior written approval of the Architectural Committee has been obtained.

4.6 Completion of Improvements. Once construction of improvements is started on any Lot, the improvements must be substantially completed in accordance with plans and specifications, as approved by the Architectural Committee, within twelve (12) months from commencement.

4.7 Dwelling Requirements. No Dwelling constructed on a PH Lot shall have a ground floor living area of less than 800 square feet and no Dwelling constructed on all other Lots shall have a ground floor living area of less than 1000 square feet. All Dwellings shall be set on permanent foundations. (This paragraph shall not apply to any temporary building used for storage or watchmen during the progress of construction continuously prosecuted).

4.8 Fences. No boundary walls shall be constructed without the prior approval of the Architectural Committee.

4.9 Fires. No open fires shall be permitted anywhere within the Project.

4.10 Firearms. No hunting or shooting of firearms shall be permitted anywhere within the Project.

4.11 Fuel Storage; Trash Receptacle. Every tank for the storage of fuel, including propane tanks, installed outside any building in the Project or on the Property shall be either buried below the surface of the ground or screened to the satisfaction of the Architectural



Committee by fencing or shrubbery. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground, screened, or so placed and kept as not to be visible from any street, waterway or golf course within the Project or on the Property at any time except during refuse collections.

4.12 Grading. Change in ground level may not be made of any Lot in excess of one foot from existing grades without the written approval of the Architectural Committee obtained prior to the commencement of work.

4.13 Mobile Homes, Pre-fabricated Homes; Manufactured Homes. Mobile Homes, Pre-fabricated Homes or Manufactured Homes, as defined herein, shall not be permitted in or on any Lot in the Project.

4.14 Model Houses. No Owner of any Lot shall build or permit the building thereon of any Dwelling house that is to be used as a model house or exhibit unless prior written permission to do so shall have been obtained from the Architectural Committee.

4.15 New Construction. All structures constructed or placed on any Lot shall be constructed with a substantial quantity of new material and no used structures shall be relocated or placed on any such Lot.

4.16 Noxious Activities. No noxious, offensive or illegal activities shall be carried on any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

4.17 Occupation of Dwelling. No Dwelling or residence shall be occupied until the same has been substantially completed in accordance with plans and specifications approved by the Board of Trustees and a certificate of occupancy has been issued by the Rich County building inspector.

4.18 Oil Processing. No oil or natural gas drilling, refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot or Common Area.

4.19 Out-of-Commission Vehicles. No stripped down, partially wrecked, or junk motor vehicles, water craft, farm or garden equipment or sizeable part thereof, shall be permitted to be parked on any street in the Project or on any Lot.

4.20 Pets. Domestic pets are allowed, however dogs must be contained within the Owner's Lot or on a leash and shall not be allowed to run free throughout the Property. Owners are responsible to keep their dogs from barking to the point of annoyance to other Owners.

4.21 Promotion for Association. Notwithstanding any other provision in this declaration, until all Lots in the Project are completely sold, Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners or similar devices at any place or places on the property, but any such device shall be of a size and

in a location as is reasonable and customary. Declarant shall have the right to maintain a sales office and/or model units of a nature as it deems reasonable and proper in this regard, Declarant shall have the right from time to time to locate or re-place any of their sales office, banners or similar devices. No Owner shall be allowed to place outside sales signs on his property without the written consent of the Architectural Committee as per paragraph 4.3 herein.

4.22 Recreation Vehicles. Recreation vehicles must remain mobile, shall only be permitted on "RV" series-Lots in the Project and must be removed from the Project during the winter season. Deadlines for Recreational Vehicle removal and close of "RV" park for winter months shall be determined by the Board of Trustees. See paragraph 3.5 herein.

