

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
CHERIMOYA HILL PHASE 2

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R) (the Declaration) is made as of the 23 day of August, 2005, by Cherimoya Hill, L.L.C., a Utah Limited Liability Company, ( the Declarant) with reference to the following facts:

A. Declarant is the owner of real property known as Cherimoya Hill Phase 2, located in the Northwest Quarter of Section 33, Township 14 North, Range 1 East of the Salt Lake Base and Meridian described as follows:

A PARCEL OF GROUND LOCATED IN THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN. DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT FOUND AT THE NORTHWEST CORNER OF SECTION 33, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°08'16" WEST (SOUTH 00°36'54" WEST BY RECORD) ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION AS CURRENTLY MONUMENTED 426.20 FEET TO THE TRUE POINT OF BEGINNING; AND RUNNING THENCE SOUTH 89°51'44" EAST 217.80 FEET; THENCE SOUTH 00°08'16" WEST 7.80 FEET; THENCE SOUTH 89°32'56" EAST 756.77 FEET; THENCE SOUTH 10°39'36" EAST 20.38 FEET; THENCE SOUTH 00°27'04" WEST 207.80 FEET; THENCE SOUTH 89°32'56" EAST 37.95 FEET; THENCE EASTERLY 54.13 FEET ALONG THE ARC OF A 375.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 08°16'14" AND A LONG CHORD THAT BEARS NORTH 86°18'58" EAST 54.08 FEET; THENCE SOUTH 07°49'09" EAST 181.20 FEET; THENCE SOUTH 69°55'09" WEST (SOUTH 69°33'41" WEST BY RECORD) 805.07 FEET; THENCE SOUTH 80°40'41" WEST 343.45 FEET (SOUTH 80°36'50" WEST 354.67 FEET BY RECORD); THENCE NORTH 00°08'16" EAST (NORTH 00°36'54" WEST BY RECORD) 750.50 FEET TO THE POINT OF BEGINNING. CONTAINING 14.38 ACRES AND 20 LOTS.

Recorded AUG 24 2005 Filing No. 66399  
At 1:15 AM/PM In Book B10 Page 1327  
Fee 30.00 Debra L. Ames Rich County Recorder  
Requested by Town of Garden City

B. Declarant has subdivided the above-described property, in accordance with Subdivision plats, approved by the Garden City Planning and Zoning Board, and which are filed con-currently herewith, in the Office of the County Recorder of Rich County, State of Utah.

C. Declarant desires, by filing of this Declaration and the aforesaid Subdivision Plat, to submit the above-described property, and all lots within the above-described property and as shown on the Subdivision Plat, to the provisions of this Declaration of Covenants, Conditions and Restrictions, and hereby specifies that this declaration shall constitute covenants to run with all of the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations upon all future owners in said subdivision.

NOW THEREFORE, as part of the general plan for improvement of the above-described real property, the undersigned hereby declares said property subject to the Covenants, Conditions and Restrictions herein recited.

## ARTICLE I DEFINITIONS

Section 1.01: "Association" and "HOA" shall mean and refer to the Cherimoya Hill Homeowners Association, as further described hereinbelow.

Section 1.02 : "Property" or "Project" shall mean all the real property described above, consisting of all acreage and any and all annexations to Cherimoya Hill.

Section 1.03 : "Lot" shall mean any plot of land or parcel shown upon any recorded subdivision map of the property, with the exception of Open Spaces.

Section 1.04 : "Owner" shall mean the record owner of a fee simple title to any lot which is a part of the Property, but excludes any person or entity which holds an interest merely as security for the performance of an obligation.

Section 1.05 : "Mortgage - Mortgagee - Mortgagor"; reference in this Declaration to a mortgage shall be deemed to include a deed of trust; reference to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

Section 1.06 : "member" shall mean and refer to every person or entity who holds membership in the Association.

Section 1.07 : "Family" shall mean a group of natural persons related to each other by blood, or legally related to each other by marriage or adoption.

Section 1.08 : "Open Space" shall mean property owned by the Association or dedicated to The Town of Garden City for the use and benefit of the members of the association or public use.

Section 1.09 : "Management Committee" or "Committee" shall mean the Declarant herein, or its successors and assigns, as the same are appointed pursuant to the provisions of Article VI, herein.

