



**DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS  
OF  
SIERRA BELLA SUBDIVISION**

This Declaration of Restrictive Covenants and Conditions of Sierra Bella Subdivision (the "Declaration") is made on the date evidenced below by Sierra Bella Development Group, LLC, a Utah limited liability company (the "Declarant").

**RECITALS**

A. The Declarant desires to record this Declaration (the "Declaration") of Restrictive Covenants and Conditions of Sierra Bella Subdivision for the property set forth below.

B. Future Phases of Sierra Bella Subdivision are contemplated and will be subjected to the conditions, covenants and restrictions of this Declaration pursuant to the expansion provisions contained herein.

C. The Declarant intends to create the Sierra Bella at Equestrian Park Estates Home Owners Association, LLC (the "Association") to protect property values, govern the common needs of the Lot owners, to administer the common areas and to enforce the covenants, conditions and restrictions of the Association as set forth in this Declaration.

D. The Declarant will adopt Bylaws of the Association consistent with this Declaration.

NOW, THEREFORE, the Declarant sets forth the restrictive covenants and conditions as follows:

**ARTICLE I  
CREATION OF COVENANT**

The Declarant hereby declares that the Declarant and all future owners of the Property described in the attached Exhibit "A" shall own, convey, hypothecate, encumber, use, occupy and improve the Property subject to this Declaration. The easements, covenants, conditions, restrictions and charges, described in this Declaration will run with the Property and be binding upon all parties having or acquiring any right, title or interest in such Property or any part thereof and inure to the benefit of the Association, and each Owner thereof. The Property includes the land so described, all buildings, improvements and structures, all easements, and rights and appurtenances located on, or belonging to or used in connection with such land.

**ARTICLE II  
PURPOSES AND DEFINITIONS**

2.1 Purposes. This Declaration is placed of record as a series of covenants running with the land, as herein set forth, for the purpose of establishing and preserving a quality residential subdivision for single family residential dwellings. These Restrictive Covenants are designed to ensure that the highest quality building standards will be observed and that the Property will be kept free and clear of any rubbish, trash, and noxious or offensive activity. Any person or entity purchasing any portion of the Property, after the date of recording of this Declaration, takes title to such property subject to and with a commitment to abide by each of the covenants and conditions herein contained.

2.2 Definitions.

2.2.1 "Additional Property" means additional real property subjected to the terms and conditions of this Declaration pursuant to the requirements herein.

2.2.2 "Architectural Control Committee" or "ACC" means that committee constituted and acting pursuant to Article 10 below.

2.2.3 "Assessment" means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the provisions of this Declaration, the Bylaws or Utah Code Ann. §§57-8a-101, et. seq, as the same may be amended or superseded from time to time.

2.2.4 "Association" means the Sierra Bella at Equestrian Park Home Owners Association, LLC, the company formed to serve as the owners' association as provided in this Declaration.

2.2.5 "Bylaws" means the Bylaws of the Association as they may be amended from time to time.

2.2.6 "Common Areas" means the areas designated as Common Areas on any applicable plat map and in Article 5 herein.

2.2.7 "Declarant" means Sierra Bella Development Group, LLC, its successors and assigns.

2.2.8 "Declaration" means this Declaration of Restrictive Covenants and Conditions of at Equestrian Park Estates Subdivision as the same may be amended or supplemented from time to time in accordance with the provisions herein.

2.2.9 "Improvement" means every structure or improvement of any kind situated on a Lot or in the Common Areas.

2.2.9 "Good Standing" means that the Owner of a Lot is not delinquent on any Annual Assessments, whether paid on an annual or monthly basis.

2.2.10 "Lot" means a numerically designated and platted Lot on the Plat (including the living unit located thereon), but does not include any Common Area.

2.2.11 "Mortgage" means a mortgage or trust deed; "Mortgagee" means a mortgagee or a beneficiary of a trust deed; and "Mortgagor" means a mortgagor or a grantor of a trust deed.

2.2.12 "Owner" means any person or entity, or combination thereof, including Declarant, at any time owning a Lot in the Property, as shown on the records of Washington County, State of Utah. The terms "Owner" shall not refer to any mortgagee, unless the mortgagee has acquired title for other than security purposes. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner."

2.2.13 "Plat" means the plat maps of Sierra Bella Subdivision as recorded in the Plat Records of Washington County, Utah, including any amendment or supplements thereto.

2.2.14 "Property" means the property described on the attached Exhibit A and shown on

the Plats, and all improvements located thereon.

2.2.15 "Reserved Use" means specific time periods setup by the Board of Directors during which the Common Area can be reserved by an Owner of a Lot for private use.

2.2.16 "Setback Lines" means:

For Rural Residential-1 Zones:

Front Property Setback: 1 acre and larger - forty (40) feet from the property lines.

Rear Property Setback: Forty (40) feet from the property line. Notwithstanding the foregoing, the rear property setback for Lots 34-38 will be sixty (60) feet.

Side Property Setback: Twenty (20) feet from side property line.

2.2.16 "Turnover Meeting" means the meeting provided for under Article 7 below.

**ARTICLE III**  
**PROPERTY RIGHTS IN LOTS / USE AND OCCUPANCY RESTRICTIONS**

3.1 Single Family Dwelling / Prohibition against Multiple Unit Dwellings. Owners shall use each Lot only for one single-family residential dwelling, and observe all city zoning requirements. There will be no multiple unit dwellings of any kind, including but not limited to basement apartments, duplexes or apartment buildings. No condominiums of any kind are allowed. Owners shall not divide the use of any Lot. Multiple owners can share ownership in a single-family residential dwelling, but cannot occupy the dwelling simultaneously. Lots may be combined in use.

3.2 Single Families / No Boarding House or Group Homes. Owners shall cause each dwelling to be occupied only by a single family. No one is entitled to reside in a residence constructed on a Lot unless they are members of the immediate family therein residing, or are authorized foster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed, regardless of the method or structure of the occupancy-arrangement.

3.3 Noxious, Illegal or Offensive Uses. No noxious, illegal, or offensive use of the Property shall be allowed on any Lot nor shall anything be done thereon that may be or become an annoyance or nuisance to the neighborhood. No grantee or grantees, under any conveyance, nor purchasers, shall at any time conduct or permit to be conducted on any residential Lot any trade or business of any description, either commercial or non-commercial, religious or otherwise, including day schools, nurseries, or church schools, nor shall premises be used for any other purpose whatsoever except for the purpose of providing a private, single-family dwelling or residence. Home based businesses may be approved by the Architectural Control Committee if not detracting from the overall integrity of the residential community.

3.4 Unsafe or Hazardous Activities or Improvements. No activity shall be conducted upon the Property, nor any improvements constructed thereon, which are or may become unsafe or hazardous to any person or property.

3.5 Vehicles and Parking. No automobiles, trailers, recreational vehicles, boats or other vehicles may be kept or stored on streets within the Property. No automobiles, trailers, recreational vehicles, boats or other vehicles may be parked on the Lots unless they are in running condition, properly

licensed and being regularly used or must be stored out of sight and not detracting from the overall integrity of the residential community. "Out of sight" means inside a garage or fully enclosed and completely out of view behind a permanent solid wall or gate at least six (6) feet in height.