4.23 Refuse Collection. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. In order to enhance the appearance and orderliness of the Property, the Declarant hereby reserves for itself, its successors and assigns, the exclusive license for a third party to operate a commercial scavenging service within the Project for the purpose of removing garbage, trash and other like household refuse. Such refuse collection and removal service shall be designated by Declarant or its successors or assigns. The charge to be made for such refuse collection and removal service shall be at a reasonable rate commensurate with the rates charged by commercial scavengers serving other Projects of high standards in the areas, and shall be subject to change from time to time. The Project's central refuse collection area is for household garbage only and is not to be used for construction or remodeling debris, no appliances, furniture, vehicle parts, batteries, paints or chemicals, etc.

4.23.1 Violation of this provision is punishable by fine and will be levied by the Board of Trustees on a case-by-case basis. Any fine levied shall be a lien against the Owner's property and payable within thirty (30) days of the Board's decision.

4.24 Signs. No signs or other advertising shall be displayed on any Lot unless the size, form, and number of same are first approved in writing by the Architectural Committee.

4.25 Temporary Structures. No temporary house, trailer, "RV", tent, garage, or other out-building shall be placed or erected on any Lot, provided, however, that the Architectural Committee may grant temporary permission for any such structure during construction. No overnight camping shall be permitted except in designated areas designed for RV use.

4.26 Toilet; Septic Tanks; Sewage System; Plumbing Fixtures. No outside toilet or septic tank shall be constructed on any Lot. All plumbing fixtures, dishwashers or toilets shall be connected to the central sewage system. Storm water shall not be allowed to flow into the sewage system.

4.27 Trees; natural growth. No tree or a natural growth shall be removed from any Lot or land in the Project without the prior written consent of the Architectural Committee.

## **ARTICLE 5**

### **ASSOCIATION REGULAR AND SPECIAL ASSESSMENTS**

5.1 Every Person who shall become the legal or equitable Owner of any Lot in the Project by any means, by the act of acquiring such title, or by the act of contracting to acquire such title, is held to have agreed to pay the Association all charges and assessments that the Association shall make in accordance with this Declaration.

5.2 Each Lot Owner shall pay the Association his regular allocated portion of the Common Expenses deemed necessary by or on behalf of the Association to manage and to meet the expenses incident to the running of the Association and upkeep of the Project. All regular assessments shall be paid annually by the Member to the Association on or before the first day of September of each year, for the ensuing year, unless the Board determines an alternate date is necessary and provides proper notice to the Members of the change. The Board of Trustees of the Association shall fix the amount of the regular annual assessment per Lot by the first day of July of each year, and written notice of the assessments so fixed shall be sent to each Member in the event it is changed from the previous year.

5.3 If an Owner fails to pay any assessment within 15 days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of 18% per annum from the date when such installment becomes due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid expenses. The Association may publish the name of a delinquent Member and may file notice that it is the Owner of a lien to secure payment of the unpaid assessment plus costs and reasonable attorney's fees, and which lien shall encumber the Lot or Lots and may be foreclosed in accordance with the laws of the State of Utah.

5.3.1 The Board of Trustees of the Association shall have the right to suspend voting rights (if any) and the right to the use of the recreational facilities any Member or associate Member if any charge or assessment owed remains unpaid; or for any continuing violation of the restrictive covenants for the Project, after the existence of the violation has been brought to the attention of the Member in writing by the Board of Trustees of the Association; or during the period that any utility bill for water or sewer service remains unpaid.

5.3.2 The lien of a mortgage or deed of trust placed upon any Lot for the purpose of permanent financing and/or constructing a Dwelling or other Improvement thereon, shall be superior to any such lien as provided for in these restrictions.

5.3.3 If an Owner, who is leasing or renting its Lot and/or Dwelling, fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board of Trustees, upon compliance with this paragraph and section 57-8a-205 of the Utah Community Association Act, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid.

5.3.3.1 The Board of Trustees shall give the Owner written notice of its intent to demand full payment from the tenant under this section. The notice shall (1) provide notice to the tenant that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the assessment is received within the time period provided in this Declaration; (2) state the amount of the assessment due, including an interest or

late payment fee; (3) state that any costs of collection, not to exceed \$150.00, and other assessments that become due may be added to the total amount due; and (4) provide the requirements and rights described in this section.