## ARTICLE II CLASSIFICATION OF PROPERTIES

The property in the subdivision shall be considered in two classifications, namely dwelling lots and Open Space.

Dwelling lots shall be utilized by the owners thereof subject to the Covenants, Conditions and Restrictions set forth below, as well as any other requirement or restriction of municipal, county, state or federal law or regulation.

The Open Space of the project consists of areas owned for the benefit of all owners in Cherimoya Hill subdivision. These are identified on the recorded plats as "Open Space". The streets shall be dedicated to the Town of Garden City for public use.

Operation and maintenance of the Open Space shall be performed by the Association, and its Management Committee, as is more specifically described below, with the exception of the streets which shall be maintained by the Town of Garden City.

### ARTICLE III MEMBERSHIP

Every person or entity who is a record owner of a fee or un-divided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership. Each lot is entitled to one vote only regardless of the number of owners of undivided interests.

### ARTICLE IV MANAGEMENT

Performance of the duties and obligations of the Association shall be done by the Management Committee. The Committee shall have the duties, power and authority, to perform the following acts, among others:

1. Levy Assessments, in the manner set forth below, for purposes of maintenance of Open Spaces.
2. Enforce, in the manner described below, these Covenants, Conditions and Restrictions.

The above-stated itemization of powers, authorities, duties and obligations of the Association and/or its Management Committee is not intended to be exclusive, and the Association may undertake such further duties and responsibilities as may become reasonable or necessary, and as may be approved by the members in accordance with voting procedures set forth herein.

### ARTICLE V VOTING RIGHTS

Members of the Association, as defined in Article III, above, shall have voting rights in the Association, in the formation of its Management Committee, and election of Members of the Management Committee.

Each person or entity who is a record owner of a fee or undivided fee interest in any lot which is subject to these covenants, including the Declarant, shall have one vote.

### ARTICLE VI MANAGEMENT COMMITTEE

Initial Management Committee : Until such time as the Declarant has sold 30 lots in the project, the Declarant shall be the Association Management Committee, and shall exercise the rights and duties thereof.

Successor Management Committee: At such time as a 30 lots are sold, the members of the association, as defined in Article III, shall hold an election for a Successor Management Committee, to consist of no less than three (3) members, one of whom may be the Declarant. The association may at that time adopt such by-laws, rules or regulations as it may deem reasonable or necessary, addressing the terms of office of management committee members, resignations, terminations and the like.

## ARTICLE VII

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 7.01. Creation of the Lien and Personal Obligation of assessments: The Declarant, for each lot owned within the Project is not liable for any annual assessments or any special assessments. This provision for the Declarant may not be changed by any amendment or supplement to this Declaration unless Declarant agrees in writing to such amendment or supplement. Each owner of any Lot, by acceptance of a deed or conveyance thereof, whether or not it shall be so expressed in any such deed or instrument of conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and (2) special assessments for capital improvements. Such assessments shall be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge upon the land and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney fees, shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The nature of this personal obligation shall in no way however remove the lien upon the property until such assessment and all related expenses are paid in full.

Section 7.02. Purpose of Assessments: The assessments levied by the association shall be used exclusively for the purpose of maintenance and repair of Open Spaces within the project. The assessments shall also be used for any and all other purposes that the Management Committee deems appropriate, or expenses incurred by the association.

Section 7.03. Basis and Maximum of Annual Assessment: Until the Management Committee, whether in the person of the Declarant or a Successor Committee, shall provide otherwise, the maximum annual assessment shall be Two Hundred Fifty Dollars (\$250.00) per lot. The maximum annual assessment may be changed, effective January 1 of each year, without a vote of the membership, in conformance with the appropriate expenditure record of the previous year, adjusted in accordance with expected expenditures for the following year. After consideration of current maintenance costs and future needs of the Association, the Management Committee may fix the annual assessment at an amount sufficient to fulfill the needs of the Association. Whenever annual assessments are increased or decreased, the Management Committee shall provide to each member a summary of the record of expenditures of the prior year, and a statement of the basis of expected expenditures for the following year upon which the change in annual assessment is based.

