

126  
23

Upon recording, return to:

7/19/00  
ccrdcb

Westfield Development Corporation  
c/o Richard Mendenhall  
2749 East Parley's Way  
Suite 310  
Salt Lake City, Utah 84109

ENT 58279;2000 PG 1 of 23  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2000 Jul 27 10:38 am FEE 125.00 BY JW  
RECORDED FOR MENDENHALL, MARY

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
DRY CREEK BENCH SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "**Declaration**"), is made as of this 25th day of July, 2000, by WESTFIELD DEVELOPMENT CORPORATION, a Utah Corporation, (the "**Declarant**"), with reference to the following facts:

WHEREAS, Declarant is the owner of record of that certain parcel of real property known as Dry Creek Bench Subdivision (the "**Subdivision**"), whose subdivision Maps were recorded on **July 26, 2000**, as **Entry No. 57790** and **Map No. 8651**, of the official records in the Office of the County Recorder for Utah County, State of Utah. Dry Creek Bench Subdivision is located in Highland City, Utah County, State of Utah, and is more particularly described as follows:

Commencing at the West Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence North 89°46'09" East along the one-quarter section line 1333.98 feet; thence South 00°03'40" East along the West boundary of Dry Creek Subdivision, Phases 1 and 2, 1323.67 feet; thence South 89°51'20" West 529.18 feet; thence West along the North boundary of Bull River Subdivision, Plats "B" and "C", 805.60 feet; thence North 00°01'34" West along the section line 1319.64 feet to the point of beginning.

Contains approximately 1,764,136.44 square feet, or 40.499 acres more or less

Basis of bearing equals the line between the Southwest Corner and the West Quarter Corner of Section 26, Township 4 South, Range 1 East, Bears North 0°01'34" West.

The areas described above are also known as Lots 1-72 of the Dry Creek Bench Subdivision, as platted and recorded in the office of the Utah County Recorder, and

WHEREAS, all lots in the Subdivision are a part of and are governed by this Declaration, and

WHEREAS, the Declarant desires to develop residential subdivisions of distinctive and individual character for the benefit of all owners within the Subdivision, and intends to provide for the preservation of such character, and

WHEREAS, the Declarant, or affiliate of Declarant has previously facilitated, or may facilitate, the development and recordation of additional subdivision Maps, which shall commonly be identified as the various phases of the Dry Creek Subdivisions, (the "Subdivisions") and which are developed on property which is contiguous to the Subdivision, or to prior or future phases of the Subdivisions , and

WHEREAS, the Declarant intends to sell the individual Lots which comprise the Property described above and the Declarant desires to subject each respective Lot to a general plan of improvement which will include certain restrictions, conditions, covenants, and agreements, as hereinafter set forth;

NOW, THEREFORE, the Declarant declares that the Property shall be held, sold, conveyed, leased, occupied, resided upon and hypothecated subject to the following covenants, conditions and restrictions; which covenants, conditions and restrictions shall run with the land, are established for the purpose of protecting and preserving the value of each and every part of the Property, and which shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I DEFINITIONS

**Section 1.1** "Association" shall mean the Dry Creek Bench Subdivision Home Owners Association, comprised of each respective Owner of a Lot within the Subdivision. Decisions by the Association shall be made by a vote of a majority of those Owners present at a duly called meeting of the Association. No vote shall be taken, however, without a quorum of the Owners present, comprised of a majority of the Owners of Lots in the Subdivision. One vote shall be allotted to the Owner of each of the Lots in the Subdivision. No dues shall be assessed to individual members of the Association, unless otherwise decided by the members of the Association, or as any member of the association, as Lot Owners, may otherwise be obligated to pay any assessments required by Highland City for the "Open Space Special Service District" as further addressed in Article 3.19 of this Declaration.

**Section 1.2.** "Category A Lots" shall mean all of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 21, 22, of Dry Creek Bench Subdivision.

**Section 1.3.** "Category B Lots" shall mean all of Lots 13, 14, 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 57, 64, 72 of Dry Creek Bench Subdivision.

**Section 1.4.** "Category C Lots" shall mean all of Lots 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71 of Dry Creek Bench Subdivision.

**Section 1.5** "Committee" shall mean the Architectural Control Committee, as such Committee is further described in Article V hereof.

**Section 1.6** "Declarant" shall mean Westfield Development Corporation, a Utah Corporation, and their successor(s) and/or assign(s).

**Section 1.7** "Family" shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption.

**Section 1.8** "Improvement" shall mean any structure, Residence, building, barn, storage shed, garage, Landscaping, accessory building, fence, wall, nonliving or living screen, or other structure of Landscaping, or other meaningful addition or alteration constructed or added to a Lot.

**Section 1.9** "Landscaping" shall mean lawn, shrubs, flowers, trees and natural foliage located or placed upon a Lot.

**Section 1.10** "Lot" shall mean any individual parcel shown upon the Maps of the Subdivision, which may be legally conveyed by reference only to the number of such Lot designated on the Map.

**Section 1.11** "Maps" shall mean the official subdivision plat maps recorded as referred to above, which have become part of the official records in the Office of the Utah County Recorder, State of Utah, as the same may be amended from time to time.

**Section 1.12** "Mortgage" shall mean any instrument creating a lien with respect to a Lot including a mortgage, deed of trust or any similar security agreement.

**Section 1.13** "Mortgagee" shall mean the holder of the obligation secured by a Mortgage.

**Section 1.14** "Owner" shall mean the recorded owner of a fee simple title to any Lot which is a part of the Subdivision. In the event that more than one party shall be established as the record Owners of a Lot, then for all purposes under this Declaration, all such parties shall be required to act jointly as the Owner of such Lot.

**Section 1.15.** "Open Space" shall mean all areas designated on the Maps as "Neighborhood Park", which areas are dedicated for the use, benefit, and enjoyment of all Owners. These areas are to be maintained as permanent open spaces and are to be accessible to the general public.

**Section 1.16.** "Open Space Special Service District" shall mean the special service district specifically created by Highland City to provide for the maintenance and care of all dedicated open space within the Subdivision.

**Section 1.17** "Property" shall mean all the real property described above, consisting of all Lots of the Subdivision.

**Section 1.18** "Public View" shall mean as viewed generally from the public right-of-way.

**Section 1.19** "Residence" shall mean a single building designed and constructed for residential occupancy, to be occupied by a Family.

**Section 1.20** "Street" shall mean all streets dedicated to Highland City.

**Section 1.21** "Subdivision" shall mean the parcel of real property known as Dry Creek Bench Subdivision as referred to previously in the recitals of this document.