5.3.3.2 If the Owner fails to pay the assessment due by the date specified in the notice described in 5.3.3.1, the Board of Trustees may deliver written notice to the tenant that demands future payments due to the Owner to be paid to the Association. The Board of Directors shall mail a copy of the notice to the tenant to the Owner that will include the language outlined in U.C.A. § 57-8a-205.

5.3.3.3 If the tenant makes payments in compliance with this section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this section shall be deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration which may not exceed \$25.00, is paid in full.

5.3.3.4 Within five (5) business days after payment in full of the assessment, including any interest, late fees, costs of administration and collection and any other available amounts, the Board of Trustees shall (1) notify the tenant in writing that future lease payments are no longer due to the Association, (2) mail a copy of the notification to the Owner and (3) pay any remaining balance to the Owner.

5.4 The Common Expenses above referred to for each year, or portions of the year, are hereby defined and shall be deemed to be such aggregate sum as the Board of Trustees from time to time shall determine, in its judgment, is to be paid by all the Owners then in existence to enable the Association to pay all estimated expenses and outlays to the close of such year, growing out of or in connection with the maintenance and operation of such land, buildings and improvements; which sum may include, among other things the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and care of the grounds, repairs, and renovations, and any other services which are separately billed or metered to the land as a whole. The Board of Trustees may, from time to time, up to the close of the year for which such cash requirements have been so filed or determined, increase or diminish the amount previously fixed or determined for such year.

5.5 Any regular or special assessment shall be separate, distinct and personal to the Owners against which the same is assessed. Suit to recover a money judgment for unpaid expenses may be maintained against the Owner without foreclosing or waiving the liens securing the same.

5.6 Other adjacent property owners may contract for the use of the recreational properties and facilities within the Project upon such terms and conditions and for such fees as may be mutually agreed upon from time to time between the operators of such properties and the Board of Trustees of the Association. The revenue accumulated as a result of the charges levied by the Association shall be used exclusively for purposes of promoting the recreation, health, safety and welfare of the Members of the Association.

5.7 The Association shall upon demand at any time furnish a list of Members who

have paid such assessment or of such Members who are then delinquent in the payment of such assessments.

5.8 In any case in which this Declaration requires the vote of a stated percentage of the Owners for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least 51%.

## ARTICLE 6

### **EASEMENTS AND UTILITIES**

6.1 Easements. The Declarant reserves unto itself, its successors and assigns, certain easements along, across, over and upon the real estate that constitutes the Project. The easements so reserved by the Declarant are described as follows:

6.1.1 Declarant, for itself, its successors and assigns and licensees, reserves a ten foot wide easement along all road rights-of-way, and rear property lines, and a three foot easement along the side lines of each and every Lot in the Project for the purpose of installing, maintaining and operating utility mains thereon, together with the right to trim, cut or remove any trees and/or brush, and the right to locate braces and anchors wherever necessary for said installation, maintenance and operations, together with the right to install and maintain and operate utility mains and appurtenances thereto, and reserving unto itself, its successors, assigns and licensees, the right to ingress and egress to such areas for any of the purposes heretofore mentioned.

6.1.2 No permanent building shall be placed on such easements, but the same may be used for gardens, shrubs, landscaping and other purposes, provided that such use or uses does not interfere with the use of such easement for their intended purposes. In instances where an Owner of two or more adjoining Lots erects and constructs a Dwelling or building which will cross over or through a common Lot line, the same shall not be subject to the aforementioned three foot easement along or upon the contiguous or common Lot line, except where utility lines or mains have been platted or installed.

6.1.3 Each Lot shall further be subject to an easement for the maintenance and permanent stabilization control of slopes.

6.2 No owner of any Lot in the development shall have any claim or cause of action against Declarant, its successors, assigns or licensees, either in law or in equity, and arising out of exercise of any easement reserved hereunder excepting in cases of willful or wanton negligence.

