

When Recorded Return To:  
Snow Canyon Development  
251 River Park Dr. Ste 350  
Provo, UT 84604

## **THE CLIFFS OF SNOW CANYON**

Washington County, Utah

### **RESTATED MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

(Applies to All Phases & Plats including  
Plat A, Amended, Plat B Amended & Extended, Plat C  
Plat D, Plat E, Plat F, Plat G, Plat H, Plat I, Plat J,  
Plat K, Plat L)

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## RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE CLIFFS OF SNOW CANYON

THIS RESTATED DECLARATION is prepared pursuant to Section 11 of the Master Declaration of Covenants, Conditions and Restrictions (the Declaration) for the Villages at Snow Canyon as of the \_\_\_\_day of \_\_\_\_\_, 2008, by SNOW CANYON DEVELOPMENT, INC., a Utah corporation, as the Declarant. This restated instrument hereby amends and restates in its entirety the Declaration recorded with the Recorder of Washington County, Utah on January 11, 2001 in Book 1391 and pages 1372 to 1413 and all subsequent amendments thereto.

### RECITALS

A. The Declarant was the owner and retains partial ownership of certain real property located in Washington County, Utah, which is generally described as the Cliffs of Snow Canyon project and is more particularly described in Exhibit "A" attached hereto. All of said property is currently subject to the Declaration recorded with the Recorder of Washington County, Utah on January 11, 2001 in Book 1391 and pages 1372 to 1413 and all subsequent amendments thereto.

B. The Property contains high scenic and natural values, and the Declarant is adopting these restated covenants, conditions and restrictions to preserve and maintain the character and value of the Property for the benefit of all existing and future owners of the Property, in conjunction with the residential development of the Property as a first class residential real estate project.

C. The Declarant has filed with the Recorder of Washington County, Utah, certain subdivision plats (collectively the "Plat"). (See Exhibit "D")

D. A majority of the Property consists of single family residential lots. The balance of the Property is Common Area directly supportive of the residential lots within the Property.

E. The Declarant has deemed it desirable for the maintenance and preservation of the values and amenities established as aforesaid to establish THE CLIFFS PROPERTY OWNERS ASSOCIATION (formerly known as The Villages at Snow Canyon POA), a Utah nonprofit corporation (hereinafter referred to as the "CPOA", and to delegate and assign certain powers and duties of ownership, operation, administration, maintenance, and repair of certain property within The Cliffs of Snow Canyon project, the enforcement of the covenants, conditions, restrictions, and easements contained herein, and the collection and disbursement of the assessments and charges hereinafter provided to the CPOA.

F. The Property is hereby made subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens contained or provided for in this Restated Declaration, all of which shall be enforceable equitable servitudes and shall run with the land.

G. The Property shall generally be know as "THE CLIFFS OF SNOW CANYON", and by such other or additional names as may be designated by the Declarant from time to time.

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, transferred, used and occupied subject to the provisions of this Restated Declaration, including the covenants, restrictions, reservations, assessments, regulations, charges and liens contained or provided herein, which are for the purpose of protecting the value and desirability of the Property as a first class residential real estate project, and which shall be construed as covenants of equitable servitude and shall run with

the land and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

## ARTICLE I

### DEFINITIONS

Section 1. "Annexing Amendments" shall mean an amendment to this Declaration which subjects additional property to this Declaration. Such Annexing Amendment may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Annexing Amendment to the Declaration.

Section 2. "Association" shall mean CLIFFS PROPERTY OWNERS ASSOCIATION, a Utah non-profit corporation, and its successors and assigns (formerly know as The Villages at Snow Canyon Property Owners Association).

Section 3. "Board of Trustees" or "Board" shall mean the Board of Trustees of the CPOA.

Section 4. "Common Area" shall mean all of the land presently owned or otherwise held, if any, or to be so acquired or held in the future by the CPOA and all improvements constructed hereon, and all personal property owned by the CPOA located thereon. The term shall include all Exclusive Common Area, as defined herein, unless otherwise indicated by the context. Generally, all utility pipes, lines, or systems, roads and streets, walkways, the club house and pool facility, and tennis facility.

Section 5. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically defined and determined by the Board of Trustees or the CPOA and the Design Review Committee.

Section 6. "Declarant" shall mean Snow Canyon Development, Inc., a Utah corporation, its successors and assigns.

Section 7. "Exclusive Common Area" shall mean and refer to certain portions of the Common Area which are for the exclusive use of the Owners of one or more of the Lots in the Property.

Section 8. "Limited Common Area" shall mean and refer to certain portions of the Common Area designated on a recorded Plat Map as reserved for use by the Owner of a certain Lot or Lots to the exclusion of other Owners. Limited Common Areas shall include any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, spas and hot tubs, water features and other apparatus appertaining to a Lot specifically, if such are outside of the boundary lines of the buildable pad or the Lot.

Section 9. "Members" shall mean the Owners, as described in Article II hereof.

Section 10. "Owner" or "Ownership" shall mean the record owner, whether one or more persons and/or entities, of a fee simple title to each Lot, including contract buyers of record but excluding mortgagees, contract sellers or others having such interest merely as security for the performance of an obligation unless and until said mortgagee or other holder of a security interest has acquired title to a Lot which is part of the Property pursuant to forfeiture, foreclosure or a proceeding in lieu thereof. An "Owner" shall mean all of the owners of a particular Lot collectively and shall be jointly regarded as a single Owner for

purposes of the Declaration. Any owner of an equity interest of record in a Lot, and any partner, officer or shareholder of an entity which is an Owner of record, may be treated by the Association as the representative of all the Ownership of such Lot for purposes of giving notices, voting and other matters.

Section 11. "Property" shall mean the real property located in Washington County, Utah which is described in Exhibit A to the original Declaration referred to in the first paragraph hereof, together with such additions and improvements thereto as may now be located on said real property or as may hereafter be conveyed or brought within the ownership or jurisdiction of the Association including additional lands annexed thereto.

## ARTICLE II

### THE ASSOCIATION

Section 1. Membership. Every Owner shall be a Member of the Cliffs Property Owners Association (CPOA). Membership shall be appurtenant to and may not be separated from Ownership of a Lot, and Ownership of a Lot shall be the sole qualification for Membership. Each Ownership shall constitute one Member.

Section 2. Membership Classes and Voting. The CPOA shall initially have two types or classes of voting membership: (a) The Owners Class which is comprised of the Owners of Lots within The Cliffs, with the exception of the Declarant Class. (b) The Declarant Class which shall be the Declarant, its successors and/or assigns. The rights of the Declarant Class member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in this Declaration and in the By-Laws. The Declarant Class member shall be entitled, in its sole discretion, to amend the Articles of Incorporation, the Declaration of Covenants, Conditions, and Restrictions, and By-Laws of the CPOA. During the Declarant Control Period, the Declarant shall be entitled to appoint the members of the Board of Trustees. After the Declarant Control Period, all members of the Board of Trustees shall be elected by the Owner Class members. The Declarant Class membership shall terminate upon the earlier of:

(i) completion of the development and sale of all Lots in The Cliffs, including all Lots added by Annexing Amendment, and the expiration of the Declarant's unilateral right to annex property pursuant to Article IX of this Declaration;

(ii) the unilateral resignation of the Declarant Class Member, without a successor or assign (whether by operation of law or by express or implied assignment); or

(iii) December 31, 2011

After the Declarant Control Period, voting by Members of the CPOA upon any matter allowing or requiring a vote of Members shall be as follows: there shall be one (1) vote allowed for each Lot. If an Owner includes more than one person and/or entity, the vote for said Member shall be cast in such a manner as the persons and/or entities constituting the same shall determine, but the decision of the Board as to the authority conferred upon one or more Owners or other representatives by the Ownership in casting the one vote of the Ownership shall be conclusive and binding.