3.6 Signs. No signs of any kind shall be displayed to public view on any Lot, except that each owner may display one sign of not more than five (5) square feet advertising the property for sale. Anything contained herein notwithstanding, Declarant may, during the course of development of the Property and sale of Lots, place signs in excess of this five square foot restriction as necessary to advertise the Property.

3.7 Animals and Pets. No animals, livestock or poultry of any kind shall be raised, kept, bred or maintained for any commercial purpose. Owners may have a maximum of two (2) horses per Lot on the following Lots: 1, 2, 3, 4, 34, 51, and 52. The Declarant can approve or disapprove any Lots that are still owned by Declarant for horses. The following animals are not permitted on any Lot either temporarily or permanently: cattle, mink, swine or any type of wild, exotic or vicious animal, fowl or reptile. All permitted animals are to be adequately maintained in a sanitary and healthful manner to prevent annoyances or offensive noise or odors, insects and disease. All animals must be adequately restrained to prevent escape from the Lot, marauding nuisance, or damage to other property. All pets must be kept on the Lots or on a leash when off of the owner's Lot. This provision may be made more restrictive by rule of the Architectural Control Committee. All permitted animals must be cared for, maintained, fed, watered and housed within the boundaries of the Property Lines. The number of permitted animals per acre is restricted to no more than two (2) horses, two (2) cats and two (2) dogs.

3.8 Trash, Waste and Rubbish. All Lots shall be used and kept free from trash, rubbish, garbage or other waste including animal waste that accumulates must be hauled away or spread out over pasture or fields for use as fertilizer and reduce the attraction of flies, health concerns and odors on the Property which includes hay or other feed shall at all times be kept by the various Owners in a sightly and attractive manner.

3.9 Storage of Garbage and Waste. All waste shall be kept at all times in appropriate sanitary containers. Garbage containers shall be stored out of prominent view at all times. Any building materials or construction materials shall be neatly stacked and kept upon the Property in the rear yard and shall not remain thereon for more than thirty (30) days following the completion of construction.

3.10 Watering. Each Lot has rights to irrigation water for the purpose of watering the property associated with the Lot. The water rights go with the property, and cannot be sold or leased for any purpose. The HOA will publish a watering schedule for each Lot in the development, and an owner cannot use the water associated with their water rights only as specified in the watering schedule without the written permission of the HOA. The watering schedule will specify the times, during which the water associated with each Lot, can be used on the Lot.

3.11 Compliance with Zoning / Land Use. All land use and all buildings constructed shall fully comply with all zoning and land-use ordinances and regulations applicable to the property, which include the land-use and zoning ordinances of the State of Utah and/or Town of Virgin. All grading shall be done so as to preserve or restore the drainage of the land and so as to comply with all flood control requirements of any applicable agency, and structures must be built high enough out of the existing ground level to have at least a 2% grade slope away from said structures and must not create a flood or drainage hazard for any other Lot or street. All drainage for each Lot must be mitigated and retained upon each Lot.

3.12 No Partial Conveyances. No Lot within the Property shall be divided, encumbered or

conveyed in part which will allow for or result in a smaller Lot, or a greater number of total Lots in the Property.

3.13 Easement Reservations. Easements for installation and maintenance of utilities and drainage are reserved, as shown on the recorded plat. Within these easements, no permanent structure, planting, block wall or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or drainage. Any structure, planting or other material shall be removed or restored by the Lot owner in the event of exercise of an easement. The easement area of each Lot shall be maintained continuously by the owner except for those improvements for which a public or utility company is responsible.

ARTICLE IV  
BUILDING RESTRICTIONS

4.1 Rural Residential Estates / Approval of Landscaping Plan. The Property is intended to be a rural estate setting with approved landscaping in harmony with Southwest country living with residences on the property. Desert or Xeriscape landscaping is encouraged. The front and side yard landscaping shall be finished within twelve (12) months after receiving the Certificate of Occupancy and must receive approval from the Architectural Control Committee. Front landscaping includes the placement of 2-inch caliper trees (selected from the Architectural Control Committee's approved list) every 25 feet along the roadway. Owners shall deposit \$2000 with the Association upon purchasing each Lot. If the trees have been planted as specified above, the Association shall refund the deposit. If not, the Association may use the deposit to plant trees as required and the Owners hereby grant an easement to the Association for such purposes. Owners shall ensure that an adequate watering system is in place for the landscape design.

4.2 Minimum Square Footage. The Property will have minimum size of the dwelling living area. No dwelling shall be constructed or erected on any Lot which has a finished, ground-level living area of less than that shown in the table below, excluding garages and other outbuildings. The ACC can approve homes with smaller minimum square footage based on exceptional architectural design and building quality.

Minimum sizes for: RR-1

Rural Residential Estate Lots ( 1 acre and larger) are:

<u>One Story -</u>	
Minimum Ground Level	- 2,800 sq. ft.
<u>Two Story -</u>	
Minimum Ground Level Portion	- 2,400 sq. ft.
Minimum Total Finished Portion	- 3,500 sq. ft.
<u>Multi-Level -</u>	
Minimum Ground Level Portion	- 2,200 sq. ft.
Minimum Total Finished Portion	- 3,800 sq. ft.

4.3 Maximum Height. The maximum height for any dwelling constructed on Lots 34-41 will be 20 feet above elevation grade. The maximum height for any dwelling or structure on a Lot other than Lots 34-41 shall be 25 feet above elevation grade.

4.4 Lot Building Coverage. No more than 50% of the total Lot area may be covered with a building.

4.5 Lot Landscaping. Desert or Xeriscape landscaping is encouraged on all Lots in the development.

4.6 Garages. Every dwelling constructed on the Property shall have an enclosed garage with a minimum capacity of three cars. All garages shall be fitted with a door, which shall be closed, except for normal use.

4.7 Styles. All structures which are built in the development must be of an approved style, which include: Tuscan, Mediterranean, Southwestern, and Spanish. The ACC can approve other styles, but any style must not distract from the surrounding structures, and should not include unusual or distracting architectural or landscaping features.

4.8 No Temporary Buildings, Structures or Improvements. No temporary buildings, structures, or improvements of any kind shall ever be erected or maintained on any of the Lots within the Property. Provided, however, that in a reasonable manner during construction, a general or subcontractor shall be entitled to keep a temporary construction trailer or portable building on the Property, however, said construction persons cannot use a trailer or portable building as a residence during or after construction.

4.9 No Mobile Homes, Manufactures Homes or Modular Homes. No mobile homes, manufactured homes or modular homes may be moved onto or constructed on the Property. All dwellings shall be of stick-built, on-site construction. Declarant or Contractors designated by Declarant may install or build and maintain a Sales Trailer or model home on any of the Lots until the last Lot is closed and then must remove the same.