## ARTICLE II PURPOSE

**Section 2.1 Purpose of Declaration.** The purpose of this Declaration is to insure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone of the Subdivision, and thereby to secure to each Owner the full benefit, enjoyment and value of their home, with no greater restriction on the free and undisturbed use of their Lot than is necessary to insure the same advantages to other Owners.

## ARTICLE III GENERAL RESTRICTIONS AND REQUIREMENTS

**Section 3.1 Land Use and Building Type.** Each Lot shall be used exclusively for the construction and occupancy of a Residence to be occupied by a Family, related Landscaping and other incidental and related Improvements. Except as may be specifically provided in Article III hereof, no building shall be erected, altered, placed or permitted to remain on any Lot other than: (a) one single Family dwelling with enclosed, attached garage for either two or three cars as specified in Section 3.3 of this Declaration, and; (b) One other detached building which is architecturally compatible with the residence and has been approved by the Committee in writing. Any additional detached buildings must be approved in writing by the Committee, and will only be approved after the Owner has demonstrated the reasonable need for any additional buildings and that the Committee's approval of any additional building will not create a problem for any other Owners in the Subdivision.

**Section 3.2 Subdivision of Lot.** No Lot may be divided, subdivided or separated into smaller parcels unless approved in writing by (a) the Committee, which approval shall be granted, if at all, in accordance with this Declaration, and; (b) Highland City.

**Section 3.3 Residence Size and Garage Specifications.** No structure shall be constructed upon any Lot unless and until the final plans and specifications for such structure have been submitted to and approved by the Committee. On **Category A Lots:** (a) no single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 1,850 square feet or greater; (b) no multi-story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is 1,500 square feet or greater. Garages for all Residences on Category A Lots shall be enclosed, large enough for three cars, and situated so as to utilize a side or rear facing entrance. On **Category B Lots:** (a) No single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 1,700 square feet or greater; (b) no multi-story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is a total of 1,350 square feet or greater. Garages for all Residences on Category B Lots shall be enclosed, large enough for at least two cars, and situated so as to utilize a side or rear facing entrance when feasible, unless it is a corner lot, in which case, a side or rear facing garage entrance will be required. In the case of a front entry garage, no more than two (2) garage doors shall face the street. On **Category C Lots:** (a) no single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 1,400 square feet or greater; (b) no multi-story Residence shall be constructed, altered, placed or permitted to

remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is 1,200 square feet or greater. Garages for all Residences on Category C Lots shall be enclosed, large enough for at least 2 cars, and encouraged to be situated so as to utilize a side or rear facing entrance when feasible, unless it is a corner lot, in which case, a side or rear facing garage entrance will be required. In the case of a front entry garage, no more than two (2) garage doors shall face the street.

The Architectural Control Committee may approve: (a) a home of a smaller size, (b) an attached garage for two cars, or (c) a front entry access to the attached garage, or other deviations from the design standards established in this Declaration only after considering all relevant factors and it is determined to be clearly unreasonable, under the given circumstances, to require compliance with the established design standards.

**Section 3.4 Siding and Trim Characteristics.** The materials that clad the exterior walls of the Residence shall be non-combustible, or fire-retardant natural materials that blend with and are compatible with the natural landscape. The textures and patterns of siding material can affect the perceived scale and mass of the Residence.

- (a) **Materials:** Major wall surfaces should express their mass by being finished in plaster, stucco, natural stone, or brick. Round or semi-round log siding is prohibited. Full-log structural sidewalls are not permitted. Neither plaster nor stone shall be used as an infill (ie. "Tudor" or "half-timbered"). Heavy materials should be used below light materials if more than one siding material is exposed on the same surface. No more than three permitted siding materials may be used on any one building facade, and no more than four on any one Residence. The following siding materials are the only siding materials permitted. The use of certain materials is limited to a percentage of the total siding materials on the Residence.

<u>Material</u>	<u>Limitation of Use</u>
Manufactured sidings, boards, or shingles of weather-resistant natural wood, tight-knot grade or better. Vinyl, aluminum, and grooved plywood are not permitted.	50%
Plaster, including stucco, Dri-vit, and similar systems, which shall be seamless except for expansion joints.	40%
Brick, Natural Stone Unfinished concrete or concrete block is not permitted.	No limitation

- (b) **Trim Materials:** The use of skirt boards, water tables, banding, battens, headers, sills, casings and other trim will enrich the exterior of a Residence and is required. Permitted trim materials are limited to treated, fire-retardant, better quality cedar, cypress, redwood, fir, spruce, pine, or durable weather resistant hardwoods such as teak and mahogany. When placed with or against siding or boards, the trim material shall be of the same wood variety as the adjoining siding material, except for casings on windows and doors provided by the manufacturer of the window or door.

- (c) Colors and Finishes: Wood sidings and shingles shall be finished in colors selected generally from the "earth-tones" to be approved by the Committee. Siding shall not be painted, but shall be stained with semi-transparent or semi-solid stains that permit the natural grain and textures of the wood materials to show through. Stucco and similar permitted materials shall be blended or finished in warm, off-white, light gray or light tan colors, and applied in a manner that does not obscure the natural texture or "tooth" of the material. Stone shall be finished only with a clear water repellent to prevent infiltration or staining of the Residence by oxidation. Sharply contrasting trim colors are prohibited on any portion of the Residence. Trim shall be finished to match or mildly contrast with any adjacent wood siding materials, or any rock or stucco siding, provided that such colors are approved by the Committee, which shall have the exclusive right to accept or reject all proposed exterior color schemes.

Given the desired blend of compatible exterior materials and colors, monochromatic exterior schemes are prohibited. The use of sharply contrasting colors, or light colors against dark colors, is also prohibited.

- (d) Siding Appurtenances: Flashing and other accessories shall be finished to match the siding and be made unobtrusive. Gable vents shall be finished to match the siding and shall be rectangular, or if triangular or trapezoidal, shall match the slope of the adjacent roof slope. Vents, stacks, meter troughs, meters, junction boxes and other devices which penetrate or mount upon exterior walls must be concealed from the Public View, and shall be finished to match the surrounding or underlying surface, except for approved exterior light fixtures or lighting devices.

**Section 3.5 Windows.** Window openings should be sheltered, and arranged and combined in a manner to reference the indigenous architecture of the community.