Section 3. Board. (a) The administration of the Property on behalf of the CPOA shall be conducted by a Board of Trustees, which is referred herein as the Board, consisting of five natural persons (or such lesser number as may be determined by the Declarant pursuant to

paragraph (j) below (the Declarant Control Period), who are not required to be Owners and shall not be required to be residents of the State of Utah.

(b) At each annual meeting of the CPOA, subject to the provisions of paragraph (j) below, the CPOA shall elect members to fill any vacancies on the Board.

(c) Each member of the Board shall serve for a term of three (3) years. The terms of the initial members shall be staggered terms, so that one member is up for re-election at the annual meeting following the initial election, two members are up for re-election at the annual meeting two years from the initial election, and two members are up for re-election at the annual meeting three years from the initial election. The members of the Board shall serve until their respective successors are elected, or until their earlier death, resignation, or removal. Any member of the Board may resign at any time by giving written notice to the CPOA. Any member of the Board may be removed from membership on the Board by a two-thirds majority vote of a quorum of the CPOA. Whenever there shall occur a vacancy on the Board due to death, resignation, removal or any other cause, the remaining members of the Board shall appoint a successor member to serve until the next annual meeting of the CPOA, at which time said vacancy shall be filled by the CPOA for the unexpired term, if any. If no such successor is appointed due to a deadlock between the remaining Board members, a special meeting of Members may be called by any Board member to elect a successor.

(d) The members of the Board shall receive no compensation for their services, other than reimbursement of expenses, unless expressly approved by a majority of a quorum of the CPOA; provided, however, that any member of the Board may be employed by the CPOA in another capacity and receive compensation for such employment.

(e) The Board, for the benefit of the Property and the CPOA, shall manage the business, property and affairs of the CPOA and shall enforce the provisions of the Declaration, and may adopt rules and regulations (including without limitations schedules of fines for violations) governing the Property. The Board shall have the powers, duties, and responsibilities with respect to the Property as contained in Article VII hereof and the other provisions of this Declaration and its Articles of Incorporation and By-Laws, as well as any other applicable law.

(f) Regular or special meetings of the Board shall be held at such places within or without the State of Utah as all members of the Board shall determine. Otherwise, meetings shall be held at the Property. A simple majority of the members of the Board shall constitute a quorum, and if a quorum is present, unless otherwise required by law or this Declaration, the decision of a majority of the entire Board shall be binding on the Board. The Board shall appoint all of the officers of the CPOA. A meeting for the annual appointment of officers shall be held at the first meeting of the Board immediately following the annual meeting of the CPOA.

(g) Regular meetings of the Board may be held without call or notice; provided, however, that if the meeting is to be held at a place other than as decided at the annual meeting each year, at least 10 days prior, notice shall be given to all Board members. The person or persons calling a special meeting of the Board shall, at least ten (10) days before the meeting, give notice of the time and place thereof by any usual means of communication. Such notice should specify the general purposes for which the meeting is called; provided that the meeting need not be restricted to discussions of those items listed on the agenda.

(h) Special meetings of the Board may be called by the president of the CPOA or by any two Board members.

(i) Any member of the Board may, at any time, waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of notice to the member. Attendance by a member of the Board at a meeting shall constitute a waiver of notice of such meeting except when a Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Board are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

(j) Until the time that the Declarant Control Period terminates (Article II, Section 2), the Declarant shall have the option to appoint and remove all members of the Board, to

appoint and remove all officers of the CPOA, and to exercise the powers and responsibilities otherwise assigned by the Declaration to the CPOA. The initial membership of the Board may be less than five members, as determined by the Declarant during the period referred to in the preceding sentence. Declarant shall have the option at any time, by an express written declaration, to turn over to the CPOA the total responsibility for electing and removing members of the Board and the officers. No term of office of a Board member or a CPOA officer or agent shall expire or otherwise be affected by the expiration of such period during which the Declarant may control the CPOA, and if the number of Board members shall be less than five at the end of such period, the vacancies shall be filled in accordance with paragraph (c) above.

(k) The fiscal year of the CPOA shall end on December 31 of each year, or as otherwise determined by the Board.

Section 4. Meetings of the CPOA. (a) The presence in person or by proxy at any meeting of the CPOA of a majority in interest of the Owners shall constitute a quorum. In the event that such a quorum is not present in person or by proxy, the meeting shall be adjourned for up to two weeks as designated by the chairman presiding at the meeting, at which time it shall reconvene and any number of Owners present at such subsequent meetings shall constitute a quorum. Unless otherwise expressly provided in the Declaration, any action may be taken at any meeting of the Owners upon a vote of a majority in interest of the Owners who are present in person or by proxy.

(b) At all meetings of the CPOA, Owners may vote in person or by proxy executed in writing by the Owner or their duly authorized attorney in fact. Proxies shall be filed with the secretary of the Board before or at the time of the meeting.

(c) There shall be an annual meeting of the CPOA each year as set by the Board, either at the Property or at such other place in Washington County, Utah as may be designated by the Board. The Board shall give written notice of the time and place of the annual meeting, said notice to be delivered to the Members not less than thirty (30) days prior to the date for said meeting.

(d) Special meetings of the CPOA may be held at any time at the Property or at some other place in Washington County, Utah to consider matters which, by the terms of the Declaration, law, or the By-Laws, require the approval of all or some of the Owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Board, or by Members representing at least twenty (20) percent in interest of all Owners and delivered to all Members not less than fifteen (15) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting, and the matters to be considered.

Section 5. Officers. (a) The Board shall perform its functions and responsibilities through those members of the Board who are elected as officers annually by the Board and through such agents or employees as the Board may appoint. The primary officers shall consist of a president, a secretary, and a treasurer. The offices of secretary and treasurer may be combined as one office. The Board may appoint such assistant officers as the Board may deem to be necessary or desirable. No officer shall receive compensation for serving as such unless a majority in interest of a quorum of the Members votes otherwise.

(b) Any officer shall be subject to removal, with or without cause, at any time by the affirmative vote of a majority of the members of the Board then serving.

Section 6. Other Matters. The CPOA may adopt by-laws containing more detailed provisions governing the internal affairs of the CPOA; to the extent the Board deems such by-laws to be consistent with this Declaration.

Section 7. Control of Common Areas. The CPOA is responsible for the exclusive management and control of the Common Area and all improvements thereon and shall maintain the same as provided in Article VII. The CPOA may acquire, hold, and dispose of tangible and intangible personal property and real property. The CPOA shall accept any real or personal

property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

Section 8. Power to Exercise Rights. The CPOA may exercise any other right or privilege given to it expressly by this Declaration, by the Articles of Incorporation or By-Laws of the CPOA, or any Utah law applicable to nonprofit corporations, and every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

### ARTICLE III

#### STATUS OF OWNERS; BOARD OF TRUSTEES

Section 1. Legal Status. The Owners do not constitute an association or entity of any kind, and the sole legal entity created hereunder is the CPOA. The name of the Association shall be the name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suit shall be brought and defended by the CPOA, the Board or officers thereof on behalf of and as agents for the Owners in the manner specified in this Declaration, the charter, the By-Laws, or by applicable law.

Section 2. Management of CPOA and Property. The management and maintenance of the Property and the business, property and affairs of the CPOA shall be managed by a Board of Trustees as provided in this Declaration and its articles and by-laws. All agreements and determinations with respect to the Property lawfully made or entered into by the Board shall be binding upon all of the Owners and their successors and assigns.