4.10 Submission of Plans and Approval from Architectural Control Committee. Dwellings, barns, outbuildings, fences or construction of any kind or additions to any existing shall not be constructed or erected on any Lot until the plans i.e., home and landscape, specifications and plot plans showing the location and style of such dwelling and landscape have been approved in writing as to conformity with these Restrictive Covenants and harmony with external design and the natural surroundings and existing structures in the Property, by the Architectural Control Committee (defined in Article 10) as set forth below. Exterior colors for all dwellings will be earth tones. Any modification, alteration (including re-painting) of an existing structure, or any other improvement or construction, shall also require the approval of the Architectural Control Committee.

4.11 Fence, Wall and Hedge Restrictions / Requirements. No fence, wall of any kind or hedge shall be constructed except after approval and review by the Architectural Control Committee, and all fences, walls or hedges, if any, shall be designed and constructed so as to be compatible with the fencing used by the Developer or Declarant. Fences can be constructed of block, stone, rod iron, or wood rail, and should be of materials which require minimal maintenance. A wood rail fence must have a masonry column every 10 feet. No perimeter fence, wall of any kind or hedge can have an installed height shorter than 4 feet and higher than 6 feet on any Lot. No chain link, vinyl, or pipe fences will be allowed on any Lot in the development. All fences, walls or hedges, if any, shall be designed and constructed so as to conform to local planning ordinances and not constitute a nuisance or offensive effect on other persons

residing within the Property. All fences, walls, or hedges shall be maintained after-installation. Any fencing changes to existing fences or additional fencing of any other kind for purposes of more privacy or security of individuals or animals must be approved in writing by the Architectural Control Committee.

4.12 Materials. All construction within the Property shall be with new materials only, except that used materials such as brick and stone may be used for the purpose of aesthetics and architectural interest when approved by the Architectural Control Committee and then properly maintained there after.

4.13 Time Period to Complete Front Yard Landscaping. The prior-approved front yard landscaping must be completed for each Lot within twelve months after the occupancy of any dwelling on said Lot.

4.14 Approval for Extensions. Extensions such as roof mounted solar collectors, heating units, etc., may not be installed without written approval by the Architectural Control Committee. Such extensions are encouraged if they are as inconspicuous as possible given the requirements of the unit.

4.15 Exterior Lighting. All exterior lighting of the Lots must be full cut or semi cut hooded and directed so as to only illuminate the areas within the setback boundaries of the individual Lot.

4.16 Exterior Materials / Masonry / Stone / Faux Stone / Adobe / Stucco. All exterior building elevations shall be accented with masonry materials to include rock, stone, faux stone, or cementitious siding covering at least twenty percent (20%) of each exterior elevation of the home. Adobe style homes will be exempt from this requirement if approved by the ACC. The use of vinyl or aluminum siding materials **SHALL NOT** be permitted on any home or structure in the subdivision.

4.17 Storm Run-Off. All Lot Owners shall provide and maintain proper facilities to control mitigate and retain storm run-off onto adjacent properties and to ensure that sediments do not enter the natural water drainage system.

4.18 Telephone / Power Lines. All lines or wires for telephone, power, cable television, or otherwise shall be placed underground and no such wires shall be visible on the exterior of any building unless the same shall be underground or in a conduit attached to a building.

4.19 Roof Pitches. Roof pitches shall be a minimum of 4/12, and a maximum of 12/12, unless otherwise approved by the Architectural Control Committee. All roofing material shall be approved by the Architectural Control Committee.

4.20 Driveways and Parking Bays. All driveways and parking bays shall be constructed of concrete or concrete aggregate, unless written approval for the use of some other material is given by the Architectural Control Committee.

4.21 Front Setback and Construction. All homes shall be constructed beginning at the front property Setback Line, unless the Architectural Control Committee approves an alternate plan which utilizes the front portion of the Lot for other aesthetic purposes (such as a circular driveway or preserving Lot features), provided that Owner provides acceptable front yard landscaping plan.

4.22 Mailboxes. All mailboxes and mailbox holders shall be of standard design accepted by the Architectural Control Committee and adhering to the applicable specifications of the U. S. Postal Service. All mailboxes shall be located as directed by the U. S. Postal Service. Each Lot Owner shall be responsible for the maintenance and replacement of his or her mailbox so as to keep it in a state of repair at all times.

4.23 Address Posts. Each Lot Owner will install a post to hold the address number of the house. The post will be located in the front left (when facing the house) corner of the driveway and will be installed to stand less than four feet to the top of the post. A light will be installed on the post to illuminate the address number of the house and provide minimal lighting of the driveway entrance. The post shall be of a standard design accepted by the Architectural Control Committee. Each Lot Owner shall be responsible for the maintenance and replacement of the post, numbers and lighting so as to keep it in a working order at all times.

4.24 Propane Tanks. Any propane tanks with a capacity to hold more than 10 pounds of propane must be completely buried so as to be completely hidden from view.

4.25 Construction Deposit. Upon purchase of each Lot, the Owner of Lot shall deposit \$3,000 with the Association to cover clean up and damage repair issues. In the event this deposit is not needed, as determined by inspection by the Architectural Control Committee, the Association shall promptly refund the deposit to the Owner upon completion of the construction of the home on the applicable Lot.

**ARTICLE V**  
**PROPERTY AND USE RIGHTS IN COMMON AREAS**

5.1 Designation of Common Areas. Common Areas as shown on the Plat, or any supplements thereto, shall be Common Areas for the purposes of this Declaration.

5.2 Title to Common Area. Within a reasonable time upon completion of construction of the Common Areas, title to the Common Areas shall be transferred to the Association.

5.3 Access and Use of Common Areas. Except as otherwise provided for in this Declaration, each Owner shall have an easement of access and use to the Common Areas, with such access and use to be consistent with this Declaration, the Bylaws, and Rules of the Association.

5.4 Owner Easement of Use and Enjoyment. Subject to the provisions of this Article, every Owner and his or her invitee shall have a right and easement of use and enjoyment in and to the Common Area, which easement shall be appurtenant to and shall pass with the title to every Lot.

5.5 Extent of Owners' Rights. The rights of use and enjoyment in the Common Areas shall be subject to the provisions set forth below and all other provisions of this Declaration.

(a) Easements. In addition to the easements shown on the Plat, the rights of use and enjoyment in the Common Areas shall be subject to the following easements in favor of the Association for the benefit of the Association and all Owners of Lots within the Property over, under and upon the Common Area:

(1) An easement on all Common Area for underground installations and maintenance of power, gas, electric, water and other utility and communication lines and services installed by the Declarant or with the approval of the Board of Directors.

(2) An easement over all roadways for vehicular access within the Property and to adjacent areas.

(3) An easement for construction, maintenance, repair and use of Common Areas, including common facilities thereon.



(b) Use of Common Area.

(1) Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners. An Owner in Good Standing (see Section 6.9b) can reserve the Common Area facilities during the times specifically designated for Reserved Use. The times designated for Reserved Use will be established by the Board of Directors. Reservations must be made through the Secretary of the Association or another individual as designated by Board of Directors. During all other times, the Common Area facilities are available on a first come basis.