6.3 Rules for determination of location of easements. The rules prescribed in paragraph 3.3 of the restrictions above for the establishment of setback lines that must be measured from meandered lines may be applied, whenever necessary and with such adaptations as are necessary, in defining the location of an easement that is to encumber a strip of land contiguous to a meandered line.

6.3.1 On each Lot, the rights-of-way and easement areas reserved by Declarant or dedicated to public utilities purposes shall be maintained continuously by the Lot Owner but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems, provided, however that where the existing location of a drainage channel would hinder the orderly development of a Lot the drainage channel may be relocated provided such relocation does not cause an encroachment on any other Lot in the Project or development and upon written approval from the committee. Improvements within such areas shall also be maintained by the respective Lot owner except for those for which a public authority or utility company is responsible.

6.3.2 Whenever two or more contiguous Lots in the development shall be owned by the same person, and such person shall desire to use two or more of said Lots as a site for a single-Dwelling house, he shall apply in writing to the committee for permission so to use said Lots. If written permission of such a use shall be granted, the Lots constituting the site for such single-Dwelling house shall be treated as a single Lot for the purpose of applying these restrictions to said Lots, so long as the Lots remain improved with a single-Dwelling.

6.3.3 The Lots in the Project or development shall be burdened by such additional easements as may be shown on the recorded plats.

6.4 Water; Cross Connection Control. For the purpose of protecting the water supply of the Project from contamination or pollution from any cross connections existing or potential and to assure that approved backflow prevention assemblies are tested when put into service and at least on an annual basis thereafter, the Association has adopted section R309.102.5 of the Utah Public Drinking Water Rules ("UPDWR") and Utah Plumbing Code ("Plumbing Code").

6.4.1 The installation and maintenance of any unprotected cross connection which would endanger the Project's water supply is prohibited. Any such cross connection now existing and hereafter installed is unlawful under Utah law and shall be immediately protected or eliminated.

6.4.2 The control or elimination of cross connections and the criteria for determining the degree of hazard and prescribing appropriate levels of protection shall be in accordance with the UPDWR and Plumbing Code.

6.4.3 Water service to any Lot, Dwelling or Improvement shall be contingent upon the Owner or Member providing appropriated cross connection control if determined necessary by the Association, its agents, Rich County or its successors and assigns, or the local municipal or governmental building inspector. Water service may be refused or terminated to any Lot, Dwelling or Improvement where an unprotected cross connection may allow contamination or pollutants to backflow into the public drinking water system.

6.4.4 The Association, its employees and/or agents shall have free access, with proper identification, to all areas of the Lot, Dwelling or Improvement to which drinking water is supplied for the purpose of conducting hazard assessment surveys. Water service may be refused or terminated to any Lot, Dwelling or Improvement, or maximum backflow protection may be required, to the Lot, Dwelling or Improvement where access to perform surveys is denied, where unprotected cross connections are located, or in the event that installed assemblies are not tested and maintained as required by state or local regulations.

6.4.5 After a problem is detected, the Association, its agents or employees shall notify the Member or Owner, in person, if possible, or at the Lot, Dwelling or Improvement, of the problem before any water service is terminated. Thereafter, the Association shall provide written notice to the Member or Owner of the date and time of the initial notification of the problem, the findings of the hazard assessment survey, and specify that the problem must be corrected within ten (10) business days and failure to do so may result in the termination of water service, assessment of penalties for such termination and imposition of re-connection fees.

6.4.5.1 The Association, its employees or agents, will conduct an inspection of work at the end of the ten (10) day period or when notified the work is complete, whichever is earlier. If the problem is corrected, the matter will be closed. If not, water service will be terminated until corrective action is taken, inspected by the Association and approved.

## **ARTICLE 7**

### **RIGHTS IN COMMON AREA**

7.1 Ownership, Use and Enjoyment of Parks and Recreational Amenities. All areas marked Common Area on the Plat that include parks, recreational facilities and other amenities within the Property are private, and neither the Declarant's recording of the Plat nor any other act of Declarant with respect to the Plat, shall be construed as a dedication to the public, but rather all such parks, recreational facilities and other amenities shall be for the use and enjoyment of Members of the Association, to residents of rental properties and other classifications of Persons as may be designated by the Declarant, and to the guests of such Members of the Association or other residents of Swan Creek Village who qualify for the use and enjoyment of the facilities.