Section 3. Powers and Duties of the Board of Trustees. The Board acting on behalf of the CPOA; shall have all the powers, duties and responsibilities which are now or may hereafter be provided by this Declaration, including but not limited to the following:

- (a) To make and enforce all house rules and administrative rules and regulations covering the operation and maintenance of the Property including the authority to enforce the Property Development Guidelines as the Board deems necessary.
- (b) To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation for their services; provided however, that any management agreement may be terminated by the Board for cause upon thirty (30) days written notice and the term of any said management agreement generally shall not exceed one (1) year, renewable by agreement for successive one (1) year periods.
- (c) To operate, maintain, repair, improve, and replace the Common Areas, including the entering into of agreements for the use and maintenance of the Common Areas and adjacent contiguous property for the benefit of the CPOA.
- (d) To determine and pay Common Expenses and other expenses of the CPOA.
- (e) To assess and collect the proportionate shares of Common Expenses and other applicable expenses from the Owners.
- (f) To enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.
- (g) To open bank accounts on behalf of the CPOA and to designate the signatures therefore.
- (h) To purchase, hold, sell, convey, mortgage, or lease any one or more Lots in the name of the CPOA or its designee.
- (i) To bring, prosecute and settle litigation for itself, the CPOA and the Property.
- (j) To obtain insurance for the CPOA with respect to the Common Areas, and for the CPOA's officers, directors and employees, as well as workmen's compensation insurance as needed.

(k) To repair or restore the Property following damage or destruction or a permanent taking by a power in the nature of eminent domain or by an action or deed in lieu of condemnation.

(l) To own, purchase or lease, hold, sell or otherwise dispose of on behalf of the Owners, items of personal property necessary to or convenient in the management of the business and affairs of the CPOA and the Board and in the operation of the Property.

(m) To keep adequate books and records, that will be available to the Owners for inspection on a reasonable basis.

(n) To do all other acts necessary for the administration, operation and maintenance of the Property, including the maintenance and repair of any improvements on the Property if the same is necessary or desirable to protect or preserve the Property.

Section 4. Delegation of Powers. The Board may delegate to a manager or managing company all of its foregoing powers, duties and responsibilities referred to in Section 3 above except: the final determination of common expenses, budgets and assessments based thereon; the promulgation of rules and regulations; the power to purchase, hold, sell, convey, mortgage, or lease any property in the name of the CPOA; or any other power, duty or responsibility nondelible by law.

Section 5. Limited Liability of Board of Trustees, etc. The Board and the Design Review Committee, and their officers, assistant officers, agents and employees (1) shall not be liable to the Owners as a result of their activities, as such, for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (2) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the CPOA in their capacity as such; (3) shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith; (4) shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

Section 6. Indemnification. The CPOA hereby indemnifies and holds harmless any person, their heirs and personal representatives from and against all personal liability and all expenses, including attorney's fees, incurred or imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Owners or any other persons or entities to which he shall be or shall be threatened to be made a party by reason of the fact that he or she was a member of the Board or an officer or assistant officer, member, attorney or manager of the CPOA or the Design Review Committee, other than to the extent, if any, such liability or expense shall be attributable to his willful misconduct or bad faith; provide, further that in the case of any settlement that the Board shall have approved, the indemnification shall apply only when the Board approves the settlement as being in the best interests of the CPOA. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Owners or of the Board or otherwise. The indemnification by the Owners as contained herein shall be paid by the Board on behalf of the Owners and shall constitute a common expense and shall be assessed and collectable as such.

Section 7. No Amendment Without Consent. The provisions of Section 5 and Section 6 above may not be amended with any retroactive effect so as to limit the rights of any persons otherwise entitled to the benefits thereof.

## ARTICLE IV

### OWNERSHIP OF COMMON AREAS

The CPOA, as a separate entity, shall own the Common Areas.

Section 1. Right of Easement of Enjoyment. Each Owner shall have a right and easement of enjoyment in and to the Common Areas subject to this Declaration.

Section 2. Limited Common Area Rights. Each Owner of a Lot is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Area appurtenant to and reserved exclusively for the use of such Owner's Lot. The Limited Common Area appurtenant to any given Lot is or shall be indicated on the approved Plat Maps. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to the Lot with which it is associated. Notwithstanding the exclusive license set forth herein, each Owner and the CPOA shall have a right of ingress and egress over, across, through or under the Limited Common Areas as may be reasonably necessary to perform any obligations hereunder, or to perform any necessary or desirable repairs, replacements, restoration or maintenance in connection with the Common or Limited Common Areas or in connection with utilities.

Section 3. Exclusive Common Area Rights. Exclusive Common Area refers to those portions of the Common Area which are for the exclusive use by the Owners of one or more Lots within The Cliffs of Snow Canyon project. Changes in the Exclusive Common Area may be made by a majority vote of the Owners and members of the CPOA present at particular called meeting of the CPOA, or by the Declarant unilaterally at any time during the Declarant Control Period. Permanent structures such as swimming pools, spas, patios/decks, pergolas, etc may not be built in the Exclusive Common Area. In general, these areas can only be landscaped and maintained by the Owner to whom the Exclusive use is granted.

Section 4. Easements for Encroachments. If any part of a Lot encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances on the Common Areas. Encroachments referred to herein include, but are not limited to encroachments caused by error in the original construction of the buildings or any improvements constructed or to be constructed within a Lot, by error in a Plat Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the project, or any part thereof, in accordance with the provisions of this Declaration.

Section 5. Delegation of Use. An Owner may delegate, in accordance with this Declaration, the Articles of Incorporation and By-Laws of the CPOA, the right to use and enjoyment of the Common Areas to members of the Owner's family, tenants, or contract purchasers who reside in or occupy the Lot.

## ARTICLE V

### ASSESSMENTS

The making and collection of assessments of any nature from Owners for their share of common expenses (determined pursuant to this Article and the other applicable provisions of this Declaration) shall be carried out by the Board in accordance with the following provisions:

Section 1. Shares of Common Expenses; Base Assessments. Each Owner of a Lot, by acceptance of the Owner's deed or recorded contract of sale, is deemed to covenant and agree to pay a Base Assessments and shall be responsible for an equal proportionate share of all General Common Expenses. Such "General Common Expenses" include but are not limited to the following services obtained by the CPOA: road and sidewalk maintenance or replacement, street sweeping, utility line maintenance, landscaping, installation and maintenance of any walkways or paths, security systems and security personnel and equipment and facilities, fencing and gates, installation and maintenance of Common Area facilities (including clubhouse, swimming pool complex and tennis court), and the cost of the administration of the Property (including accounting, legal, equipment, insurance, personnel and overhead), and the cost of liability insurance covering the CPOA and its Board, officers and employees. The CPOA, in its discretion may bill specific Owners for specific services (such as cable television, internet service, Entrada Country Club Associate membership or repairs and maintenance of an Owner's improvements and land, as a special assessment against the applicable Owner and the Lot of that Owner. It is expressly understood that the certain services, such as cable television, internet service, and Entrada Country Club Associate membership may or may not be provided by the Association and is subject to the discretion of the Board, and that certain services such as water and sewer services may be provided by other entities such as a public water and sewer district or a municipality.

The CPOA shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring any damage or disruption resulting to streets or other common or limited common areas from the activities of St. George City or Ivins City and Washington County or other governmental entities as applicable, in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise, is in the City up to and including the meters for individual Lots, and that they are installed and shall be maintained to City Specification.

Section 2. Payment of Assessments; Lien Created. Assessments not paid on or before fifteen (15) days after the date due shall bear interest at the rate of twelve percent (12%) per annum. The Board may also impose a late charge of up to 5% of any amount remaining unpaid for 15 days or more. All payments on account shall be first applied to interest or other charges and then to the assessment payments in the order of when due (that is, the oldest unpaid amounts shall be paid first). All annual or special assessments, together with interest, reasonable attorney's fees and all costs and expenses incurred by the Board incident to the collection of such assessments, shall be a charge upon the Lot involved and shall be a continuing lien upon the Lot (including all improvements thereon) for which the assessment was made, as well as the personal obligation of each Owner, jointly and severally, who had any interest of record in or to such that at the time of the assessment became due or at any time thereafter.