(2) The Common Area and any facilities thereon shall be used for the purposes for which the same are reasonably intended, and their use, operation and maintenance shall not be obstructed, damaged or unreasonably interfered with by any Owner.

(3) Nothing herein shall prevent the placing of a sign or signs upon the Common Area identifying Sierra Bella Subdivision or identifying items of interest, including directional signs, provided such signs comply with any applicable sign ordinances.

(4) The Board of Directors shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means with or without having to bring legal proceeding.

(c) Alienation or Division of Common Area. The Association, its successors, designee or assigns, are prohibited from abandoning, partitioning, subdividing, encumbering, creating a security interest in, selling or transferring the Common Area.

(d) Easements in Favor of Municipalities and Utilities. Declarant or the Association may (and to the extent required by law, shall) grant or assign easements on all Common Area to municipalities or other utilities performing utility services and to communication companies, and may grant free access over the Common Area to police, fire and other public officials and to employees of utility companies and communication companies serving the Property.

5.6 Lease of Common Areas. Notwithstanding anything in this Article or Declaration to the contrary, the Board of Directors may lease the Common Areas or any portion thereof, to a private entity or individual, including the Declarant, pursuant to a written lease agreement approved by the Owner controlled Board of Directors. Any lease entered into with the Board, and the resulting use of the leased premises, shall comply with any applicable zoning ordinances. Owners' rights and easements of use, access and enjoyment over and through the Common Areas may be suspended with respect to such leased property during any lease period.

5.7 Delegation of Use. An Owner may delegate his or her right of enjoyment to the Common Area to the members of his or her family or contract purchasers who reside on the Property, whose use of the Common Area shall be subject to this Declaration, the Bylaws and all rules and regulations adopted hereunder.

5.8 Additional Rights of Declarant. So long as Declarant owns at least one Lot, Declarant shall have:

(a) An easement over, under and across the Common Areas in order to carry out sales and rental activities necessary or convenient for the sale or rental of Lots and for such other purposes as may be necessary or convenient for discharging Declarant's obligations or for exercising any of Declarant's rights under this Declaration, the Bylaws or other law.

(b) An easement of ingress and egress over, in, upon, under and across the Common Areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of Improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot or his or her family, tenants, employees, guests or invitees.

**ARTICLE VI**  
**BUDGET, EXPENSES AND ASSESSMENTS**

**6.1 Covenant for Assessment.**

(a) The Declarant for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments:

- (1) Annual assessments;
- (2) Special assessments;
- (3) Emergency assessments; and
- (4) Individual assessments.

(b) Assessments shall be established and collected as provided in this Article.

No member may exempt itself from liability for Assessments by abandonment of any Lot owned by such member or by the abandonment of the member's right to the use and enjoyment of the Common Area.

**6.2 Annual Budget and Assessment.**

(a) **Adoption of Budget.**

(1) The Board of Directors shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Area and for the administration, management and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

(2) If additional Lots are annexed to the Property as provided in Article XII below, the Board of Directors may prepare a new budget reflecting the additional Lots and recompute any previous assessment covering any period after the closing of the first Lot in the new phase.

(b) **Determination of Annual Assessment.**

(1) The Board of Directors of the Association shall fix the amount of the annual assessment ("Annual Assessment") against each Lot for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning any assessment period.

(2) The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

6.3 Apportionment of Assessments. Subject to Subsections (d) and (e) of this Section, assessments shall be apportioned as follows:

(a) Annual, Special and Emergency Assessments. All Lots shall pay a pro rata share of the Annual Assessment, Special Assessments and Emergency Assessments commencing upon the date the Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such assessment divided by the total number of Lots not owned by the Declarant.

(b) Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots benefited or to which the expenses are attributable as provided in Section 6.11 below.

(c) Payment of Assessments. Upon resolution of the Board of Directors, installments of Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty.

(d) Deferral of Payment of Assessment for Reserves. After the date a Use and Occupancy Permit is issued by the proper local City authorities for any Lot owned by Declarant or a Builder, the Declarant or Builder may elect to defer payment to the Association of that portion of the Annual Assessment or Emergency Assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot as provided in Section 6.9(c) below.

6.4 Lien. The Annual Assessment and all other Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article 6 and shall be construed as a real covenant running with the land.

6.5 Personal Obligation and Costs of Collection.

(a) Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board of Directors, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

(b) The personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.

6.6 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community and paying all expenses related thereto, including but not limited to:

(a) The improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area;

(b) The payment of any taxes on the Common Area (except to the extent that

proportionate shares of the public charges and assessments on the Common Area may be levied against all Lots by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots);

- (c) The payment of insurance premiums on the Common Area;
- (d) The costs of repair, replacement and additions to the Common Area and improvements thereon;
- (e) The costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association;
- (f) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws;
- (g) The cost of maintenance, insurance and replacement of any playground or Park equipment, trails, or lighting;
- (h) Unless otherwise dedicated to the local jurisdiction, the cost of maintaining, insuring and replacing the roads, parks, sidewalks of the Association;
- (i) The cost of regular maintenance of the drainage channel and easement due to erosion, sediment buildup, etc.;
- (j) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements in accordance with Section 6.16 below; and
- (k) Any other items properly chargeable as an expense of the Association.

**6.7 Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of members of the Association other than the Declarant, voting in person or by proxy at a meeting duly called for such purpose and the written consent of Declarant until the Turnover Meeting and thereafter as long as Declarant owns at least one Lot.

**6.8 Notice and Quorum for any Action Authorized Under Section 6.7 and 6.10.**

- (a) Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Sections 6.7 and 6.10 of this article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of members, other than the Declarant, entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum.
- (b) If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2)

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

6.9 Commencement and Due Date of Assessments.

(a) Commencement of Assessments. All Lots subject to this Declaration shall be subject to assessment as provided in Section 6.1 above.

(1) Subject to Subsection (c) of this Section, the full Annual Assessment or Emergency Assessment as to any Lot shall commence on the date the Lot is conveyed to any person or entity other than the Declarant or a Builder.

(2) The Annual Assessment or Emergency Assessment as to any Lot owned by the Declarant or a Builder shall be as specified in Section 6.3(d) above.

(b) Dues Dates.

(1) The Annual Assessment is due in full by the 31<sup>st</sup> of January each year. The Annual Assessment can be paid in twelve (12) equal installments on monthly basis, which are due and payable on the first (1st) calendar day of each month, unless otherwise provided by resolution of the Board of Directors, and annual or monthly assessments shall be delinquent if not paid within thirty (30) days after the due date. An Owner of a Lot is considered in Good Standing if they are not delinquent on any Annual Assessments whether such assessments are paid on a monthly or annual basis.

(2) The due date of any Special Assessment, Emergency Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment.

(c) Commencement of Assessment for Replacement Reserves.

(1) The portion of the Annual or Individual Assessments allocated for major maintenance and replacement reserves as described in Section 7.16 below shall commence to accrue upon the closing of the sale of the first Lot in the Community for which the reserve is established.