Section 7.04. Special Assessments: In addition to the annual assessments authorized above, the Management Committee may levy in any assessment year, such special assessments, applicable for that year only, as may be necessary for the purpose of paying the cost of any construction or reconstruction, unexpected repair of the Open Spaces within the project.

Section 7.05. Date of Commencement of Annual Assessments: The annual assessments provided for herein shall commence as to all lots on the date of closing when initially sold or transferred by Declarant.

Section 7.06. Effect of Non-Payment of Assessments; Remedies of the Association: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after due date, the assessment shall bear interest from the date of delinquency at the rate of twelve per cent (12%) per annum, and the Association may bring an action at law against the property and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Open Spaces, or abandonment of his lot.

Section 7.07. Professional Management: It shall be within the authority of the Management Committee without vote of the membership to contract for professional management of the Association, and to assess the members under the other provisions for assessment herein, to pay for such management. Under this provision the Professional Manager would be responsible only to the Management Committee for the performance of his or her duties, and any request for his or her services or complaints shall be referred to the Management Committee.

## ARTICLE VIII IMPROVEMENTS AND UTILITY SERVICE

Section 8.01. Streets: The Declarant is obligated to, and has or will, provide streets to each Lot in the Project unless otherwise approved by the Town of Garden City, in accordance with the standards set by the Town of Garden City, State of Utah.

Section 8.02.a. Water: The Declarant has or will, install in the Project a primary water distribution system. Connection to the water distribution system for any given lot, connection fees, and installation of a water meter, shall be the sole responsibility of the owner of such lot, and shall be done at the expense of the owner. In the event that connection requires excavation of a street, it shall be the further responsibility of the owner to restore the street to its former condition. The Town of Garden City will meter the water usage, and each member will be billed for water usage.

Section 8.02.b. Water Use Rates: Rates for Water usage shall be determined by the Town of Garden City.

Section 8.02.c. Water Use Billing: Billing for water usage, based upon metered amounts and rates established as described above, will then be the responsibility of the Town of Garden City.

Section 8.03. Other Utilities: Declarant will be obligated to pay for installation of primary electric lines according to the rules and regulations of the State of Utah. Declarant will install in the Project a sewer collection system to each lot or street adjoining each lot. Connection by lot owners to such trunk lines will involve payment of connection fees by the lot owner, which fees will be paid to the providers of such services, whether Bear Lake Special Service District or other public agency, and to the provider of electrical service, Utah Power and Light or other utility. Payment of such connection fees will or may result in refund of the installation costs advanced by Declarant. Such refunds shall be the sole right and property of Declarant hereunder.

## ARTICLE IX ARCHITECTURAL CONTROL

Section 9.01. Architectural Control Committee: There shall be an Architectural Control Committee, initially the Declarant, then, at such time as a Successor Management Committee is elected, three (3) owners of Lots in the project, not members of the Management Committee, and who shall be appointed by the Management Committee. No member of the Architectural Control Committee may be compensated for services performed pursuant to this Declaration. However, the Architectural Control Committee may, at its discretion, employ an outside professional architect or engineer, or other consultant or professional, to assist it in its functions, and a reasonable fee may be charged to the lot owner for such services, in which event the provisions of Article VII shall be applicable. No member of the committee shall be liable to any person for his for her decisions or failure to act in making decisions as a member of the Committee.

Section 9.02. Scope: No building, residence, dwelling, garage, carport, wind generation device, accessory building or fence, wall, non-living screen or any other structure or landscaping shall be commenced, erected, placed or meaningfully altered on any lot until the plans, specifications and plot plans showing the location and nature of such structure, building, landscaping or other improvement or meaningful alteration have been submitted to and approved in writing by the Architectural Control Committee, which may consider factors such as (but not limited to) the quality of workmanship and materials, design, harmony of external design with existing project, structures, location with respect to topography and finish grade, elevation, preservation and enhancement of the natural beauty of the area and safety.