Section 3. Fines. It is expressly understood and agreed that fines for any violations of this Declaration or the rules and regulations of the Board may be assessed against a Lot and against an Owner, for violations by that Owner or by tenants or invitees.

Section 4. No Waiver or Exemption from Assessments. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Lot. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution of abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the CPOA or Board to take some action or perform some function required to be taken or performed by the CPOA or Board under this Declaration, or the Articles of Incorporation or the By-Laws of the CPOA, or for the inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the

Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 5. Rights to Collect From Tenant. If an Owner shall, at any time, lease their Lot or Unit and shall be in default for a period of one month or more in the payment of assessments or other charges, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall discharge such tenant or subtenant from the obligation for rent to the Owner and the Owner from his obligation to the CPOA, to the extent of the amount so paid. The Board shall be fully entitled to demand and receive a copy of the applicable lease agreement.

Section 6. Special Assessments. The CPOA may levy a Special Assessment or Special Assessments; provided, such assessment shall have the affirmative vote or written consent of a majority of the Owners, and, during the Declarant Control Period, the affirmative vote or written consent of the Declarant Class Member. Special Assessments may be levied to pay or defray expenses that are not otherwise covered by Base Assessments against the Lots. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

Section 7. Computation of Assessment. It shall be the duty of the Board, at least thirty (30) days before the beginning of the fiscal year, to prepare a budget covering the estimated costs of operating the CPOA during the coming year. The budget and the assessments shall become effective unless disapproved by a majority of the Owners or by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget on petition of the Voting Members as provided for in special meetings in the By-Laws of the CPOA.

Section 8. Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Lot upon the date of Closing of the sale of such Lot by the Declarant to the first purchaser thereof.

Section 9. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments and Special Assessments: (a) all Common Area, (b) all property dedicated to and accepted by any governmental authority or public utility, and (c) property not yet sold by Declarant.

## ARTICLE VI

### PURPOSE OF PROPERTY, AND CERTAIN RESTRICTIONS ON USE

Section 1. General Purpose. The general purpose of this Declaration is to provide for the maintenance, administration and control of the Property as a first class residential community.

Section 2. Use as Residence Only. The Lots may only be occupied and used for single family residential purposes, and for such incidental purposes as may be approved by the Board. Any time-sharing, fractional ownership or any other similar arrangement, whereby the use of a Lot is in effect allocated between different persons for separate repeating time intervals, is expressly prohibited. Each Owner shall use or occupy their Lot in a manner consistent with all applicable Washington County and St. George City rules and regulations.

Section 3. Use of Parking Facilities and Roadways; Storage. An Owner shall not permit designated parking spaces to be used for purposes other than to park vehicles. The Board shall have full power and authority to regulate the parking and storage of cars and any and all motor homes, recreational vehicles, buses, boats, bicycles, motorbikes, motorcycles, trailers and other similar vehicles and equipment, and to regulate the use of roadways by imposing and enforcing speed limits and other restrictions, all with full power and authority to impose and enforce (by special assessments hereunder or otherwise) fines and other penalties for violations of such regulations.

Vehicles must be stored within an enclosed garage with a door height of not to exceed eight feet, unless it is a commercial vehicle in the process of being loaded or unloaded, and then such commercial vehicle shall not be parked in the project overnight. Boats, trailers, buses, motor homes, trucks or campers shall not be parked for longer than 12 hours on any street within the Cliffs and such vehicles may not be parked overnight.

Section 4. Certain Additional Restrictions. The following additional restrictions are applicable to Lots. Each reference to "Owners" includes their tenants and invitees.

(a) Keeping Outside Areas Clean and Sightly. The Owners shall not place or store anything within the Common Areas without the prior written consent of the Board or its designee except in a facility specifically designated or approved for their storage. All Owners shall keep their residences and their Lots in a reasonably clean, safe, slightly and tidy condition, except for reasonable activities permitted by the Design Review Committee during the construction of a residence or authorized improvement. No clotheslines will be permitted. Any tires, lawnmowers, garden equipment, children's toys and other similar items must be stored and appropriately screened from the public view when not in use. No antennas or television "dishes" or other similar items may be placed upon any of the Common Areas without the express written consent of the Board. Refuse, garbage and trash shall be kept at all times in a covered container, and such covered container shall be screened from view at all times other than a specified regular time period for garbage pick-up.

(b) Notices and Signs. No sign, advertisement, notice, lettering, or descriptive design (other than street numbers) shall be posted, displayed, inscribed, or affixed to the exterior of any structures located on any Lot. No "For Sale" or similar signs or notices of any kind shall be displayed or placed upon any part of a Lot, without the prior approval of the Declarant or the CPOA. Any sign approved for display shall be no larger than six (6) square feet. Notwithstanding the foregoing, the Declarant may display any sign which it deems, in its sole discretion, to be necessary, and the developer may, until all Lots have been sold by the developer, place reasonable "For Sale" and similar signs on Lots that are owned by the developer.

(c) Obstructing Common Areas. Owners shall not obstruct Common Areas. Owners shall not place or store anything within the Common Areas without the prior written consent of the Board or its designee.

(d) No Fireworks. The discharge of firearms, firecrackers or fireworks is forbidden without the express written consent of the Board.

(e) Pets. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Cliffs, except that dogs, cats or other domesticated household pets may be kept in a Residence, provided that said pets are not kept to be bred, boarded or maintained for commercial gain, and subject to the reasonable rules and regulations adopted by the Board, and the right of the Board to direct the Owner to remove the pet from the Lot if the Board determines the pet(s) to be a nuisance. A dog which repeatedly barks or a cat that howls, whether or not within the Owner's yard will be considered to be a nuisance. No outside dog houses, dog runs or other pet enclosures or accommodations are allowed.

(f) Limitations on Certain Activities. Owners shall not permit any obnoxious or offensive activity or nuisance to be carried on in or around their Lot or in the Common Area. No light shall be emitted or reflected from any Lot which is unreasonably bright or causes unreasonable glare for any adjacent Owner. No unreasonably loud or annoying noises, or noxious or offensive odors, shall be emitted from any Lot. No motorcycle/ATV or similar

device shall be operated on the Property for recreational or access purposes. Bicycles and "trail bikes" may only be used on roadways and bike paths. The Board may terminate the use of a vehicle on the Property if such vehicle is not strictly limited to access use.

(g) Architectural Control. Except as otherwise expressly provided herein, no building, fence, driveway, excavation or improvement of any kind shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made (including without limitation any closing in of a porch or balcony), by any Owner other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, and locations of the same shall have been submitted to and approved in writing by the Design Review Committee, as to harmony of external design and location in relation to surrounding structures and topography, and in relationship to the quality and appearance of the Cliffs of Snow Canyon project.

(h) Compliance with Rules and Regulations. Owners shall not violate any rules and regulations for the use of Common Areas adopted by the Board and furnished in writing to the Owners. Fines and other penalties for violations thereof may be imposed and enforced by the Board for violations of such rules and regulations, and it is expressly understood that Owners may be held responsible for acts of their tenants and invitees.

(i) Limitation of Owners' Use. Each Owner's rights to the use of Common Area shall be restricted to their personal family, tenants and guests, with the right of the Board to reasonably limit the number of guests which an Owner, tenant or lessee may invite to use such facilities.