(2) After the date a Use and Occupancy Permit is issued by the proper local authorities for any Lot owned by the Declarant or a Builder, the Declarant or Builder may elect to defer payment to the Association of that portion of the Annual Assessment or any Emergency Assessment attributable to reserves or any Individual Assessment for the particular Lot until the closing of the sale of the Lot. However, the Declarant or any Builder may not defer payment of accrued assessments for reserves beyond the Turnover Meeting or if the Turnover Meeting is not held, the date the Owners assumes administrative control of the Association. The deferral shall not apply to the obligation of the Declarant or a Builder to pay regular operating expense assessments under Section 6.3 above.

(3) Declarant and any Builder shall deposit the balance due the Association within thirty (30) days after the date due specified in paragraph (2) of this subsection.

6.10 Emergency Assessments.

(a) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall, as soon as practicable, determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget

and levies the additional assessment ("Emergency Assessment"). The resolution shall specify the reason for the Emergency Assessment.

(b) Any Emergency Assessment in the aggregate in any fiscal year that would exceed an amount equal to five percent (5%) of the budgeted expenses of the Association for the fiscal year may be levied only if approved by not less than a majority of the members other than the Declarant voting in person or by proxy, at a meeting duly called for such purpose and with the written consent of Declarant until the Turnover Meeting and thereafter as long as Declarant owns at least one Lot.

(c) Emergency Assessments shall be apportioned as provided in Section 6.3 above.

#### 6.11 Individual Assessments.

(a) Any expenses benefiting or attributable to fewer than all of the Lots may be assessed exclusively against the Lots affected or benefited ("Individual Assessment"). Individual Assessments shall include, but are not limited to:

(1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of this Declaration or rules and regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation of this Declaration, the Bylaws or any rules and regulations of the Association.

(2) Any reasonable services provided to an unimproved or vacant Lot by the Association due to an Owner's failure to maintain the same in order to protect the health, safety and welfare of adjoining Lot owners and the Association in general.

6.12 Nonpayment of Assessments. Any assessment or portion thereof not paid within thirty (30) days after the due date (which shall be established by resolution of the Board of Directors):

(a) Shall be delinquent and shall bear interest from the date of delinquency at the rate, established by resolution of the Board of Directors, not to exceed the maximum rate permitted by law, and

(b) Shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and

(c) If paid by installments, may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner.

#### 6.13 Subordination of Lien to Mortgages.

(a) The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgages or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as provided in subsection (b) of this Section.

(b) The sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due or from the lien of any future assessment.

6.14 Enforcement of Lien. The Association may establish and enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration or by law or awarded by a court for breach of any provisions of this Declaration, the Bylaws or any rules and regulations of the Association.

6.15 Exempt Property. The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessments created under this Declaration.

6.16 Reserves Funds.

(a) The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Area by the allocation and payment monthly to such reserve fund of in an amount to be designated from time to time by the Board of Directors. The fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider necessary or appropriate.

(c) The proportional interest of any member of the Association in any reserve fund established under this Section shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with the Lot.

6.17 Initial Capital Contribution. At settlement for each Lot, an amount equal to two (2) months of the current monthly Assessment amount for that type of Lot shall be paid from each prospective member of the Association (other than the Declarant or a Builder), for the purpose of start-up expenses and operating contingencies. Such amount shall be in addition to any pro rata share of Assessments due and adjusted at settlement.

6.18 Annexation of Additional Property.

(a) When Additional Properties are annexed to the community as provided in Article XII, the Lots shall become subject to assessment from the date of the annexation. Subject to Section 6.3(d), all newly annexed Lots shall pay Assessments in the amount then being paid by other Lots.

(b) The Board of Directors, at its option, may elect to recompute the budget based upon the additional Lots subject to assessment and recompute Annual Assessments of all Lots, including the new Lots, for the balance of the fiscal year.

6.19 Certificate of Assessment. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by resolution of the Board, may be levied in advance by the Association for each certificate so delivered.

**ARTICLE VII**  
**DECLARANT RIGHTS AND CONTROL**

7.1 **Administrative Control of Association.** Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Meeting.

7.2 **Turnover Meeting.** The Turnover Meeting shall be held within ninety (90) days of the later of three (3) years from the recording of this Declaration or the date the Declarant has conveyed ninety percent (90%) of the total number of Lots to be developed. Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners.

7.3 **Other Rights.** In addition to any other rights under this Declaration, the Bylaws or relevant statute, as long as Declarant owns at least one (1) Lot, Declarant:

(a) **Sales Office and Model.** Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

(b) **"For Sale Signs."** May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Property, including without limitation, the Common Areas.

**ARTICLE VIII**  
**ASSOCIATION**

**8.1 Organization.**

(a) The Association has been or will be organized as a nonprofit corporation under the nonprofit corporation laws of the State of Utah. The name of the Association is "Sierra Bella at Equestrian Park Estates Home Owners Association."

(b) The Articles of Incorporation of the Association provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. All of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association. Such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws (as the same may be amended from time to time) as if they had been drafted to constitute the governing documents of the unincorporated association.

**8.2 Membership; Board of Directors.**

(a) Each Owner shall be a member of the Association. The rights, obligations and other entitlements granted to or imposed upon an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.



(b) The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

8.3 Allocation of Voting Rights. Each Lot shall be allocated one (1) vote in the affairs of the Association. If an Owner owns more than one Lot, such person shall have one (1) vote for each Lot owned. Subject to the period of Declarant Control set forth herein, Declarant shall be entitled to vote as the Owner of any then existing Lots retained by Declarant.

8.4 Powers, Duties and Obligations. The Association shall have such powers and duties as may be granted to it or imposed by any relevant Utah statute, as may be amended from time to time with such additional powers and duties afforded by this Declaration, the Bylaws, and the Articles of Incorporation. Furthermore, the Association shall have all necessary powers and authority to lawfully administer the common needs of a community association in the State of Utah.

8.5 Adoption of Bylaws, Appointment of Interim Board of Directors. Association shall adopt Bylaws for the Association and Declarant will appoint an interim Board of Directors of the Association, which directors shall serve until their successors have been elected at the Turnover Meeting as provided in the Bylaws.

**ARTICLE IX**  
**MAINTENANCE, SERVICES, CONDEMNATIONS, DAMAGE**

9.1 Maintenance, Repair and Replacement of Lots and Improvements.

(a) Association Responsibilities. The Association shall be responsible for:

(1) All maintenance and repair of the Common Areas, and all improvements thereon, unless said maintenance is assigned to a private party pursuant to a lease agreement.

(2) All maintenance and repair of the drainage channel and easements, and all improvements thereon performed on a regular and consistent basis in compliance with all Town, County, State, and Federal requirements for drainage and flood waste. Said maintenance can assigned to a private party pursuant to a contract agreement with the Association.

(b) Owners' Responsibilities. Each owner shall be responsible for:

(1) All maintenance and repair to a Lot and any improvements thereon.

9.2 Condemnation.

(a) Common Area. In the event that all or any portion of the Common Area is appropriated as the result of condemnation or threat or imminence thereof, the Board of Directors shall have the sole authority, right and duty to represent each of the Owners for the purpose of negotiating and contesting, if it deems so doing to be necessary or appropriate, any condemnation award offer by the condemning authority in question and may authorize expenditures and assessments to retain counsel or other experts for such purposes.