The committee shall condition such approval on the lot owner depositing cash in the sum of not to exceed Five Hundred Dollars (\$500.00) with the Architectural Control Committee, the purpose of which shall be to further ensure that the lot owner (1) fulfills his responsibility to keep his lot in a condition so as to prevent the rubbish and debris which accumulates during the construction process from blowing or collecting on neighboring lots, (2) reasonably cleans up his lot at or near the completion of the construction process and, (3) repairs any damage to the road caused by the construction. If the lot owner fails in any of these responsibilities, the deposit may be kept by the Architectural Control Committee as a fine upon such lot owner or as liquidated damages. If any such failure is not remedied within 14 days after written notice thereof, the Architectural Control Committee may remedy such condition itself and shall charge the lot owner for the cost of the remedy, in which case the provisions of Article VII shall be applicable.

Section 9.03. Process of Approval: Plans and re-submittal thereof shall be approved, disapproved or otherwise acted upon in writing within thirty (30) days of submission. All plans and specifications and other materials shall be submitted in triplicate. One (1) set shall be returned to the lot owner. Failure of the Committee to respond to a submittal or re-submittal of plans or materials within thirty (30) days shall be deemed to be an approval of plans as submitted or re-submitted.

If, after such plans and specifications have been approved, the improvements are altered, erected, or maintained upon the lot otherwise than as approved by the committee, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the Committee. After the expiration of one (1) year from the date of completion of any improvement, said improvement shall, in favor of purchasers and encumbrances, in good faith and for value, be deemed to comply with all of the provisions hereof unless a Notice of such non-compliance or non-completion, executed by one or more members of the Architectural Control Committee shall be sent to the lot owner by certified mail to the address listed on the building permit, or will appear of record in the office of the County Recorder, or legal proceedings have been instituted to enforce compliance with these provisions. The approval of the Committee of any plans or specifications submitted for approval for use on any residence shall not be deemed to be a waiver by the Committee of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plan submitted for approval for use on other residences. Upon approval of the Committee acting in accordance with the provisions of this Declaration, it shall be conclusively presumed that the location and height of any improvement do not violate the provisions of this Declaration.

Until later published, the address of the Committee is: Executive Recreational Properties, 10 South Bear Lake Blvd., Garden City, Utah 84028.

## ARTICLE X

### GENERAL RESTRICTIONS AND REQUIREMENTS

Section 10.01. Land Use and Building Type: All lots shall be used exclusively for single family residential purposes. Except as may be specifically approved as provided in Article IX hereof, no building shall be erected, altered, placed or permitted to remain on any lot other than one single family dwelling, one building for an out building or detached garage, unless otherwise approved by the Architectural Control Committee. No lot may be divided, subdivided or separated into smaller parcels. Any building being constructed must be complete on the exterior eighteen (18) months from that starting date of construction of the building.

Section 10.02. Dwelling Size and Materials: No single story dwelling shall be constructed, altered, placed or permitted to remain on any lot unless the main floor area, exclusive of attached garages; open porches, is 1,200 square feet or greater. Square footage of covered decks on the main floor may not be counted as part of the main floor. No structure shall have a height greater than 35 feet from the original lot ground level measured from the center or middle point of the structure. Unless prior written approval is first given by the Architectural Control Committee, all above-ground construction of all buildings including garages and barns shall be log, log siding, stucco and log or stucco and cedar or comparable look, cedar siding or some comparable material which harmonizes with the natural surroundings in both color and material, and is approved in writing by the Architectural Control Committee. No more than 80% of the exterior can be stucco unless approved by the Architectural Control Committee. In no event shall aluminum siding or vinyl siding, be permitted.

All dwellings must have a least one set of large beam exposed trusses on the street-side elevation.. All dwellings must have a street-side landscaping plan approved by the Architectural Control Committee at the time of approval of building plans which will extend the entire street-side length of the building and will include an area as per the subdivision engineering specification to handle storm water from a portion of the road.. Use of plant native materials and stone are highly encouraged. This landscaping plan must be completed within the 18 months along with the building exterior.

Section 10.03. Building Location: No building walls or foundation shall be located on any Lot nearer to the front lot line or nearer to the side street line than the minimum building set-back described under prevailing City Zoning. Notwithstanding any zoning requirements to the contrary, except where special written approval is first given, no building shall be located on any lot nearer than 30 feet to the front line, or nearer than 20 feet to any side lot line, or nearer than 30 feet to the rear lot line.

Section 10.04. Nuisances, Unreasonable Annoyance and Noxious Activities: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the neighborhood. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the project.