(j) Interruption of Drainage. No change in the elevation of a Lot or the structures approved for that Lot may be made and no change in the condition of the soil or level of the land of a Lot shall be made which results in any permanent change in the flow and drainage of surface water which the CPOA, in its sole discretion, considers detrimental. The CPOA may cause the property to be returned to its initial conditions at the expense of the Owner.

(k) Fences. No fences or walls shall be allowed on any Lot without the prior written consent thereto from the CPOA or the Design Review Committee of the CPOA.

(l) Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of The Cliffs or any property operated by neither the CPOA nor any part of it; and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction shall be observed.

(m) Recreation Use of Lakes and Ponds. Lakes and ponds within The Cliffs project shall not be used for swimming or for boating of any kind.

(n) Antennae. No radio, television or other antennae of any kind or nature, or device for the reception or transmission of radio, microwave or similar signals, including satellite dishes, shall be permitted on any Lot, provided however, that such a device will be allowed if it is 36 inches or less in diameter and if it is substantially shielded from view and painted the same color as the exterior walls of the house.

(o) Guests. Owners shall be fully responsible for the activities and actions of their guests, invitees, tenants, or visitors and shall take all action necessary or required to insure that all such persons fully comply with the provisions of this Declaration, and all rules and regulations of the CPOA.

Section 5. Requirement of Development Permit. No structure or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on or under the surface of any Lot, and no construction activities or removal of trees, shrubs or other similar vegetation shall be commenced, until a written development permit has been issued therefore by the Design Review Committee specifically authorizing such structure, improvement or activity.

IT IS EXPRESSLY UNDERSTOOD THAT ALL LOTS ABUTTING THE ENTRADA DEVELOPMENTS MUST MEET STRICT DESIGN AND CONSTRUCTION AND LANDSCAPING GUIDELINES TO BE IMPOSED BY THE BOARD so that the exterior architecture and design of those improvements are consistent and compatible for that specific area.

**ARTICLE VII**  
**MAINTENANCE**

Section 1. General Maintenance, etc. The maintenance, alteration, replacement and repair of the Common Areas shall be the responsibility of the CPOA. The Board as part of its responsibility, shall maintain, repair and provide for maintenance on all roadways constituting part of the Common Areas. All costs associated with maintenance, repair or replacement of Exclusive Common Areas shall be the obligation of the Owners to which the Exclusive Common Area is assigned.

Section 2. Owners Responsibility. The maintenance, repair and replacement of all improvements on each Lot shall be the responsibility of the Owner of such Lot and not the CPOA. This includes all structures, parking areas, if any, landscaping and other improvements comprising the Lot and any appurtenant Limited Common Areas, in a manner consistent with the Community-wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by the CPOA. If any Owner fails to properly perform this maintenance responsibility, The CPOA may perform it and assess all costs incurred by the CPOA against the Lot and the Owner thereof. The CPOA shall afford the Owner reasonable notice and an opportunity to cure the problem prior to the CPOA's assuming this responsibility.

The area between the curb and sidewalk or the sidewalk and any rock wall, if any, shall be the responsibility of the Owner.

Section 3. Access. The CPOA or its manager shall have the irrevocable right to have access to each Lot from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and facilities, or for making emergency repairs necessary to prevent damage to the Common Areas or to a Lot, although there shall be no affirmative duty to do so.

The Declarant reserves full rights, but not the obligation, to conduct landscaping activities on the Property, and implement additional improvements (including without limitation fencing, pathways, signs, outdoor lighting and maintenance sheds) on the Property in the future without the requirement of obtaining the consent or other authorization of the CPOA, the Board, or the Design Review Committee.

**ARTICLE VIII**  
**INSURANCE AND CASUALTY LOSSES**

Section 1. Blanket All-Risk Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements located in the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

Section 2. Public Liability Insurance. The Board shall obtain a public liability policy covering the Common Area, the CPOA and Owners for all damage or injury caused by the negligence of the CPOA or any of its Owners or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000) single person limit as respects bodily injury and property damage, a Three Million Dollar (\$3,000,000) limit per occurrence, if reasonably available, and a Five Hundred Thousand Dollar (\$500,000) minimum property damage limit.

Section 3. Premium payment. Premiums for all insurance on the Common Areas shall be Common Expenses of the CPOA and shall be included in the Base Assessment. The policy may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

Section 4. Insured. All insurance coverage obtained by the CPOA shall be written in the name of the CPOA as trustee for the respective benefited parties, as further identified in Section 4 (b) below. Such insurance shall be governed by the provisions hereinafter set forth.

(a) All policies shall be written with a company licensed to do business in Utah which holds a Best's rating of A or better and is assigned to financial size category of XI or larger as established by A.M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the CPOA its Owners and their mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies obtained by the CPOA on the Property shall be vested in the CPOA Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the CPOA hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) The CPOA shall be required to make every reasonable effort to secure insurance policies that provide (1) a waiver of subrogation by the insurer as to any claims against the CPOA Board, its manager, the Owners and their respective tenants, servants, agents, and guests; (2) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash; (3) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners; (4) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the CPOA or its duly authorized manager without prior demand in writing delivered to the CPOA to cure the defect and the allowance of reasonable time thereafter within which the defect may be cured by the CPOA, its manager, any Owner, or Mortgagee; (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and (6) that the CPOA will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

Section 5. Other Insurance. The Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law; director's and officer's liability coverage, if reasonably available, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the CPOA's funds. The amount of fidelity coverage shall be determined in the Board's business judgment but, if reasonably available, may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the CPOA of any cancellation, substantial modification, or non-renewal.

Section 6. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the CPOA that each Owner shall carry blanket all-risk casualty insurance on the Owner's Lot(s), the appurtenant Limited Common Areas, and the structures constructed thereon meeting the same requirements as set forth in Article VIII, Section 1 for insurance of the Common Area. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner

shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XIII of this Declaration. The Owner will pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed the Owner may decide not to rebuild or reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-wide Standard.

Section 7. Damage and Destruction (a) Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the CPOA, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Owners representing at least seventy-five percent (75%) of the total vote of the CPOA shall decide within sixty (60) days after the casualty not to repair or reconstruct. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Area shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the CPOA in a neat and attractive condition consistent with the Community-wide Standard.

Section 8. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceed remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the CPOA and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner and their Mortgagee(s), as their interests may appear, shall be retained by and for the benefit of the CPOA and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.

Section 9. Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association, levy a Special Assessment against all Owners on the same basis as provided for Base Assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE IX

### ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation Without Approval of Owners. As the owner thereof, or if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right,

privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration or December 31, 2011, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the CPOA all or any portion of the real property described in Exhibit "B" (as it may be amended from time to time), attached hereto and by reference made a part hereof. Such annexation shall be accomplished by filing in the public records of Washington County, Utah, an amendment to this Declaration annexing such property (an "Annexing Amendment"), and by recording a plat, all as provided by the laws of the State of Utah and the appropriate municipal ordinances. An Annexing Amendment shall not require the consent of the CPOA or the Voting Members. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to the Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A", "B" or "C" and that such transfer is memorialized in a written instrument executed by the Declarant.

Section 2. Annexation with Approval of Owners. (a) Subject to the consent of the owner thereof, the CPOA may annex real property other than that described on Exhibit "B" and following the expiration of the right in Article IX, Section 1 (or any proper extension thereof), any property described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the CPOA. Such annexation shall require the affirmative vote of Voting Members representing at least a majority of the total CPOA members present at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Article IX, Section 1 hereof. Such annexation shall be accomplished by filing in the public records of Washington County, Utah, an amendment to this Declaration annexing such property (an "Annexing Amendment"), and by recording a plat, all as provided by the laws of the State of Utah and the appropriate municipal ordinances. Any such Annexing Amendment shall be signed by the President and Secretary of the CPOA, and by the owner of the property being annexed.