- (a) Design: Where large glazed areas are desired, windows should be grouped together. When in the Public View, the use of single glass surfaces (lites) of over twenty (20) square feet is strongly discouraged, and no single lite on any Residence shall exceed fifty (50) square feet. A grouping of windows, each separated by trim, mullions, or siding material, is preferable to windows attached jamb-to-jamb in a strip or gang. Windows shall be rectilinear in shape, although trapezoidal forms are allowed when the top leg is parallel to the roof slope above, and other legs are vertical and the base horizontal. Free-standing, round-topped, quarter-rounded, octagonal, elliptical, and similar curvilinear windows are prohibited. Any half-round, constant radius windows, incremental to a Palladian window assembly, and consisting of no more than three (3) glazed elements, of which the round-top is the central and highest element, all trimmed as a single unit, is permitted. Glass block may not be used within the Public View.
- (b) Material: Windows must be constructed of either vinyl, wood, or clad wood. All windows must be double or triple glazed. The use of non-wood snap-in or artificial muntin bars is discouraged. The use of true divided lites or wood, full-sectioned applied muntins is encouraged and will enrich the appearance of large glazed areas.

- (c) **Colors and Finishes:** Windows shall be finished in an approved color to match or mildly contrast with their adjoining trim. No reflective glazing is permitted, and the use of opaque tints, and films to the exterior of clear glass is prohibited.

**Section 3.6 Exterior Doors.** Door openings should be protected by overhanging eaves and otherwise located to provide shelter from weather. When adjacent, doors and windows shall have matching head heights, and when grouped together, doors should be of identical size and type. Doors shall be rectangular in shape and constructed and glazed to the same standards as the windows, as described above. Doors shall be finished in a color approved by the Committee to match the trim or to mildly contrast with trim and siding colors.

**Section 3.7 Garage Doors.** Garage doors may vary in height but shall match the trim details of any other doors and windows on the same wall surface or within four (4) horizontal feet on the same elevations in the Public View. Adjacent garage doors may vary in width but shall otherwise be identical. Surfaces in the Public View are encouraged to be solid wood or wood veneer. All garage doors must be finished in a color to match or mildly contrast with adjacent trim and siding.

**Section 3.8 Foundation.** No foundations may be exposed more than eight (8) inches above the finished grade. Foundations that extend above that height must be covered with an approved siding material.

**Section 3.9 Parking Areas.** Each Residence shall include a garage for at least two vehicles. Residences may garage more than two vehicles, provided that no more than three garage doors be ganged together when in the Public View. Each Residence must also provide paved driveway parking for two vehicles. No on-street parking is permitted. Parking areas may not be used for the storage or parking of boats, campers, motor homes or any other recreational vehicles. All such items must be removed from the Public View in accordance with the provisions of Section 3.22 of this document.

**Section 3.10 Driveways, Walkways and Other Paving.** Whenever possible, the construction of driveways and walks shall conform to natural grade. Necessary cuts and fills shall conform to good design practices and blend with or match natural grades in a rounded and gentle manner, with no side slopes steeper than one foot of vertical rise in two feet of horizontal run. All paved surfaces shall have an appearance and scale consistent with the community. Unless specifically approved by the committee, no driveway surface shall exceed twenty (20) feet in width or 12% in slope, and whenever possible and practical, the first twenty (20) feet in from the roadway shall not exceed a 5 % slope.

**Section 3.11 Roof Characteristics.** The following roof characteristic restrictions shall apply:

- (a) **Roof Types:** Double-pitched roofs, hip roofs, and partial hip roofs are permitted. Shed roofs are only permitted if they are smaller, secondary roof forms attached and terminating with their ridge or highest point in continuous contact with a major building form. Mansard roofs, A-frames, gambrel roofs, domes and curvilinear roof elements are prohibited. Flat roofs are permissible only when not visible from the Public View, and are limited to a maximum size of 5% of the Residence's Floor Area.
- (b) **Roof Pitch and Roof Planes:** Roof pitches shall be not less than 5 in 12 pitch, and should generally follow or respond to the underlying grade, with steeper pitches used on steeper terrain, and flatter pitches used on flatter terrain. All roof planes descending from a

common ridge or connected ridge shall be of the same pitch, regardless of length. A second roof pitch on any one Residence may be used only for secondary roof forms such as permitted sheds or dormers. Only hip roofed or double-pitched roof dormers are permitted. Two or more dormers placed above and well-apart from the eave line on the same roof surface shall be spaced no closer than 0.75 times the width of the largest such dormer unless their fascias intersect, in which case they shall be considered as a continuous or repetitive dormer. Except for permitted flat roofs, all roofs shall overhang exterior walls by a minimum of 24 inches..

- (c) Roof Novelties: No turrets, towers or other thematic decorative elements are permitted, other than as specifically approved by the Committee, and no complex, multi-faceted roof planes twisting to conform to irregular building shapes are permitted, unless specifically approved by the Committee as part of the overall design of the Residence.
- (d) Ridge Line Alignment: All roofs are intended to be seen as part of the backdrop of the sloping hillside site rather than objects to be silhouetted against the off-site background or horizon. Design of each Residence shall include an effort to align the predominant horizontal lines of the roof, the primary ridge line, and its eaves or drip line, reasonably parallel to the prevailing site contours. Such prioritized ridge line alignment, reinforced by creative use of smaller, non-aligned roof planes, will create an ordered visual diversity that responds to dominant patterns of the natural grade. A primary or dominant ridge line that runs perpendicular to the contour lines of the Lot will not be approved.
- (e) Roof Materials: Roof materials should be selected to minimize their off-site visual impacts and to not contrast with the surrounding natural landscape. The only permitted roofing materials are those listed as follows:
- Metals of copper, zinc, or terne or steel
  - Fire retardant wood shingles or medium shakes with no more than ten (10) inches to the weather
  - Architectural asphalt shingles weighing more than 270 pounds per 100 square feet
  - Cement base tile or slate
  - Membrane or composition roofing on a permitted flat roof
- (f) Roof Colors: All roofing colors shall be specifically approved
- (g) Fascia and Roof Trim: Fascia and roof trim shall be sized proportionate to the roof and building mass, and shall not be less than ten (10) inches wide. The use of compound or build up trim adds detail to the roof element and is encouraged. Fascia and roof trim shall be constructed of an approved siding material, and finished in colors that are approved by the Committee to match or mildly contrast with adjacent siding or roof material. Stucco is not permitted as a fascia or roof trim material. No vinyl soffits are permitted. Select aluminum products will be permitted as a soffit material only with specific Committee approval.