9.3 Damage Due to Act or Neglect of Owner.

(a) In the event that maintenance or repair of a Lot is necessitated by the willful neglect or negligent acts of the family, guests or invitees of the Owner, the Board may assess the Owner

for the cost of such maintenance or repair as a special assessment which shall be added to and become part of the regular annual assessment to which such Lot and Owner are subject.

(b) If, due to the act or neglect of an Owner, or a member of such Owner's family or household pet or of a guest or other authorized occupant or visitor of such Owner, damage shall be caused to the Common Area or maintenance, repairs or replacements shall be required which would otherwise be a common expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not fully covered by the Association's insurance. Such amount shall be an Assessment against the Lot and the Owner who caused or is responsible for such damage and shall be collected as an assessment.

**ARTICLE X**  
**ARCHITECTURAL CONTROL COMMITTEE**

**10.1 Architectural Control Committee.** The initial Architectural Control Committee (ACC) shall be comprised of Declarant and/or its appointees. After the Turnover Meeting described above in Article 7, or at an earlier date if Declarant so elects, the committee shall consist of no fewer than three (3) members and no more than five (5) members as appointed by the Board of Directors. The terms of office for each member of the ACC shall be for one (1) year unless lengthened or shortened by the Board of Directors at the time of appointment. The Board may appoint any or all of its members for the ACC and there shall be no requirement for non-Board members to serve on the ACC.

(a) **Submission of Architectural Plans.** Any property owner seeking to construct a new home or other appurtenant structure, or to add to or modify any portion of the exterior of an existing home, shall submit the plans to the Architectural Control Committee for review. A modification of the home exterior will include fences, barns, drives, decks, hot tubs, patios, pools, and similar alterations. Construction of new structures includes equipment and material housing, dog runs, gazebos, arbors associated with landscaping, and other similar construction.

(b) **Approval of Architectural Plans.** No excavation, construction, change, modification, or alteration, for which plans are to be submitted to the Architectural Control Committee pursuant to paragraph (a), immediately above, shall commence until the plans and specifications showing the nature, kind, shape, height, materials, size, estimate of cost, and location of the same have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee has the sole authority and discretion, after reviewing the plans and specifications, to make a determination as to the harmony of the external vegetation design and location in relation to surrounding structures and topography, and other such factors as the Architectural Control Committee considers necessary, appropriate, and relevant to maintain property values of nearby properties. In the event the Architectural Control Committee fails to approve or disapprove such design or plans within sixty (45) days after such plans and specifications have been submitted to and received by it, approval will not be required and full compliance with this Section of the Declaration will be deemed to have occurred.

(c) **Submission of Site Plan.** Any property owner seeking to construct a new home must also submit a site plan to the Architectural Control Committee for review along with a \$500 retainer. The site plan will be submitted to a local engineering firm for review and approval. The \$500 retainer will be used to pay for the site plan review, and the property owner will be responsible for any additional charges in excess of the retainer amount. The property owner will be refunded any balance remaining from the \$500 retainer. The property owner will not be able to proceed with any excavation or construction until approval of the site plan is provided.

(d) Limitation of Liability. In spite of the foregoing provisions, the Architectural Control Committee shall have no affirmative obligation to be certain that all elements of the design comply with the restrictions contained in this Declaration, and no member of the Architectural Control Committee shall have any liability, responsibility, or obligation, whatsoever for any decision or lack thereof, in carrying out of duties as a member of such committee. Such committee and its members shall have only an advisory function, and the sole responsibility for compliance with all of the terms of this Declaration shall rest with the homeowner. Each homeowner agrees to save, defend, and hold harmless the Architectural Control Committee and each of its members on account of any activities of the Architectural Control Committee relating to such owners property or buildings to be constructed on his or her property.

(e) Enforcement by Architectural Control Committee. Upon approval by the Board of Directors, the Architectural Control Committee may enforce compliance with the provisions and this Declaration, by proceedings at law or in equity against any person or persons violating any covenant to restrain violation and/or recover damages. If any enforcement action is necessary, the Architectural Control Committee shall be entitled to injunctive relief, damages and such other remedies as the law allows, and shall be entitled to recover from the owner or other person in violation all of its costs, expenses and a reasonable attorney's fee.

(f) Discretion of Architectural Control Committee. The approval of building plans and specifications shall not be unreasonably withheld by the Committee. The Committee shall, however, have the sole and absolute discretion to evaluate plans and specifications for the purpose of assuring that the proposed buildings and accessory structures are consistent with the use contemplated by these Restrictive Covenants, that the plans and specifications are in all particulars consistent with applicable laws and ordinances and that the proposed construction is aesthetically consistent with the objectives herein set forth. Any owner or builder may not, however, rely on the opinion of the Architectural Control Committee as to whether the plans meet the applicable laws and municipal ordinances in place at the time of construction. It shall be the sole and exclusive responsibility of the owners of the Lots within the Property to be sure that all laws and ordinances are complied with in connection with their construction.

10.2 Sierra Bella Development Group, LLC: Temporary Authority. Until such time as 90% of the Lots in the development are sold to third parties, Declarant shall be entitled to perform all functions of the Architectural Control Committee set forth herein. Declarant shall have the right to relinquish its duties as the Architectural Control Committee during any period of time it is vested with that authority.

10.3 Majority Action. A majority of the members of the ACC shall have the power to act on behalf of the ACC, without the necessity of a meeting and without the necessity of consulting the remaining member or members of the ACC. All decisions rendered by the ACC must be by written instrument setting forth the action taken by the members consenting thereto.

10.4 Non Waiver, Precedent and Estoppels. Approval or disapproval by the ACC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppels impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

10.5 Appeal.

(a) Any Owner adversely impacted by action of the ACC may appeal such action to the Board of Directors.

(b) Appeals shall be made in writing within ten (10) days of the ACC's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive

decision shall be made by the Board of Directors within twenty (20) days after receipt of such appeal. The determination of the Board shall be final.

10.6 Effective Period of Consent. The ACC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ACC.

10.7 Determination and Notice of Compliance.

(a) Inspection. The ACC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

(b) Notice of Noncompliance. If the ACC finds that the work was not performed in substantial conformation with the approval granted, or if the ACC finds that the approval required was not obtained, the ACC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date.

10.8 Noncompliance.

(a) Notice of Hearing. If after receipt of a notice of noncompliance the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, at the expiration of the third (3<sup>rd</sup>) day from the date of such receipt of notice, the ACC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not less than seven (7) or more than thirty (30) days from receipt of the notice of noncompliance.

(b) Hearing. At the hearing, if the ACC finds that there is no valid reason for the continuing noncompliance, the ACC shall determine the estimated costs of correcting it and may fine the Owner for such noncompliance. After such determination, the ACC shall require the Owner to remedy or remove the same within a period the ACC determines reasonable.