(b) Annexation of land adjoining lot 206A (see Exhibit "C"). In the event that the CPOA is presented with the opportunity to annex all or part of the land North and adjacent to lot 206A (Exhibit "C", the "landlocked parcel"), to be subjected to the provisions of this Declaration and the authority and jurisdiction of the CPOA, the Declarant, whether still retaining ownership of property within Exhibits "A", "B", or "C" or not, shall retain the right and authority to negotiate (or delegate negotiation of) any consideration exchanged for permitting annexation of the land or part of the land shown in Exhibit "C", the "landlocked parcel" and permitting its access to improvements installed by Declarant for the benefit of other owners within the Project. Declarant shall also be authorized to negotiate (or delegate negotiation of) the price, size and nature of any easement across lot 206A granted for the benefit of all or part of the land shown in Exhibit "C", the "landlocked parcel" if found necessary in order to obtain municipal, county or state agency, division or board approval of the proposed use or improvement of all or part of the land shown in Exhibit "C" the "landlocked parcel". The proceeds from a conveyance of any easement benefiting all or part of the land shown in Exhibit "C", the "landlocked parcel" or and/or the sale of Lot 206A or any part thereof shall belong in their entirety to Declarant and shall be considered compensation for Declarant's prior investment into improvements related to the Project, Lot 206A and all or part of the land shown in Exhibit "C", the "landlocked parcel", and for services rendered by Declarant in facilitating the annexation of all or part of the land in said Exhibit "C", the "landlocked parcel".

Section 3. Acquisition of Additional Common Area. During the Declarant Control Period, Declarant may convey to the CPOA additional real estate, improved or unimproved, located within the properties described in Exhibits "A" or "B" or "C" contiguous thereto which upon conveyance or dedication to the CPOA shall be accepted by the CPOA and thereafter shall become Common Area and be maintained by the CPOA at its expense for the benefit of all Members.

Section 4. Amendment. This Article IX, shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any of the real property described in Exhibits "A" or "C" hereof.

#### **ARTICLE X EMINENT DOMAIN**

Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury, or destruction of all or part of the Common Areas and facilities by the exercise of the power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board shall be entitled to timely written notice thereof and the Board shall participate in the proceedings incident thereto.

#### **ARTICLE XI NO PARTITION**

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Project or any part thereof seek any judicial partition unless the Property has been removed from the provisions of this Declaration. This Article XI shall not be construed to prohibit the Board from acquiring title to real property which may or may not be subject to this Declaration.

#### **ARTICLE XII DESIGN REVIEW COMMITTEE**

Section 1. Restriction on Construction. No building, fence, wall, or other structures shall be commenced, erected, or maintained by any Owner, nor shall any exterior addition or change or alterations therein, including a change in the building exterior paint color, be made nor shall any improvements be made within the Owner's property line or in any appurtenant Limited or Exclusive Common Area until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Cliffs Design Review Committee (DRC) as to: (a) such proposal's compliance with the Property Development Guidelines; and (b) the harmony of external design and location of the proposal in relation to surrounding structures and topography.

Section 2. Creation of the Cliffs Design Review Committee. The Board of the CPOA is authorized and directed to appoint the DRC in accordance with the provisions of the By-Laws. The DRC will consist of three to seven members, as determined by the Board. Each member will hold office until such time as he has resigned or been removed, or until his successor has been appointed. Any member of the DRC may at any time resign from the DRC upon written notice delivered to the Board. Members of the DRC need not be Owners of Lots at the Cliffs of Snow Canyon.

Section 3. Duties of the Design Review Committee. The DRC shall have the duty to consider and to act upon such proposals or matters as from time to time are submitted to it pursuant to the Property Development Guidelines, and to perform such other duties as are assigned to it by this Declaration or which are, from time to time, delegated to it by the Board.

Section 4. Time for Design Review Committee's Action. In the event the DRC fails to approve, disapprove or to table pending additional information to be submitted by an applicant, a request for approval of plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, express approval of the DRC shall not be required and Article XII, Section 1, will be deemed to be fully complied with. Items which have been tabled must be similarly approved, disapproved or tabled pending additional information within thirty (30) days after being tabled, or they will be deemed to have been approved; provided, however, that if the applicant fails to submit additional information that has been requested by the DRC, the matter shall be deemed tabled without time limit until such additional information has been supplied. Nothing herein contained shall be construed as prohibiting the DRC from granting limited approvals of certain elements so as to allow construction to proceed, and tabling for further information items of lesser importance.

Section 5. Meetings of the Design Review Committee. The DRC shall meet from time to time as necessary to properly perform its duties. The vote or written consent of a majority of the members shall constitute an act by the DRC unless the unanimous decision of its members is otherwise required or unless the DRC has previously acted to delegate certain powers to one or more members of the DRC. The DRC shall keep and maintain a record of all action taken by it at such meetings.

Section 6. Compensation to Design Review Committee Members. Unless otherwise authorized by the Declarant or the CPOA, the members of the DRC shall not receive any compensation for services rendered. All members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any DRC function or duty. Professional consultants and providers of secretarial services retained by the DRC shall be paid such compensation as the DRC determines.

Section 7. Amendment to Guidelines. The Property Development Guidelines shall be amended when and in the manner deemed appropriate or necessary by the Declarant or the CPOA to further the philosophy of the Cliffs or the practical necessities of making The Cliffs an outstanding and successful community. The Property Development Guidelines are subject to revision by amendment as follows:

(a) At such time as the DRC determines that any portion of the Property Development Guidelines should be revised, the DRC shall send to the Board in written form a proposed amendment outlining the changes and the reasons therefore.

(b) The Board shall either approve or disapprove the proposed amendment in writing. Failure of the Board to disapprove the proposed amendment shall in no way be deemed to be approval of the same.

(c) The Board and the Declarant, during the Declarant Control Period, may also amend the Property Development Guidelines independently.

Section 8. Enforcement. The Property Development Guidelines and the plans as approved by the DRC may be enforced by the DRC, the CPOA, or the Board as provided herein or in the By-Laws of the CPOA. The Board may create a Design and Rules Enforcement Committee and vest any such committee with the authority required to enforce the rules, regulations and findings of the DRC or the CPOA, or both. The rules and regulations can be enforced in equity.

### ARTICLE XIII DESIGN REVIEW PROCEDURES

Section 1. Review Process. Proper standards of development will be assured to every resident in the Cliffs by the practice of design review as established by the DRC. The DRC is

responsible for reviewing and approving all improvements and any revision or alteration to those improvements. The goal of the DRC is to process each submittal fairly, consistently, in a timely manner, and in accordance with the sound professional judgment and the requirements of the Property Development Guidelines and this Declaration. The DRC shall establish reasonable procedural rules and may assess a reasonable fee in connection with the review of plans and specifications. The DRC may delegate initial plan review responsibilities to one or more members of the DRC, but a quorum of the DRC shall be responsible for all final approvals.

Section 2. Review Committee's Address. The address of the DRC shall be the principal office of the CPOA as designated by the Board pursuant to the By-Laws. Such address shall be the place for the submittal of plans and specifications and the place where the current Property Guidelines shall be kept.

Section 3. Application for Construction. Applications for construction of improvements shall be made available at the office of the DRC.

Section 4. Conditions to Approval. (a) The DRC, before giving such approval, may require that changes be made to comply with the requirements of this Declaration, the Property Development Guidelines and such additional requirements as the DRC may, in its discretion, impose as to structural features of any proposed improvements, the type of material used, or other features or characteristics thereof not expressly covered by any provisions of this document, including the setting or location of any proposed improvement with respect to topography and finished ground elevations. The DRC may also require or specify, in its discretion, the exterior finish and color, and the architectural style and character of existing improvements within the project.