- (h) Roof Metals and Appurtenances: Each vent, stack, gutter, flashing, snow diverter, furnace flue, trim and metal work shall match the color of the surface to which it is attached or from which it projects. Vents, stacks, flues and the like must be located out of the Public View or confined within a chimney structure or cap if within the Public View, and combined to minimize roof penetrations. No mechanical equipment, exhaust fans, coolers, or attic ventilation equipment shall protrude more than 6 inches from the roof or in anyway interrupt the roof surface if within the Public View. Skylights are permitted when mounted close to and consistent with the underlying roof pitch. Domed or barrel-vaulted skylights are prohibited. Solar collectors shall lie flat on the roof surface, with attention to minimizing glare and reflection to the Public View, and to integrate such devices into the form and plane of the roof. Greenhouse or conservatory roofs shall match the plane and are not allowed where in the Public View. All visible parts of such roof appurtenances except glazing, shall match the color of the underlying or adjacent roof surface.

**Section 3.12 Chimneys.** Chimneys must be constructed of or clad in an approved siding material. No exposed metal flues or visible metal parts, other than flashing are permitted. If more than one chimney is used on a Residence, then each must be of the same design, finish and appearance, and proportion, although sizes may differ. Whenever possible, chimneys shall contain and conceal the Residence's vent stacks, furnace flues and other permitted roof penetrations.

**Section 3.13 Maximum Heights and Lengths.**

- (a) Maximum Ridge Line: The maximum height of a dwelling's ridge line shall be thirty (30) feet. No more than fifty (50) percent of the Residence's total ridge line measurement shall be at or within three (3) feet of this height.
- (b) Maximum Upper Floor Area: The area of a top or intermediate floor template shall not exceed seventy (70) percent of area of the floor template directly beneath it.
- (c) Loft Space: Loft space above a garage may be developed as living space provided that, without approval of the Committee, such development shall not result in raising of the garage exterior wall height or eave line above that necessary to contain the actual garage area volume.
- (d) Maximum Exterior Wall Length: No single or continuous exterior wall plane shall measure more than thirty (30) feet in length before a change in depth of at least three (3) feet.
- (e) Maximum Garage Door Wall Length: No single or continuous exterior wall plane containing one or more garage doors shall measure more than twenty-four (24) feet in length before a change in depth of at least three (3) feet.
- (f) Maximum Exterior Wall Height: No exterior wall may exceed twenty-six (26) feet in height when measured from the eave overhang line to the lesser in elevations of either natural grade or finished grade.

**Section 3.14 Building Location.** No walls or foundation of a Residence or other structure shall be located on any Lot nearer to the front Lot line or nearer to the side and rear Lot lines than the minimum building set-backs described in this Declaration. Notwithstanding any zoning requirements to the contrary, except where special, written approval is first given by the Committee, each Residence on **Category A Lots** shall be located (a) at least thirty-five (35) feet from the front boundary line of such Lot along the Street; (b) at least thirty (30) feet from the rear boundary line; and (c) at least fifteen (15) feet from each side boundary of Lot. Each Residence on **Category B Lots** shall be located (a) at least thirty (30) feet from the front boundary line of such Lot along the Street; (b) at least fifteen (15) feet from the rear boundary line; and (c) at least twelve and one half (12.5) feet from each side boundary of Lot. Each Residence on **Category C Lots** shall be located (a) at least twenty-five (25) feet from the front boundary line of such Lot along the Street; (b) at least fifteen (15) feet from the rear boundary line; and (c) at least ten (10) feet from each side boundary of Lot. Any out-buildings constructed on Lots 1, 2, 3, 4, 5, 6, or 7 must be at least twenty-five (25) feet from the rear boundary line of that Lot. Each Owner will be responsible for developing a design of their proposed Residence which will present to the street fronting their Lot an elevation designed in such a way that it will be commonly perceived as the "front elevation" of the Residence, and which in the sole opinion of the Committee is complementary with the other homes in the Subdivision. The site plan showing the proposed location of all Improvements to be constructed upon a Lot shall be submitted to and approved by the Committee prior to the commencement of any construction.

**Section 3.15 Construction and Landscaping Time Restrictions.** It is understood that the Lot owner shall not be required to build any Improvements on their Lot. However, Lot Owners will be obligated to maintain their Property in a reasonable state of appearance, which shall be deemed to include the elimination or control of weed growth on the Lot and any other factor which may be considered to be noxious or to create a nuisance.

The exterior constructions of all Residences or other structures shall be completed within a period of one (1) year following commencement of construction. The front and side yards of each Lot shall be landscaped with at least a sprinkling system and grass lawn, as appropriate, within a period of nine (9) months following completion of construction or occupancy of each Residence, whichever shall first occur. All front yard landscaping shall include all lot boundaries fronting on any dedicated roads. The completion of the front and side yard landscaping, which must include trees, shrubs, and garden areas, and the rear yard landscaping, which shall require a sprinkling system and grass lawn, as appropriate, must be completed within a period of eighteen (18) months following completion of construction or occupancy of each Residence, whichever shall first occur. Each Lot Owner shall be responsible for landscaping their Lot in a manner that will complement the natural environment and landscaping of the other Residences in the Subdivision and not detract from the quality or appearance of the community. The Committee shall have the responsibility to review the landscaping of each Lot and advise any Owner of deficiencies which detract from the objectives and intentions of this Declaration, and to initiate actions to require further landscaping improvements to be made.

The time periods set forth in this paragraph may be extended by that period of time during which access to the Lot is restricted by reason of weather, seasonal conditions and/or soil conditions which would prohibit such performance.

**Section 3.16 Utility Lines.** All utility lines shall be installed underground. Connection fees shall be paid by each individual Owner. In the event that the Declarant has paid for any utility

connection fees associated with any Lot, the Owner will be obligated to reimburse the Declarant for fees paid.

**Section 3.17 Governmental Regulations.** Activities within the Subdivision must be in compliance with all applicable governmental rules, regulations, and ordinances of Highland City, Utah County or other local or federal Governmental Agencies. Specifically, Owners are required to comply with all regulations related to wetlands, or environmental hazards, and any others which may be applicable. When a subject is covered both by this Declaration and a governmental rule, restriction or ordinance, the more restrictive requirements shall be met.