(c) Continued Noncompliance. If the Owner does not comply with the ACC's ruling within the specified period or within any extension of such period as the ACC, at its discretion, may grant, the ACC may either remove the non complying improvement or otherwise remedy the noncompliance. The cost of any such action shall be assessed against the Owner.

10.9 Liability. Neither the ACC nor any member thereof shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ACC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ACC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

10.10 Estoppels Certificate.

(a) Within fifteen (15) business days after written request is delivered to the ACC by an Owner, and upon payment to the ACC of a reasonable fee fixed by the ACC to cover costs for each review requested by an Owner, the ACC shall provide such Owner with a certificate executed by the chairman, or other authorized member of the ACC certifying with respect to any Lot owned by the Owner, that as of the date thereof either:

(1) All improvements made or done upon or within such Lot by the Owner that are subject to the requirements of this article comply with the Declaration and the Bylaws; or

(2) Such improvements do not comply, in which event; the certificate shall also identify the non-complying improvements and set forth with particularity the nature of such noncompliance.

(b) The Owner, Owner's heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between and among Declarant, the ACC the Association and all Owners and such persons deriving any interest through any of them.

10.11 Fees. The ACC may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ACC to retain architects, attorneys, engineers, landscape architects and other consultants to advise the ACC concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee shall be collectible as an assessment.

#### ARTICLE XI COMPLIANCE AND ENFORCEMENT

11.1 Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner.

11.2 Remedies. Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors (or the ACC as the case may be) acting on behalf of the Association, the right, in addition to any other rights set forth above or in any other provision of this Declaration, the Bylaws or under law, to do any or all of the following after giving notice and an opportunity to be heard:

(a) To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors a copy of which has been delivered to each Owner, mailed to the mailing address of Lot or mailed to the mailing address designated by the Owner in writing to the Association;

(d) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto.

11.3 Injunctive Relief. Nothing in this Section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

11.4 Notification of First Mortgagee. The Board of Directors shall notify in writing any first Mortgagee of any individual Lot of any default in performance of the terms of this Declaration by the Lot Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

**ARTICLE XII**  
**EXPANSION / FUTURE PHASES**

12.1 Additions to Property.

(a) Annexation of Additional Property. The Declarant, its successors and assigns, shall have the unilateral right for seven (7) years from the date of the recording of this Declaration, without the necessity for consent from the members of the Association, to bring additional property into the scheme of this Declaration as provided in this Article.

(b) Method of Annexation. All or any portion of the Additional Property may be annexed to the Community by the recording of a supplemental Declaration and plat for each phase in the Recorder's Office of Washington County, Utah. The supplemental declaration shall extend the scheme of the Declaration to the Additional Property. The described property shall thereupon become part of the Property. Upon the filing recording of a supplemental declaration and plat for a subsequent phase, the Owners with the Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property.

(c) General Plan of Development. Any Additional Property annexed to under this Article shall conform to the general plan of development as shown on the Plat, but the plan shall not bind the Declarant, its successors or assigns, to make the proposed additions, or to adhere to the plan in any subsequent development of the land shown thereon.

(d) Limitation on Number of Lots. There is no limitation on the number of Lots or Living Units which Declarant may create or annex to the Property or the number of phases by which Additional Property is annexed to the Property, except as may be established by applicable ordinances. Similarly, there is no limitation on the right of Declarant to annex Common Area, except as may be established by the Town of Virgin.

**ARTICLE XIII**  
**INSURANCE**

13.1 Types of Insurance Maintained by the Association. The Association shall obtain the following types of insurance:

(a) Insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement cost of such improvements in the event of damage or destruction;

(b) A public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(c) Workers' compensation insurance, if and to the extent required by law; and

(d) Fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

13.2 Premiums for Insurance Maintained by Association. Premiums for all insurance and bonds required to be carried or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the Annual Assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

13.3 Damage and Destruction of Common Area.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with Subsection (b) of this Section, the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

13.4 Repair and Reconstruction of Common Area. If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

13.5 Hazard Insurance on Improved Lots. Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

13.6 Obligation of Lot Owner to Repair and Restore.

(a) In the event of any damage or destruction of the improvements on a Lot, the

insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such improvements originally approved by the Declarant or the Architectural Control Committee, unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Control Committee and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Owner shall be personally liable to the Association for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within ten (10) days after such Owner's receipt of a written demand therefore from the Association, the Association may establish a lien therefore upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

#### ARTICLE XIV AMENDMENT AND DURATION

##### 14.1 Amendments

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment.

(b) Approval Required. Except as otherwise provided in Subsections (c) and (e) of this Section or by other provisions of this Declaration, this Declaration may be amended if such amendment is approved by Owners holding sixty-seven percent (67%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Property or any of the Additional Property, any and all amendments proposed pursuant to this Section must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Additional Approval Requirements.

(1) No amendment may create, limit or diminish any special Declarant rights, change the boundary of any Lot or uses to which any Lot or Dwelling is restricted, change the method of determining liability for common expenses or right to common profit, or voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment.

(2) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the President and Secretary of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the Recorder's Office of Washington County, Utah.

(d) Corrections and Regulatory Amendments. Notwithstanding the provisions of Subsections (b) and (c) of this Section and any other provision of this Declaration, and in addition to all other special rights of the Declarant provided in this Declaration and the Bylaws, Declarant shall have the unilateral right (without the approval of the general membership or joined by the Association, Owners,



Mortgagee or other person) to amend this Declaration in order to:

- (1) Correct obvious typographical, mathematical or similar errors.
- (2) Comply with the requirements of any applicable statute, ordinance, regulation or guideline of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States, the State of Utah, Washington County, or any corporation wholly owned, directly or indirectly, by the United States, the State of Utah, Washington County which insures, guarantees or provides financing for a community such as Sierra Bella Subdivision or Lots in such a community.

(e) Non-Modification or Elimination of Certain Sections. Notwithstanding anything to the contrary in this Declaration, Sections 4.3, 5.5(c), 6.6(i) & 9.1(a)(1) & (2), shall not be amended or eliminated.

14.2 Duration. This Declaration perpetually shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property and the Owners thereof. This Declaration may be terminated upon approval by the vote or written consent of not less than one hundred percent (100%) of all Owners and the Town of Virgin. Any such termination shall become effective only if a certificate of the President and Secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Deed Records of Washington County, Utah.