7.1.1 The ownership of all Common Area and recreational facilities within the Property shall be in Declarant or its designee.

7.1.2 Common Area shall not be used for access or egress to any Lot. Similarly, no Lot shall be used for access to property outside the Project as described in Article 4.1 herein.

## **ARTICLE 8**

### **MEMBERSHIP**

8.1 Every Person acquiring legal or equitable title to any Lot in the Project becomes a Member of the Association. With such ownership in the Association, he then becomes subject to the requirements and limitations imposed in these restrictions and to the regulations and

assessments of the Association, with the exception, however, of such person or persons who hold an interest in any such Lot merely as security for the performance of an obligation to pay money, e.g. mortgages, deeds or trust, or real estate contract purchases. However, if such a person should realize upon his security and becomes the real owner of a Lot within the Property, he will then be subject to all the requirements and limitations imposed in these restrictions on Owners of Lots within the Property and on Members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

8.2 Grantee's Acceptance. The grantee of any Lot subject to the coverage of the Declaration, by acceptance of a deed conveying title thereto, of the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such Lot, shall accept such deed or contract upon and subject to each and all of these restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of Declarant and of the Association and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, the Association, and with grantees and subsequent owners of each of the Lots within the development to keep, observe, comply with and perform said restrictions and agreements.

8.2.1 Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all the risks and hazards of ownership or occupancy attendant to such Lot. The general purpose of the Association is to further and promote the community welfare of property Owners in the Project.

8.3 The Association shall be responsible for the maintenance, upkeep and repair, and the establishment and enforcement of rules and regulations concerning the operation and use, of all recreational facilities, and other properties within the Project as it may from time to time own.

8.4 The Association shall have all the powers that are set out in its Articles of Incorporation and Bylaws and all other powers that belong to it by operation of law, including, but not limited to, the power to assess and collect from every Member of the Association a uniform regular assessments per single-family residential Lot within the Project. The amount of such charge is to be determined by the Board of Trustees of the Association.

8.5 Association's Right to Perform Certain Maintenance. In the event an Owner of any Lot in the Project shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees of the Association, the Association shall have the right to enter upon said Lot and repair and restore the Lot and the exterior of any improvements erected thereon. Such entry shall not be deemed a trespass. Such right shall not be exercised unless two-thirds of the Board of Trustees shall have voted in favor of such action. The cost of such exterior restoration and maintenance shall be added to and become a part of the annual charge to which such Lot is subject. The Association shall not be liable for any damage which may result from any maintenance work performed hereunder.

8.6 Indemnity of Association Trustees and Officers. The Association will maintain appropriate insurance coverage to indemnify the officers, agents and trustees of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.



8.7 Charges for Water and Sewer Service. Every legal or equitable Owner of a Lot in the Project shall pay charges for water and sewer service according to consumption. Each Lot Owner in the Project shall be required to connect to water and sewer systems prior to the completion of the construction and prior to occupancy of the Dwelling on the Lot, and thereafter shall pay for water and sewer service at reasonable consumption rates. Easements in addition to those reserved through these restrictions and on the recorded plats shall be granted for the practical construction, operation and maintenance of such water and sewer facilities upon request of the Declarant or the applicable utility of Water and Sanitation District.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

9.1 Duration. These restrictions shall effect and run with the land and shall exist and be binding upon all parties and all persons claiming under them unless properly amended.

9.2 Amendment. Subject to the other provisions of this Declaration, at any time while this Declaration is in effect, the provisions of this Declaration may be amended upon approval of 66.6% or two-thirds of the Owners of the Lots. Any amendment must be in writing. No such amendment will be retroactively binding upon the holder of any mortgage or trust deed.