**Section 3.18 Community Open Space.** The Subdivision was approved by Highland City under the conditions and restrictions associated with the Open Space Subdivision Option of the Highland City Development Code. Accordingly, the city awarded an Open Space Density Bonus which was based on the quantity and quality of the Subdivision open space which is designated on the Map as Neighborhood Park North, Neighborhood Park South, and Neighborhood Park West, which in total contain an area of approximately 437,782.6 square feet or 10.05 acres. The Open Space, as designated on the Map, must be maintained in perpetuity as open space, and continue to be maintained in accordance with the design, standards and other requirements as approved by Highland City at the time of the final Map approval. The Open Space has been created for the benefit of all Owners, as well as the general public and shall be maintained in such a manner as to provide all Owners and the general public with unimpaired access and enjoyment of these areas. It is anticipated that the ownership of the Open Space will be conveyed to Highland City and the maintenance of the Open Space will be the responsibility of Highland City in accordance with Section 3.19 of this Declaration. However, the costs and burdens of maintenance and insurance of the Open Space shall be the exclusive responsibility of the Owners, and in the event that Highland City fails to take title to the Open Space, and therefore does not assume responsibility for the maintenance of the same, then the Open Space shall be conveyed to the Association and the Association shall uniformly levy such fees against all owners as are necessary for the maintenance and preservation of the Open Space.

**Section 3.19 Open Space Special Service District.** Upon Highland City's creation of an Open Space Special Service District, all Lots within Dry Creek Bench Subdivision shall be subject to the Highland City "Open Space Special Service District". Each Lot shall be liable for a monthly fee to be assessed by the District and collected by the City on a monthly utility bill. The District will be responsible for the maintenance and care of all open space dedicated by Dry Creek Bench Subdivision as Open Space. This fee will be adjusted annually based on the maintenance needs of the District.

**Section 3.20 Fire Protection.** Each Residence shall have installed surrounding it a sprinkler system for fire protection covering the total area of the lot and the area of the Residence, which sprinkler system may also be used for irrigation. All residents shall strictly comply with all state and city ordinances pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Exterior fires must be contained within appropriate receptacles and in compliance with the applicable government agency.

**Section 3.21 Nuisances, Unreasonable Annoyance and Noxious Activities.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the Subdivision, or any Lot or Owner. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the Subdivision.

**Section 3.22 Storage of Vehicles and Materials.** No truck larger than one (1) ton, trailer, construction equipment, or recreational vehicle, including but not limited to campers, boats, motor homes, off-road vehicles, motorcycles and similar equipment, or passenger trucks or cars not used on a regular basis and which are not reasonably operational and in a reasonable state of repair, (hereinafter collectively referred to as the "Equipment or Vehicles") shall be permitted to be parked overnight or for any period of time longer than seventy-two (72) hours, upon any portion of the Streets, or on any Lot, driveway or off-street parking area of a Lot in front of the front set-back line of the Residence. The Equipment or Vehicles including recreational vehicles shall be allowed to remain for longer periods on the Property only if housed in a garage, or other detached building, or parking area located behind the front set-back line of the Residence. Appropriate and reasonable screening for any such parking area behind the front set-back line of the Residence shall be required by the Committee at the Committee's sole discretion and at the sole expense of the Owner. Failure to comply with the provisions hereof shall constitute a nuisance. No storage of articles, materials, Equipment or Vehicles of any nature is permitted in the front portion of any Lot (in front of the front set-back line of the Residence), except that a reasonable number of regularly used passenger cars, in proper working order, may be parked on driveway or off-street parking areas.

**Section 3.23 Rubbish and Unsightly Debris, Garbage, Etc.** Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become so physically encumbered with rubbish, unsightly debris, garbage, equipment, weed growth, or other things or materials so as to constitute an eyesore as reasonably determined by the Association. Within ten (10) days of receipt of written notification by the Association of such failure, the Owner shall be responsible to make the appropriate corrections.

**Section 3.24 Temporary Structures, Etc.** No structure of a temporary character, or trailer, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence either temporarily or permanently, unless first expressly approved in writing by the Committee.

**Section 3.25 No Annoying Lights.** All outdoor lighting devices shall be described on the construction plans, and are subject to approval by the Committee. The seasonal use of temporary lighting devices to illuminate trees, shrubs and holiday decorations is permitted for a single term of no more than forty (40) consecutive days per year. All outdoor lighting shall be installed to aim downward and to limit the field of light to the confines of the Lot on which it is installed. The illumination of a Residence or structure with silhouette lighting, or with floor or overall illumination, is expressly prohibited. The flood lighting of vegetation, tennis courts or similar sports courts or other improvements is also prohibited, except in limited periods of use. These restrictions shall not apply to street lighting maintained by the City.

**Section 3.26 Non-Residential Uses Prohibited.** No part of the Property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes; provided however, that professional and administrative occupations may be carried on within the Residence so long as there exists no meaningful external evidence thereof. The Declarant, or its successors or assigns may use the Property for a model home site, display and sales office during the construction and sales period.

**Section 3.27 Signs.** No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without express written approval having been first obtained from the Association; provided, however, that the

restrictions of this paragraph shall not apply to any sign or notice seven (7) square feet or smaller in size which states that the premises are for rent or sale. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Lots.

**Section 3.28 Antennas.** All television and radio antennas shall be completely erected, constructed and placed within the enclosed area of the Residence or garage on the Lot. Satellite dishes or other electronic reception devices shall be located and screened so as to not be visible from the Street or an adjacent Lot. Exceptions must first be expressly approved in writing by the Committee.

**Section 3.29 Animals.** Domestic animals may be maintained by the Lot owners, provided that all animals must be contained in a containment area on the Owner's Property with the proper fencing and that such contained areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. The species and number of each species must be approved by the Committee; and furthermore, no animals shall be maintained in areas closer than fifty (50) feet to any Residence built on an adjoining Lot. Commercial raising of animals or pets will not be permitted, except with the specific permission of the Committee in writing.

Owners shall be responsible for all damage or loss incurred by other Lot Owners or their invitee caused by animals they own. Owners will be responsible for maintaining control over animals they own at all times if such animals are taken out of the containment area. The enclosure constituting the containment area must be maintained such that the animal cannot escape therefrom. In no case may any household pet or other animal kept at or around the Residence be allowed to create a nuisance for neighboring Lot Owners due to noise, or otherwise.