#### ARTICLE XV MISCELLANEOUS PROVISIONS

15.1 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

15.2 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

15.3 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been



**Exhibit A**

**Property Description**

The legal descriptions for the three phases of the Sierra Bella Subdivision are shown below:

**THE PROPOSED PLAT OF SIERRA BELLA SUBDIVISION PHASE 1, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

BEGINNING AT A POINT BEING LOCATED N89°59'28"W, 1003.27 FEET ALONG THE CENTER SECTION LINE FROM THE EAST QUARTER CORNER OF SECTION 22, TOWNSHIP 41 SOUTH, RANGE 12 WEST, SALT LAKE BASE AND MERIDIAN TO THE NORTHEAST CORNER OF THE NW1/4 NW1/4 NE1/4 SE1/4, AND RUNNING THENCE N89°59'28"W CONTINUING ALONG SAID CENTER SECTION LINE 4.42 FEET; THENCE S0°04'54"W 660.00 FEET; THENCE S89°59'28"E 5.11 FEET; THENCE S0°01'18"W 6.50 FEET; THENCE N89°59'20"E 154.09 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY FENCE OF KOLOB ROAD; THENCE ALONG SAID RIGHT-OF-WAY FENCE THE FOLLOWING FIVE (5) COURSES, (1) S58°29'09"W 90.19 FEET; THENCE (2) S50°08'02"W 77.96 FEET; THENCE (3) S49°16'57"W 23.97 FEET; THENCE (4) S47°32'33"W 77.72 FEET; THENCE (5) S41°22'46"W 43.63 FEET; THENCE N0°00'09"E 80.65 FEET; THENCE S89°58'06"W, 145.00 FEET; THENCE S0°00'09"W 145.00 FEET; THENCE S89°58'06"W 102.50 FEET; THENCE S0°00'09"W 291.98 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF UTAH STATE HIGHWAY 9; THENCE S89°59'41"W ALONG SAID RIGHT-OF-WAY 476.33 FEET; THENCE N0°56'15"W 164.93 FEET TO THE POINT OF A 168.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, 175.13 FEET THROUGH A CENTRAL ANGLE OF 59°43'35"; THENCE N58°47'20"E 117.29 FEET; THENCE N0°00'27"E 130.75 FEET; THENCE N89°59'33"W 390.64 FEET; THENCE N0°00'50"W 51.32 FEET; THENCE N89°59'20"E 20.08 FEET TO THE NORTHEAST CORNER OF THE NE1/4 SW1/4 NW1/4 SE1/4; THENCE N0°00'50"W ALONG SAID 1/64TH LINE 414.47 FEET; THENCE S89°57'43"E 334.37 FEET TO A POINT ON THE 1/256TH LINE; THENCE N0°00'07"W ALONG SAID 1/256TH LINE 252.55 FEET TO A POINT ON THE CENTER SECTION LINE; THENCE N0°00'16"W ALONG SAID 1/256TH LINE 811.40 FEET; THENCE S89°59'33"E 329.78 FEET; THENCE NORTH 31.00 FEET; THENCE S89°59'33"E 339.39 FEET TO A POINT ON THE 1/256TH LINE; THENCE S0°01'04"W ALONG SAID 1/256TH LINE 842.42 FEET TO THE POINT OF BEGINNING. CONTAINS 33.07 ACRES.

**THE PROPOSED PLAT OF SIERRA BELLA SUBDIVISION PHASE 2, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

BEGINNING AT A POINT NORTH 0°03'04" EAST 865.30 FEET ALONG THE SECTION LINE AND NORTH 89°56'56" WEST 18.00 FEET FROM THE EAST QUARTER CORNER OF SECTION 22, TOWNSHIP 41 SOUTH, RANGE 12 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 89°56'56" WEST 257.00 FEET; THENCE SOUTH 0°03'14" WEST 10.00 FEET; THENCE NORTH 89°56'56" WEST 55.00 FEET; THENCE NORTH 89°59'28" WEST 673.77 FEET; THENCE SOUTH 0°01'04" WEST 13.12 FEET TO THE NORTHEAST CORNER OF LOT 22, OF THE PROPOSED SIERRA BELLA SUBDIVISION PHASE 1, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY, THENCE NORTH 89°59'33" WEST 339.39 FEET ALONG THE BOUNDARY LINE OF SAID SUBDIVISION; THENCE SOUTH 31.00 FEET ALONG SAID BOUNDARY LINE; THENCE NORTH 89°59'33" WEST 329.78 FEET ALONG SAID BOUNDARY LINE; THENCE LEAVING SAID BOUNDARY LINE NORTH 0°00'16" WEST

520.76 FEET; THENCE NORTH 89°51'51" EAST 334.68 FEET; THENCE NORTH 0°00'24" EAST 302.47 FEET; THENCE NORTH 89°51'38" EAST 304.96 FEET; THENCE NORTH 0°08'22" WEST 119.25 FEET; THENCE NORTH 89°51'38" EAST 274.00 FEET; THENCE NORTH 203.60 FEET; THENCE NORTH 89°51'38" EAST 28.97 FEET TO A POINT ON A 180.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS NORTH 75°11'44" EAST; THENCE NORTHWESTERLY 46.60 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°50'00"; THENCE SOUTH 89°58'16" EAST 60.00 FEET TO A POINT ON A 120.00 FOOT, NON-TANGENT RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS SOUTH 89°58'16" EAST; THENCE SOUTHEASTERLY 3.95 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°53'04"; THENCE NORTH 89°47'31" EAST 342.75 FEET; THENCE SOUTH 0°02'24" WEST 1092.79 FEET; THENCE SOUTH 89°57'26" EAST 316.60; THENCE SOUTH 0°03'04" WEST 45.02 FEET TO THE POINT OF BEGINNING.

CONTINUED ALSO:

THE PROPOSED PLAT OF SIERRA BELLA SUBDIVISION PHASE 3, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SECTION 22, TOWNSHIP 41 SOUTH, RANGE 12 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89°43'11" WEST 1339.78 FEET ALONG THE SECTION LINE TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 22; THENCE SOUTH 0°00'24" WEST 1030.54 FEET ALONG THE EAST 1/16 LINE TO THE NORTHWEST CORNER OF LOT 30, SIERRA BELLA SUBDIVISION PHASE 2, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY; THENCE ALONG THE BOUNDARY OF SAID SUBDIVISION THE FOLLOWING (9) COURSES: NORTH 89°51'38" EAST 304.96 FEET; THENCE NORTH 0°08'22" WEST 119.25 FEET; THENCE NORTH 89°51'38" EAST 274.00 FEET; THENCE DUE NORTH 203.60 FEET; THENCE NORTH 89°51'38" EAST 28.97 FEET TO A POINT ON A 180.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS NORTH 75°11'44" EAST; THENCE NORTHWESTERLY 46.60 FEET ALONG THE ARC OF SAID CURVE THOUGH A CENTRAL ANGLE OF 14°50'00"; THENCE SOUTH 89°58'16" EAST 60.00 FEET TO A POINT ON A 120.00 FOOT, NON-TANGENT RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS SOUTH 89°58'16" EAST; THENCE SOUTHEASTERLY 3.95 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 1°53'04"; THENCE NORTH 89°47'31" EAST 7.94 FEET ALONG SAID BOUNDARY LINE TO THE SOUTHWEST CORNER OF THAT PARTICULAR DEED RECORDED AS ENTRY NUMBER 984248, WASHINGTON COUNTY RECORDS; THENCE NORTH 0°01'44" EAST 333.67 FEET ALONG SAID BOUNDARY LINE; THENCE NORTH 89°45'21" EAST 669.76 FEET ALONG SAID BOUNDARY LINE TO A POINT ON THE EAST LINE OF SAID SECTION 22, THENCE NORTH 0°03'04" EAST 334.10 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING. SITUATE IN WASHINGTON COUNTY, STATE OF UTAH.