Section 10.05. Signs: No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any lot without written approval having been first obtained from the Architectural Control Committee; provided however, that the restrictions of this paragraph shall not apply to any professionally painted and maintained sign or notice seven square feet or smaller in size which states that the premises are for rent or sale, or which identifies the residents owners. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the residence and or lots.

Section 10.06 Animals.: Animals kept on the property shall be for household pets only. Absolutely no commercial use may be made of any animal, including renting, leasing or sale.

Section 10.07. Rubbish and Unsightly Debris, ect.: Notwithstanding any other provision in the Declaration, no owner shall allow his lot to become so physically encumbered with rubbish, unsightly debris, older vehicles or equipment or other things or materials so as to constitute an eyesore as reasonably determined by the Association. Within 20 days of receipt of written notification by the Association of such failure, the owner shall be responsible to make appropriate corrections.

Section 10.08. Temporary Structures, Ect.: No structure of a temporary character, or trailer, camper, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, unless approved in writing by the Architectural Control Committee; provided however, that this section shall not be applicable to temporary structures utilized during construction of a dwelling on the Lot, not to exceed 18 months in duration.

Section 10.09. Non-Residential Uses Prohibited: No part of the property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes; provided however, that professional and administrative occupations may be carried on within the residence so long as there exists no meaningful external evidence thereof. The Declarant, its successors or assigns, may use the property for a model home site, display, and sales office during the construction and sales period.

Section 10.10. Drilling Operations: No oil drilling, oil development operations, exploration, oil refining, quarrying, or mining operations of any kind shall be permitted upon any lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling boring for oil, natural gas or water, be erected, maintained or permitted on any lot.

Section 10.11. Fences and Walls, Hedges and Screens: No fences, walls, or non-living screen shall be constructed on any lot without written approval first having been obtained from the Architectural Control Committee.

Front yard fences, walls and non-living screens are discouraged and require prior approval before construction. Such fences, walls and screens may be approved only following careful scrutiny by the Architectural Control Committee.

Section 10.12. Environmental Concerns: Lots, where possible, shall provide a means for wildlife to traverse. All dogs with potential of chasing wildlife during winter months must be restrained, penned, or on a leash, ect. during that time. No commercial agriculture or gardening, or sale of produce shall be permitted.

## ARTICLE XI

### EASEMENTS HILLSIDE DISTURBANCE AND FLOOD CONTROL

Section 11.01. Utility Easements: Easements for installation and maintenance of Hodges Irrigation Company canal facilities are reserved over an area extending 33 feet from the center of the canal alignment to each side.. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with or damage canal facilities. However, the Committee may approve a structure such as a fence or landscaping where constructed at the Lot Owner's risk of having it dismantled, removed or destroyed where necessary because of drainage or utility servicing, installation, alteration or maintenance. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot; except for those improvements for which a public authority or utility company is responsible to maintain. All roads and Open Spaces shall have a general blanket easement for utility installation.

Section 11.02. Fire Control Easement and Responsibility: Each homeowner will provide as part of their landscape, a fire break around their home in case of a brush fire. Also there is an existing easement across all lots for fire break equipment to disturb any of the lots upon demand to stop a brush fire from spreading.

Section 11.03. Flood Control Responsibility: Construction of berms, channels or other flood control facilities is the sole responsibility of the lot owner and shall be done in accordance with flood control plans as engineered on the engineering specifications of the final plat. Any such construction shall commence at the time the lot is graded or otherwise altered from its natural state.

## SECTION XII VIOLATIONS

Section 12.01. Committee's Power of Enforcement: Enforcement of the provisions of this Declaration shall be accomplished by any lawful means, including proceedings at law or in equity, against the person or persons violating or attempting to violate any provision herein, either to restrain violation, compel compliance, or recover damages. To the extent reasonably possible, the violator shall be required to pay the expenses incurred therein. No liability shall attach to the Committee in acting pursuant to the provisions of this Declaration.

If, after due notice, a lot owner fails to remedy a violation, the Association may (in addition to any other lawful remedies available) cause such violation or condition to be remedied, and the cost thereof shall be deemed a special assessment against the owner of the lot, and which shall be subject to levy enforcement and collection in accordance with the assessment lien procedure provided for in Article VII.