**Section 3.30 Hazardous Materials and Drilling Operations.** No Lot Owner shall be allowed to use, generate, place, store, release, or otherwise dispose of any Hazardous Materials on any Lot or within any Improvements on the Lot, except in strict accordance with all Environmental Laws. In the event of a breach of the foregoing, the Owner will undertake remediation or removal in accordance with all Environmental Laws. In addition, the Owner will indemnify, defend, and hold the Declarant, Declarant's affiliates, and all other Owners harmless against and reimburse any damaged party for all Hazardous Materials Liabilities asserted against or incurred by them as a result of a breach of an Owner's obligations under this Section. The term "Hazardous Materials" as used herein means any substance (a) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Environmental law; (b) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous; (c) which is or becomes regulated by any Governmental Authority; or (d) the presence of which causes or threatens to cause a nuisance to any Owner in the Subdivision. The term "Environmental Laws" refers to all laws relating to (a) emissions, discharges, spills, releases or threatened releases of Hazardous Materials onto land or into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, or septic systems; (b) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Materials; or (c) the protection of human health or the environment. The term "Hazardous Materials Liabilities" as used herein means all claims, damages, losses, forfeitures, expenses, or liabilities arising from or caused in whole or in part, directly or indirectly, by a breach by an Owner of the provision of this Section, including, without limitation, all costs of defense (including reasonable attorneys' fees and other costs of litigation), all consultants' fees, and all costs of investigation, repair, remediation, restoration, cleanup, detoxification or

decontamination, and/or preparation and implementation of closure of any remediation action or other required plan.

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

**Section 3.31 Fences and Walls, Hedges and Screens.** No fences, walls, or non-living screens shall be constructed on any Lot without prior written approval having been obtained from the Committee. Front yard fences, walls and/or non-living screens are prohibited entirely. No hedges, shrubs or other living Landscaping or screen of any kind shall be erected so as to constitute a hazard for vehicular traffic, pedestrians, children, etc., particularly near the entrances to (a) driveway(s) onto a Lot. Any solid hedge within twenty (20) feet of the front Lot line shall be trimmed to a maximum height of three (3) feet. No back yard fence shall extend further along the Lot line, or otherwise toward the front of the Lot than even with the front setback of the Residence. Chain link fencing is prohibited.

Rear Lot fencing installed on the South boundaries of Lots 1, 2, 3, 4, 5, 6, and 7 shall not exceed 4 feet in height.

The Declarant will install fencing along the East boundary of Dry Creek Bench Subdivision Lots 12, 18, 19, 20, 21, and 22 at the time of construction of the Subdivision. The installed fence must meet with the approval of the owners of lots 52, 53, 60, and 61 of Dry Creek Subdivision Phase 2. Owners of a Lot on which the fencing is installed shall take title and possession to their Lot subject to the following restrictions: (a) the installed fencing must remain in place, and be unaltered or modified by the Lot Owner, unless they have the prior written approval of all adjacent Lot Owners in Dry Creek Subdivision Phase 2, and (b) the Lot Owner shall be required to maintain the installed fencing in a reasonable condition.

In the event that the Declarant has paid for the installation of any fencing associated with any Lot, the Owner will be obligated to reimburse the Declarant for the cost of fencing which has been installed.

Careful and sensitive design should generally eliminate the need for retaining walls. In those situations where a retaining wall is necessary, it shall be constructed of treated landscape timbers, natural stone, or concrete faced with natural stone or some other architectural finish. No retaining wall face shall exceed 6 feet in exposed height, and any series of retaining walls on the same slope shall be separated by a horizontal distance of at least four (4) feet of natural or finished grade of no more than 15% slope. Retaining walls must be shown on site plan submitted to the Committee.

**Section 3.32. Natural Landscaping.** By this Declaration, Declarant intends to preserve the natural rural atmosphere and beauty of the landscape of the entire Subdivision in order to enhance the country residential environment of the Subdivision. To that end, (a) absolutely no removal of trees or shrubs or other alteration of the natural environment shall be allowed, and (b) any currently-existing, healthy trees and shrubs may be removed from each Lot only to the extent absolutely necessary for clearing driveways, excavation for Residence foundations, construction of other permitted structures, and for lawn, gardens, patios or other approved amenities. Although the foregoing restriction shall not prohibit any Owner from removing any dead, dying or diseased trees, shrubs, or plants from the Owner's

Lot, promptly upon any such removal the Owner shall replant the area affected with substitute, native trees, shrubs and plants characteristic of the region.

Following the construction of a Residence on a Lot, the Lot shall be landscaped as provided in section 3.15 above. The landscape plan for each Lot shall incorporate a minimum of twelve (12) trees for each one-half acre of area. Existing natural foliage may be considered by the Committee in meeting this requirement as landscaping plans are submitted for review.

Owners must use reasonable care and the Committee shall have the authority to require that all orchards, gardens, etc., within the Subdivision, are maintained in such a manner as to not constitute a nuisance or create a problem for other Owners as addressed elsewhere in this Declaration. Approved landscaping shall cover the entire Lot. The use of sodded landscaping berms and trees is encouraged in front yard landscaping. However, those portions of rear or side yards which are located on or within natural, wooded hillsides or areas may be maintained with the natural vegetation and trees, consistent with the stated spirit and intent of this Declaration. Each Lot shall be landscaped and maintained in such a manner so as to prevent any erosion or excess drainage thereof onto adjacent streets or adjoining property.

**Section 3.33 Environmental Concerns.** If required by Highland City or the Committee, all site plans submitted in accordance with Section 5.2 hereof shall address soils, seismic conditions, revegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the site, including cuts and fills.

**Section 3.34 Deviations.** Deviations from the standards set forth in this Declaration will be allowed only upon written approval by the Committee for good cause shown.

**Section 3.35 Plan Repetition.** No Plan for a Residence shall be repeated within the Subdivision.

Care should be given that each Residence complement those around it, and not detract in design, quality or appearance. All final decisions with respect to these enumerated standards and their application to a particular proposed structure in the Subdivision shall be made by the Committee, in their sole discretion. The Committee shall have the right to make exception for materials and designs which are in keeping with the objectives and intentions of this Declaration, but are not specifically identified in Article III

## ARTICLE IV LIABILITY, INSURANCE, INDEMNIFICATION

**Section 4.1 Release of Liability; Insurance; Indemnification.** Each Owner is hereby put on notice that North Bench Irrigation Company, ("North Bench") owns and operates an open irrigation ditch know as the "Bull Ditch" (the "Ditch") which crosses the Subdivision in the south east portion of the Neighborhood Park South. Owners of Lots in the Subdivision, for themselves and their successors, assigns, invitees, licensees, and all other parties under their influence or control, hereby completely and irrevocably release North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all liability in connection with any injury or death to any person(s), or any flooding or other damages to real

property, arising from, attributable to, or in any way associated with the Ditch and the Open Space. Further, each Lot Owner irrevocably shall indemnify and hold harmless, North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all damages, claims, actions, or proceedings, (in law or equity), of whatsoever kind or nature (including attorney's fees) arising from, attributable to, or in any way associated with the Ditch and the Open Space. The foregoing release and indemnification shall be irrevocable, shall constitute a covenant running with each of the Lots, and shall survive any termination (for any reason whatsoever) of this Declaration.