(b) The DRC, before giving its approval, may impose conditions, including without limitation, time limitations for the completion of improvements or require changes to be made which in its discretion are required to ensure that the proposed improvement will not detract from the appearance of the Cliffs or otherwise create any condition that unreasonably disadvantages other Owners or is detrimental to the Cliffs as a whole. Until all plans and specifications required for each submittal are determined by the DRC to be complete, the DRC shall have no obligation to review any partial submittal. All completed submittals shall be acted upon promptly by the DRC. The amount of time taken by the DRC for the approval process will vary with the adequacy and complexity of the design information and the completeness of submittal plans. A decision of the DRC to approve, or to disapprove, a submittal, together with an explanation of further conditions to be satisfied by the applicant, shall be made within thirty (30) days after receipt of a completed submittal, provided, however, that the DRC may, within such period, require the submission of additional information without approving or disapproving the submittal. The approval of the DRC of any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the DRC, shall not be deemed to constitute a waiver by the DRC of its right to approve, disapprove, object or consent to any of the features or elements embodied therein when the same features or elements are embodied in other matters submitted to the DRC.

Section 5. Request for Reconsideration. An applicant may request reconsideration of a ruling of the DRC by submitting to the DRC written arguments for such reconsideration within thirty (30) days of the date of receipt of the DRC's ruling. The DRC will give its final ruling by answering the arguments and by confirming or modifying its ruling within thirty (30) days of receipt of the applicant's written arguments. No fee is required to be submitted for reconsideration. Failure of the DRC to notify the applicant regarding the reconsideration within thirty (30) days of the date of submittal of the written arguments to the DRC shall be deemed approval of the submittal. Final approvals of the DRC shall be valid for one (1) year from the date of final approval and must be obtained prior to formal submission to the City of St. George or Ivins as applicable, for a building permit. If a Building Permit is not issued within

one (1) year after an Owner obtains an approval, the approval shall be void and an application for the proposed improvement(s) shall be resubmitted to and re-approved by the DRC. Verbal approvals shall not be effective approvals under any circumstances. The applicant shall not rely on and shall not place any value whatsoever on a verbal approval by anyone, including a DRC member(s). The DRC shall not be bound in any respect by a verbal approval.

Section 6. Appeal to the Board of Trustees. An applicant may appeal the final ruling of the DRC by filing a petition of appeal, together with a written statement as to the ruling from which the appeal is taken, and the reasons in support of the applicant's appeal, with the Board of the CPOA. The Board shall solicit a response from the DRC, which response shall be filed by the DRC within twenty (20) days after notification reaches the DRC of the need for such a response. The Board may request such other and additional information as it deems to be relevant, and shall thereupon make a final decision on the matter. The Board shall make its decision on or before the next regularly scheduled Board meeting.

Section 7. Liability of Review Committee, Declarant, etc. Neither Declarant, the CPOA, the Board or the DRC, or the members or designated representatives thereof, shall be liable for damages to any Owner or Owner's representative submitting plans or specifications to the DRC or any of the entities named above for approval, or to any Owner or Owner's representative affected by this Declaration or the Property Development Guidelines by reason of mistake of judgment, omission, or negligence unless due to willful misconduct or bad faith of the DRC.

Section 8. Indemnification by Owner. Each Owner, as a condition to obtaining any approval under the Property Development Guidelines, agrees to fully indemnify, protect, defend and hold harmless the Declarant, the CPOA, and the DRC, and their respective members and representatives, against and from any and all claims, liabilities, lawsuits and disputes related to any approval and/or approved or disapproved improvement.

#### **ARTICLE XIV BUILDER APPROVAL**

All residential dwellings in The Cliffs shall be constructed by a Preferred Builder or an Approved Builder as those terms are defined in the Property Development Guidelines. No residential dwelling shall be constructed by an Owner, his agent or employee, who is not a Preferred Builder or an Approved Builder as those terms are defined in the Property Development Guidelines.

#### **ARTICLE XV UTILITY SERVICE**

Section 1. Dedication of Utility Easements. Declarant has and will dedicate certain portions of The Cliffs, through which easements are now and may hereinafter be granted, for use by all utilities, public and private, for the construction and maintenance of their respective facilities servicing the lands described in this Declaration. Declarant hereby grants to such utilities, jointly and severally, easements for such purpose. Such easements may, but are not required to, be dedicated by recorded plat or other instrument. Additional easements may be granted by the CPOA for utility or recreational purposes in accordance with the requirements of this Declaration.

Section 2. Treatment of Median Strips. Any median strip located within a public right-of-way shall be considered Common Area and shall be planted and maintained by the CPOA, in accordance with the City's ordinances, policies and standards.

**ARTICLE XVI  
GOLF EASEMENTS AND ASSUMPTION OF RISK**

Section 1. Stray Ball Easement. Each Owner expressly assumes the risk relating to the proximity of a Lot to any Golf Course located within or adjacent to the The Cliffs, and each Owner agrees that it shall purchase its Lot subject to the following stray ball license and/or easement:

(a) License to Enter Upon Golf Course Lot Prior to Construction of a Residence. Until such time as a residence is constructed upon a Lot, the owner of a golf course adjacent to or within close proximity of a Lot shall have a license to permit and authorize its agents, and registered golf course players and their caddies to enter upon said Lot to recover a ball or play a ball, subject to the official rules of the golf course, without such entering and playing being deemed to be a trespass thereon.

(b) Stray Ball Easement Upon Lot Subsequent to Construction of Residence. After a residence has been constructed upon a Lot adjacent to or within close proximity of a golf course, the Owner of said Lot acknowledges and agrees that, due to the proximity of the Lot to the golf course, stray golf balls might enter upon the Lot. In the event that a golf ball enters upon said Lot, the Owner of said Lot agrees that neither Declarant, the CPOA nor the owner of the golf course shall be responsible or liable for (i) any damages caused by the stray balls; or (ii) any claim of trespass that the Owner of said Lot may assert or be entitled to assert resulting there from.

Section 2. Assumption of Risk by Owner and Indemnification. Each Owner hereby expressly assumes the risk relating to the proximity of their Lot to any golf course that is within or adjacent to The Cliffs, and each Owner agrees that neither Declarant, the CPOA, the owner of said golf course, nor their guests, invitees, or clients nor any entity responsible for the design, construction, ownership, management or operation of the golf course shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution, or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Lot to the golf course, including without limitation, any claim arising in whole or in part from the negligence of Declarant, the CPOA and any entity responsible for the design, construction, ownership, management or operation of the golf course, including the owner of the golf course, against any and all claims by Owner or Owner's invitees or guests.

Section 3. Restricted Access to Golf Course. Notwithstanding the proximity of Lot or Common Area to a golf course, each Owner acknowledges that ownership of any Lot, does not convey to said Owner or create in favor of said Owner any interest in or right to the use of the golf course. Use of the golf course shall be strictly limited and controlled by the owner of the golf course, at its sole and absolute discretion.

**ARTICLE XVII  
GENERAL PROVISIONS.**

Section 1. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered forty-eight (48) hours after a copy of the same has been deposited in the U.S. Mail, postage prepaid. Notice to Owners for any purposes shall be addressed to each Owner as set forth in Article II, Section 4 above.

Section 2. No Waiver. The failure of the Board or the Design Review Committee or its agents to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or the DRC or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board or the DRC, as the case may be.

Section 3. Enforcement. Excepting only those provisions herein restricting the right of enforcement to the CPOA, Declarant, or some other specific entity or committee, the CPOA, the Declarant (during the Declarant Control Period), or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration.