9.3 Remedies. The Association or any party to whose benefit these restrictions inure, including the Declarant and assigns, may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these restrictions; provided, however, that it is expressly understood that neither Declarant nor the Board of Trustees shall be liable for damages of any kind to any party for failing to either abide by, enforce, or carry out any of these restrictions.

9.3.1 No Waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy herein in respect to a violation of any of these restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.


9.4 Severability. Every one of the restrictions is hereby declared to be independent of, and severable from, the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Therefore, if any of the restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holdings shall be without effect upon the validity, enforceability, or "running" quality of any other one of the restrictions.

9.5 Captions; Form of Word. The underlined captions preceding the various paragraphs and subparagraphs of these restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the restrictions. Whenever and wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

9.6 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions and restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

IN WITNESS WHEREOF, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swan Creek Village have been adopted by the membership of the Swan Creek Village Homeowners Association, Inc. as of the 18 day of September, 2007.

SWAN CREEK HOMEOWNERS  
ASSOCIATION, INC.



By: Dean Nelson  
Its: President

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

I hereby certify that on the 18<sup>th</sup> day of Sept., 2007, personally appeared before me Dean Nelson, who, being by me first duly sworn, declared that he is the person who signed the foregoing document and that the statements therein contained are true.

  
NOTARY PUBLIC

**EXHIBIT A**  
**SWAN CREEK VILLAGE PHASE 1**

A tract of land in the West ½ of the Northeast ¼ of Section 8, Township 14 N, Range 5 E, Salt Lake Base & Meridian, Rich County, Utah, described as follows:

Beginning at the corner of Section 8, T. 14N, R. 5E. 2621.008 feet from the west ¼ corner of Section 8, and running thence S. 89° 15' 33" E. 1316.579 feet along the Southline of the Northeast ¼ of Section 8, more or less, to the Southwest, of the Southwest ¼ of the Northeast ¼ of Section 8; thence N. 0° 33' 11" E. 1821.980 feet; thence N. 89° 26' 49" W., 110.000 feet; thence N. 0° 33' 11" E. 983.843 feet to the point of curvature of a 137.678 foot radius curve to the right. (Radius point bears S. 89° 26' 49" E.); thence along the arc of said curve 101.356 feet (Delta=42° 10' 49") to the southwesterly right-of-way line of U.S. Highway 89; thence N. 47° 16' 00" W. along said right-of-way line 60.000 feet, to a point on a 197.678 foot radius curve to the left (radius point bears S. 47° 16' 00" E.); thence along the arc of said curve 145.527 feet (Delta=42° 10' 49"); thence S. 0° 33' 11" W. 938.843 feet; thence N. 89° 26' 49" W. 122.300 feet; thence S. 49° 34' 00" W. 343.800 feet; thence S. 32° 04' 00" W. 450.000 feet; thence S. 49° 34' 00" W. 382.000 feet; thence S. 0° 34' 00" 833.785 feet N. 89° 15' 33" W. 77.850 feet to a point of tangency to a 200.893 foot radius curve to the right (radius bears N. 0° 44' 27" E.); thence Northwesterly along said curve 191.195 feet (Delta= 54° 31' 48") to the West line of the Northeast ¼ of said Section 8; thence S. 0° 30' 24" W. along said West line 254.322 feet to the point of beginning.

Containing 40.649 Acres - 96 Lots

**EXHIBIT B**  
**SWAN CREEK VILLAGE PHASE 2**

A tract of land in Sections 5,6,7 and 8; Township 14N, Range 5E, Salt Lake Base & Meridian, Rich County, Utah, more particularly described as follows:

Beginning at the Southwest corner of Section 8, T.14N. R.5E, S. L. B. & M.; thence South  $88^{\circ}51'27''$  East, on the South line of said Section 8, 2614.929 feet, more or less, to the South  $\frac{1}{4}$  corner of said Section 8; thence North  $00^{\circ}26'58''$  on the East line of the Southwest of said Section 8, 2674.052 feet; thence North  $00^{\circ}30'24''$  East, 254.322 feet; thence on a curve to the left with a radius of 200.893 feet and a central angle of  $54^{\circ}31'48''$ , for an arc distance of 191.195 feet; thence South  $89^{\circ}15'33''$  East, 77.850 feet; thence North  $00^{\circ}34'00''$  East, 314.114 feet; thence on a curve to the right with a radius of 100.000 feet and a central angle of  $57^{\circ}19'24''$ , for an arc distance of 100.048 feet; thence North  $15^{\circ}26'42''$  West 363.453 feet, more or less, to the centerline of the Garden City Canal; thence Northwesterly along the centerline of canal as follows: North  $64^{\circ}47'56''$  West 93.916 feet; thence South  $63^{\circ}17'27''$  West 221.015 feet; thence South  $06^{\circ}48'08''$  West 22.000 feet to a point departing the Garden City Canal; thence on a curve to the right with a radius of 475.000 feet and a central angle of  $22^{\circ}29'14''$  for an arc distance of 186.426 feet; thence North  $60^{\circ}42'38''$  West 675.850 feet; thence on a curve to the right with a radius of 1775.000 feet and a central angle of  $5^{\circ}17'06''$  for an arc distance of 163.730 feet; thence on a curve to the left with a radius of 247.157 feet and a central angle of  $67^{\circ}14'44''$  for an arc distance of 290.077 feet; thence North  $37^{\circ}44'52''$  West 303.325 feet; thence North  $52^{\circ}15'08''$  East 65.716 feet, more or less, to the center of canal; thence Northerly along the centerline of canal as follows: North  $18^{\circ}46'41''$  West 264.055 feet; thence North  $28^{\circ}18'03''$  West 147.648 feet; thence North  $01^{\circ}14'43''$  West 230.054 feet; thence North  $13^{\circ}14'26''$  East 87.321 feet; thence North  $07^{\circ}35'41''$  West 151.327 feet; thence North  $26^{\circ}33'54''$  East 67.082 feet; thence North  $08^{\circ}21'57''$  East 343.657 feet; thence North  $40^{\circ}45'49''$  East 191.442 feet; thence North  $19^{\circ}22'03''$  East 174.897 feet; thence North  $02^{\circ}13'37''$  East 180.136 feet; thence North  $11^{\circ}41'22''$  West 148.071 feet; thence North  $41^{\circ}11'09''$  West 53.151 feet; thence North  $67^{\circ}55'56''$  West 199.625 feet; thence North  $62^{\circ}47'02''$  West 196.787 feet; thence North  $37^{\circ}59'55''$  West 177.597 feet; thence North  $89^{\circ}36'10''$  West 690.283 feet departing the center of canal to a point on the West line of Section 5, T 14N, R.5E, S.L.B. & M.; thence continuing North  $89^{\circ}36'10''$  West 264.000 feet; thence South  $00^{\circ}23'50''$  West 1436.232 feet to a point on the South line of Section 6, T. 14N, R. 5E, S.L.B. & M.; thence South  $00^{\circ}17'03''$  West 1334.485 feet; thence South  $19^{\circ}27'02''$  West 1407.087 feet; thence South  $89^{\circ}02'49''$  East 726.000 feet to the West  $\frac{1}{4}$  corner of Section 8, T. 14N, R. 5E, S.L.B. & M.; thence South  $00^{\circ}19'01''$  West 2665.475 feet, more or less, to the point of beginning.

**EXCLUDING:**

Beginning at a point that is South  $89^{\circ}41'04''$  East 1248.29 feet from the West  $\frac{1}{4}$  corner of Section 8, T. 14N, R. 5E, S.L.B. & M.; thence North  $00^{\circ}24'10''$  East 1213.40 feet; thence North  $89^{\circ}35'50''$  West 363.000 feet; thence South  $00^{\circ}24'10''$  West 1194.58 feet;

thence South 06°21'26" West 1554.693 feet; thence South 83°38'34" East 363.000 feet; thence North 06°21'26" East 1573.632 feet to the point of beginning.

ACREAGE: 23.068 acres in exemption / 327.374 acres outside exemption. TATS:  
470