In addition to the release and indemnification obligations incumbent on each and every Lot Owner pursuant hereto, promptly upon Declarant's conveyance to him of fee title, each and every Owner of the Subdivision Lots agrees to execute, deliver and cause to be recorded, a written agreement in such form as Declarant may specify to accomplish the following purposes:

(a) Release. The owners of all Lots in the Subdivision, for themselves and all other residents of their respective Lots, shall confirm that each such Owner completely and irrevocably releases and agrees to indemnify and hold harmless North Bench, Highland City and the Declarant, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all liability in connection with any injury or death to any person(s), or any damage to property, arising from, attributable to, or in any way associated with the Ditch, or the Open Space.

(b) Insurance. The Owners shall irrevocably covenant and agree to purchase and maintain in continuous, uninterrupted effect a liability insurance policy (the "**Policy**") in the amount of at least \$1,000,000 combined single limit (or such greater amount of coverage as Declarant and/or the Association reasonably may designate from time to time) covering each Lot including any part of an Open Space and naming North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., as additional insureds.

The Policy shall be issued by an insurer duly qualified in the state of Utah; shall not have a deductible greater than \$1,000.00 per occurrence; shall provide broad-form coverage for death, injuries and damages of all types (including, without limitation, flooding) to persons or property arising from, attributable to, or in any way associated with the Ditch or the Open Space in the Subdivision; and shall not be decreased or terminated without at least ten (10) days prior written notice to North Bench, Highland City, Declarant and the Association. Each such Lot Owner shall provide certificates evidencing the existence of such insurance to North Bench, Highland City, Declarant and/or the Association upon written request from time to time. The Association may elect to purchase insurance for and on behalf of all Owners which meets the requirements of this Section. If the Association so elects to acquire insurance on behalf of all Lot Owners the cost for such insurance shall be prorated amongst the Owners with each Lot Owner becoming responsible for 1/72 of the costs. Provided the Association elects to provide the insurance as required in this Section, the individual Lot Owners shall be relieved of the insurance obligations of this Section.

(c) Indemnification. The Owners of Lots shall irrevocably agree to indemnify and hold harmless North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all damages, claims, actions or proceedings (in law or equity), of whatsoever kind or nature (including



attorneys fees) arising from, attributable to, or in any way associated with any uncovered waterway and any other aspect of any Open Space located within the Subdivision.

## ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

**Section 5.1 Committee Appointment and Composition.** The Committee shall originally consist of three seats. For convenience and to facilitate scheduling, two appointed individuals may alternate for one seat. The initial Committee will be appointed by the Declarant, and will likely include practicing architects or design professionals who are not Owners. The Committee shall act by a majority consent of the members of the Committee. The original members of the Committee shall be Tim Furner and Tim Wyatt of The Highland Group, located at 4471 South Highland Drive in Salt Lake City, Utah, and as Declarant, Robert Mendenhall and Richard Mendenhall. Notwithstanding anything to the contrary which may appear elsewhere herein, the number of Committee members shall be determined by the Declarant. The Committee members shall be appointed only by the Declarant or its successor, which, at its option, may temporarily delegate or forever assign such powers and responsibilities or other powers and responsibilities given to it by this Declaration, to an assignee. Such assignment shall be in writing and until such assignment, the assignee shall not possess any powers or responsibilities with respect to such Committee. No member of the Committee shall be liable to any person for decisions made or failure to act in making decisions as a member of said Committee.

**Section 5.2 Scope of Committee Responsibility.** Any plans and specifications for the construction or addition of an Improvement upon a Lot within the Subdivision by the Owner thereof must be submitted to the Committee for approval at least thirty (30) days prior to commencing construction. No Improvement shall be commenced, erected, placed or meaningfully altered on any Lot until the plans, specifications and plot plans showing (a) the location on the Lot and nature of such proposed Improvement; (b) all drives, walkways, patios, barbecues, outbuildings, swimming pools, tennis or other sport courts and similar Improvements, the dimensions of all such Improvements and distances between the proposed Improvement and the Lot boundaries and other Improvements on the Lot; (c) elevation of sewer as it relates to Residence elevation; (d) finish grading plans; (e) complete set of architectural documents; and (f) complete set of all exterior colors in the form of samples or color chips, with detailed information as to the location of the color and types of all exterior building materials, have been submitted to and specifically approved in writing by the Committee. In making its determination, the Committee will use the specific standards stated herein as guidelines, but final approval of the plan or any design element thereof, shall be at the sole discretion of the Committee. They may consider such factors as (but not limited to) the quality of workmanship and materials, design, harmony of external design with existing project structures in the Subdivision, location with respect to topography and finish grade elevation, preservation and enhancement of the natural beauty of the area, and safety. Any subsequent changes, Improvements, or alterations in such plans must be submitted to the Committee for written approval. Some or all of the requirements of this Section may be waived by the Committee, in the Committee's sole discretion, upon request of the Owner, with respect to the Committee's consideration of the approval of a particular Improvement. The Committee expressly reserves the right to wholly reject plans which in its sole and exclusive judgment are determined to be inconsistent with the stated intent or explicit requirements of the architectural design standards as stated in Article 3 of this Declaration. Approval of the Committee shall be sought in the following manner:

- (a) Plans Submitted: Complete plans for the construction of any new Residence must be submitted to the Committee for review and approval. Preliminary plans may be submitted before the expense of final construction drawings is incurred. Plan must be sufficient to show the location on the Lot of the Residence and all other structures to be built with elevations of all buildings, illustrating the nature and location of windows, doors, roof pitches, decks and other exterior elements together with their materials and colors. A complete site plan or landscape plan must also be submitted showing the location of all grading, including existing and proposed contours, driveways, walkways, patios, decks and other hard surfaced or irrigated areas, proposed plantings, and the means of restoring all disturbed areas. In the case of an addition or modification to an existing Residence, the Committee may waive any of the foregoing requirements.
- (b) Plan Review: Within fifteen (15) days from receipt of a complete submittal, the Committee will review the plans and make the determination as to whether the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the Committee will approve the plans. The Committee may also approve the plans subject to specific modifications or conditions. Upon approval, the Committee and the Owner will each sign a copy of the plans, which shall be left with the Committee. Any construction that is not in strict compliance with the approved plans is prohibited.
- (c) Plan Review Fee: The construction plan submittal shall be accompanied by a Plan Review Fee of \$400.00 for each new Residence. In the case of multiple re-submissions for review of a single Residence, additional fees may be required.
- (d) Written Record: The Committee shall maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for the period of time it deems to be reasonable.
- (e) Failure to Act: If the Committee has not approved or rejected any submittal within forty-five (45) days after payment of the review fee and submission of complete plans, the submission is deemed to have been disapproved.