Section 4: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 5: Duration and Amendment. (a) The covenants and restrictions of this Restated Declaration shall run with and bind the property subject hereto for a term of forty (40) years from the January 11, 2001 (date of recording of the original Declaration), after which time they shall be automatically extended for successive periods of twenty (20) years. (b) Amendment of this Declaration shall require: (i) the affirmative vote of at least two-thirds (2/3) of the members of the CPOA who are voting in person or by proxy at a meeting duly called for such purpose; and, so long as the Declarant Class membership exists, (ii) the written consent of Declarant. Notwithstanding the above, the Declarant, its successors and/or assigns shall have the right, until December 31, 2011, to unilaterally amend this Declaration. Any amendment shall be effective upon recording in the Washington County Recorder's Office. An instrument amending this Declaration may be executed as follows: (iii) by the Declarant, acting through an authorized officer or other agent thereof; or (iv) on behalf of the CPOA, by an authorized officer or Board member thereof, provided that any amendment by the CPOA shall recite that the amendment has been duly approved by the members of th CPOA, as provided herein.

Section 6. Easement of Enforcement. The CPOA is granted an easement over each Lot subject to this Declaration, for the purpose of enforcing the provisions of this Declaration, and may go upon each Lot to remove or repair any existing cause of a violation thereof. If the Owner required to cure the violation fails to do so, the CPOA shall have the right to cure such violation, and all costs incident thereto, including court costs and reasonable attorney's fees, shall become the personal obligation of the Owner and be a lien against his Lot in the same fashion as if said sums represented monies due for unpaid assessments.

Section 7. Captions, Gender and Grammar. The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope and intent of this Declaration or any provision thereof. The singular wherever used herein shall be construed to mean the plural wherever applicable or vice versa and necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, etc., shall be assumed in each case as though made.

Section 8. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

**ARTICLE XVIII  
COMPLIANCE AND DEFAULT**

Each Owner shall be governed by and shall comply with the terms of this Declaration, all exhibits hereto, the Articles of Incorporation and By-Laws of the CPOA, and the regulations adopted pursuant to those documents and all of such as they may be amended from time to time. Failure of an Owner to comply with such documents and regulations shall entitle the Declarant, the CPOA, and/or other Owners to all appropriate legal and equitable relief.

Section 1. Negligence. An Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees.

Section 2. Cost and Attorney's Fees. In any proceeding arising because of an alleged failure of an Owner to comply with the terms of this Declaration, the Articles of Incorporation and the By-Laws of the CPOA, any exhibit to this Declaration, or any rules or regulations adopted pursuant to any of the foregoing, and all other similar documents, the CPOA shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees, including costs and fees incurred in any appeal.

**ARTICLE XIX  
EFFECTIVE DATE**

This Restated Declaration shall take effect when recorded with the Recorder of Washington County, Utah.

IN WITNESS WHEREOF, the undersigned Declarant has executed this instrument as of \_\_\_\_\_ day of \_\_\_\_\_, 2008

By SNOW CANYON DEVELOPMENT, INC., a UTAH Corporation

By: \_\_\_\_\_, Sec. / Treasurer

STATE OF UTAH                            )  
  :SS  
COUNTY OF UTAH                     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008. by \_\_\_\_\_, as the Secretary/Treasurer of Snow Canyon Development, Inc., a Utah Corporation.

\_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_

My Commission Expires:  
  
\_\_\_\_\_

EXHIBITS A, B, C

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Beginning at a point on the Northeast right-of-way of the Snow Canyon Parkway Road; said point being South 89°07'14" East, along the quarter section line, 567.83 feet from the West Quarter corner of Section 3, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence along said right-of-way line the following two (2) calls: thence North 63°05'53" West, 44.47 feet to a point on a 510 foot radius curve to the right: thence 105.97 feet along said curve through a central angle of 11°54'18" (chord bears North 57°08'44" West 105.78 feet); thence North 03°51'29" East, 279.34 feet; thence North 38°26'44" East 775.82 feet; thence North 14°22'26" East, 997.63 feet; thence North 42°37'03" East, 966.83 feet to a point on the Section line running thence along said section line the following three (3) calls; thence South 88°42'57" East, 760.98 feet; thence South 89°15'21" East, 29.70 feet; thence South 88°45'04" East, 121.17 feet to the North Quarter corner of Section 3; thence South 01°15'43" West, along said quarter section line, 2,654.95 feet to a point on the East/West quarter section line; thence South 01°15'43" West, along said quarter section line, 34.79 feet; thence North 89°07'14" West, 709.14 feet; thence North 39°01'34" West, 45.36 feet to a point on the quarter section line; thence North 39°01'34" West, 39.64 feet; thence North 89°07'14" West, 802.21 feet; thence South 41°38'19" West, 40.15 feet to a point on the quarter section line; thence South 41°38'19" West, 145.04 feet; thence South 84°01'43" West, 71.44 feet; thence South 39°20'42" West, 78.11 feet to a point of non-tangency with a 840 foot radius curve to the left; said point also being on the Northeast right-of-way line of said Snow Canyon Parkway Road; thence 184.31 feet along said right-of-way line and along said curve through a central angle of 12°34'17" (chord bears North 56°48'44" West, 183.94 feet); thence North 63°05'53" West, along said right-of-way line, 185.15 feet to the point of beginning.

Contains 105.09 Acres

**EXHIBIT "B"**  
**LEGAL DESCRIPTION**  
(Additional Property which may be annexed)

Beginning at the North Quarter corner of Section 3, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence South 88°45'04" East, along the section line, 2,521.48 feet to the Southeast corner of Section 34, Township 41 South, Range 16 West; thence South 88°33'37" East, along the section line, 168.71 feet to the Northeast corner of said Section 3; thence South 01°14'00" West, along the section line 2,637.04 feet to the East Quarter corner of said Section 3; thence North 89°07'14" West, along the quarter section line, 2,691.56 feet to the center of said Section 3; thence North 01°15'43" East, along the quarter section line, 2,654.95 feet to the point of beginning.

Contains 163.47 Acres

**EXHIBIT "C"**  
**LEGAL DESCRIPTION**  
(Parcel # SG-6-2-3-131)

Township 42 South, Range 16 West, Salt Lake Base and Meridian; Section 3

Beginning at a point which is North 01°15'43" East, 635.07 feet from the Center of Section 3, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence North 01°15'43" East, 470.97 feet; thence South 90°00'00" East, 85.45 feet; thence North 46°28'00" East, 65.12 feet; thence North 21°11'26" West, 28.92 feet; thence North 79°01'53" East 155.31 feet; thence North 22°24'31" East, 127.42 feet; thence North 78°34'46" West, 125.76 feet; thence North 30°09'16" East, 377.04 feet; thence North 76°32'57" East, 114.43 feet; thence North 12°16'13" East, 183.71 feet; thence South 88°12'22" East, 88.77 feet, thence South 42°48'10" East, 160.08 feet; thence South 07°06'26" West, 558.54 feet; thence South 18°13'44" West, 369.47 feet; thence South 04°16'44" East, 238.32 feet; thence South 07°42'05" West, 82.93 feet; thence South 05°56'08" East, 343.88 feet; thence North 48°01'58" West, 29.89 feet; thence North 06°07'11" West, 62.55 feet; thence North 22°20'34" West, 134.47 feet, thence North 03°11'20" West, 80.44 feet; thence North 35°46'22" West, 68.44 feet; thence North 07°07'48" East, 143.26 feet; thence North 09°16'44" East, 110.27 feet, thence North 12°06'11" West, 63.60 feet; thence North 17°06'50" East, 60.42 feet; thence North 60°07'06" West, 102.54 feet; thence South 68°58'33" West, 92.86 feet; thence South 75°58'23" West, 146.62 feet; thence South 11°06'05" West, 115.43 feet; thence South 51°48'19" West, 229.79 feet to the point of beginning.

Contains 10.86 Acres