Failure to comply with any of the provisions in this Declaration or regulations adopted pursuant thereto shall be grounds for relief which may include, without limitation, recovery of damages, injunctive relief, foreclosure of lien, or any combination thereof. Failure on one occasion to enforce any provision hereof shall not be deemed a waiver of the right to enforce said provision or any other provision hereof.

Section 12.02. Enforcement by Others: Additionally, and after reasonable notice in writing, an owner not at the time in default hereunder, shall have the option of bringing an action for damages, specific performance or injunctive relief against a defaulting owner. Any judgement entered in such case shall include an award of reasonable attorney's fee to the prevailing party.

Section 12.03. Rights of Entry: The committee shall have a limited right of entry in and upon all lots and the exterior of all residences for the purpose of taking corrective action that it may deem necessary and proper. Nothing in this Article shall in any manner limit the right of the owner to exclusive control over the interior of his residence.

## ARTICLE XIII DURATION AND AMENDMENT

Section 13.01. Duration: This Declaration shall continue in full force and effect for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded with the County Recorder, which declaration must meet the requirements of an Amendment, as set forth hereinbelow. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any lot from membership in the Association so long as this Declaration shall continue in full force and effect.

Section 13.02. Amendment: Notice of the subject matter of a proposed Amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Owners at which meeting such amendment is to be discussed.

No amendment to this Article XIII shall be effective unless approved in writing by all of the record holders of all encumbrances on all lots in the Project at the time of such amendment, including lots owned by the Declarant.

All other amendments shall be effective only upon written approval by not less than seventy-five percent (75%) of record owners of all lots in the Project at the time of such amendment, including lots owned by the Declarant.

Notwithstanding any of the foregoing, the Declarant may at any time amend this Declaration to qualify the Project with lending institutions and until the close of escrow established for the sale by the Declarant of its last lot in the Project (including lots in any annexations thereto), Declarant shall have the sole right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. "The close of escrow" shall be deemed to be the date upon which a deed conveying the lot is recorded. It is anticipated that additional property and lots will be annexed to Cherimoya Hill and share in the ownership of the Open Spaces. Each owner of any lot, by acceptance of a deed or conveyance thereof, whether or not it shall be so expressed in any such deed or instrument of conveyance, is deemed to Covenant to accept any an all annexations such as Declarant may make.

#### ARTICLE XIV

##### MISCELLANEOUS AND GENERAL PROVISIONS

Section 15.01. Severability: Invalidity of any one of these covenants, or any portion thereof by judgement or court order shall in no way effect any of the other provisions of this Declaration.

Section 15.02. Singular Includes Plural: Whenever the context of the Declaration requires the same, the singular shall include the plural, and the masculine shall include the feminine.

Section 15.03. Liability: Neither the Declarant, the Management Committee, their assignees, delegates, or the Architectural Control Committee, shall be liable to any other person for any action or failure to act hereunder where such action or failure was in good faith.

Section 15.04. Annexation of Additional Property: Any real property may be annexed to the Project in the discretion of the Declarant. Such real property shall be made subject to this Declaration at the time it is annexed.

Section 15.05: As the Project is being constructed in a wildlife area Lot owners should expect wildlife in the area and upon the Lots, and neither the Declarant, the Management Committee, their successors, delegates, assigns, or the Architectural Control Committee, nor any member thereof, shall have any responsibility for any damage caused by wildlife, or for removal of wildlife from the Project.

IN WITNESS WHEREOF, the Declarant has executed this instrument the day and year first above written.

Cherimoya Hill LLC

Cherimoya Hill L.L.C.

By: [Signature]  
Member-Manager

STATE OF UTAH )

:SS

County of Rich )

On the 23<sup>rd</sup> day of August, 2005, personally appeared before me Nash Mocham, who being by me duly sworn did say for himself that he is the Manager of Cherimoya Hill L.L.C., a Utah Limited Liability Company, and that the foregoing instrument was signed in behalf of said Limited Liability Company by authority of the Board of Directors and the said Member-Manager acknowledged to me that said Limited Liability Company executed the same.

Kathy L. Hislop  
Notary Public

Residing at: ~~Laketown~~ Jordan City, Utah

My commission Expires ~~11/11/2007~~ March 8, 2007