**Section 5.3 Variances.** Variances to the architectural design standards contained in this Declaration may only be granted when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot. No such variance may be granted without the unanimous consent of the Committee.

If, after such plans and specifications have been approved, the Improvements are altered, erected, or maintained upon the Lot otherwise than as approved by the Committee, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the Committee having been obtained as required by this Declaration. After the expiration of one (1) year from the date of completion of any Improvement, said Improvement shall, in favor of purchaser and encumbrances in good faith and for value, be deemed to comply with all of the provisions hereof unless a notice of such non-compliance or non-completion, executed by two or more member(s) of the Committee shall appear of record in the office of the County Recorder, or legal proceeding shall have been instituted to enforce compliance with these provisions. The approval of the Committee of any plans or specifications submitted for approval as herein specified for use on any Lot and/or Residence shall not be deemed to be

a waiver by the Committee of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications submitted for approval as herein provided for use on other Lots or Residences. Upon approval of the Committee acting in accordance with the provision of this Declaration, it shall be conclusively presumed that the location and size of any Improvement does not violate the provisions of this Declaration. Until later published, the address of the Committee may be obtained by contacting Robert L. Mendenhall, 827 W. Meadow Lane, Alpine, Utah, Telephone (801) 756-3983.

**Section 5.4 Termination of Committee.** Upon the first to occur of either (a) the completion of the construction of a Residence and the Landscaping upon each Lot, or (b) the date which shall be five (5) years from the date hereof, the Committee shall automatically cease to exist. Any and all rights, duties and/or responsibilities of the Committee shall at that time automatically become the rights, duties and/or responsibilities of the Association without the necessity of the filing of any amendment to this Declaration or any other action, unless otherwise extended by Declarant.

## ARTICLE VI

### EASEMENTS, HILLSIDE DISTURBANCE AND FLOOD CONTROL, IRRIGATION SYSTEM

**Section 6.1 Utility Easements.** Easements for installations and maintenance of drainage facilities and public utilities are generally reserved over ten (10) feet of the front, rear, and one side of each Lot, and as otherwise identified on the Maps of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Committee may approve a structure within the easements such as a fence, wall, landscaping, driveway or off street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible to maintain.

**Section 6.2 Subdivision Entry Monuments.** As part of the construction of Dry Creek Bench Subdivision, the Declarant may elect to erect subdivision entry monuments. Any such entry monuments shall be erected for the benefit of all the Lot Owners in all the Subdivision. Each of the Lot Owners in the Subdivision shall be responsible for 1/72nd of the maintenance or other related costs of the monuments. The monuments' location shall be determined at a later date, and will be erected only at the discretion of the Declarant.

**Section 6.3 Grading Approval.** All persons erecting or constructing Improvements on any Lot shall comply with the Highland City Ordinances as may require, among other things, that grading and vegetation plans be approved by the Highland City Engineer before building permits are issued.

**Section 6.4 Responsibility for Flood Control.** Construction of appropriate berms, channels, ditches or other flood control facilities on each Lot is the sole responsibility of each Lot Owner and shall be done in accordance with the flood control district plans approved by Highland City and/or Utah County Flood Control if any such plans exist. Such construction shall commence at the time such Lot is

graded or otherwise altered from its natural state. Each Lot owner shall be responsible for storm water, irrigation water, culinary water, or any other surface water of any source which is allowed to drain from their Lot and which may cause damage to other Lots or Open Space within the Subdivision. The design of the improvements on each Lot, meaning buildings as well as landscaping, shall take into consideration the requirements to retain surface water on the Lot to the extent it is reasonably possible.

## ARTICLE VII VIOLATIONS AND POWERS OF ENFORCEMENT

**Section 7.1 The Association's Powers of Enforcement.** Enforcement shall be accomplished by any lawful means, including proceeding at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. In the event a legal action is instituted by the Association to enforce compliance with or due to a breach of any of the provisions of this Declaration, the party found to have violated any provision(s) of this Declaration shall be liable to the prevailing party for the prevailing party's legal costs and expenses, including a reasonable attorney's fee. Notwithstanding the foregoing, no liability of any nature at all shall attach to the Association, or any member thereof, in acting in good faith pursuant to the provisions of this Declaration. If after fourteen (14) day's written notice, an Owner fails to remedy a violation (the "Defaulting Lot Owner"), another Owner and/or the Association may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the cost thereof shall be charged to the Defaulting Lot Owner in which event such costs shall be deemed a special assessment to such Defaulting Lot Owner and shall attach as a lien to the Defaulting Lot Owner's Lot, and shall be subject to levy, enforcement and collection by the other Owner, and/or the Association, in accordance with the assessment lien procedure provided for in this Declaration in this Article VI. Failure to comply with any of the provisions of this Declaration or regulations adopted pursuant thereto shall be grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought and liberally construed to effectuate its purpose. Any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provision or any other provisions hereof.

**Section 7.2 Lien For Assessments.** All sums assessed to an Owner pursuant to this Declaration, together with interest thereon at the legal rate of interest from the date of assessment until paid, before or after judgement, shall be secured by a lien on such Lot and the Improvements thereon, in favor of the Association. To evidence a lien for sums assessed pursuant to this Declaration, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by a duly authorized representative of the Association and shall be recorded in the Office of the County Recorder for Utah County, State of Utah. Such lien may be enforced by sale or foreclosure of the Lot encumbered by the lien at a foreclosure sale conducted by the Association and generally in accordance with the provisions of Utah law applicable to the exercise of powers of sale or foreclosure under deed of trust or mortgages or in any manner permitted by Utah law. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including but not limited to a reasonable attorneys fee and court costs, and such costs and expenses shall be secured by the lien herein provided whether or not same shall be specifically set forth therein.

**Section 7.3 Enforcement by Others.** Additionally and after reasonable notice in writing, an Owner not at the time in default hereunder, the Association, or the Declarant, shall have the option of bringing an action for damages, specific performance, or injunctive relief against any defaulting Owner, and in addition may sue to have enjoined any violation of this Declaration. Any judgment shall include an award of the legal costs and expenses, including a reasonable attorney's fee, entered against the losing party and in favor of the prevailing party. Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure or waiving the lien securing the same.

**Section 7.4 Rights of Entry.** The Association shall have a limited right of entry in and upon all Lots and the exterior of all Residences for the purpose of taking whatever corrective action it deems necessary or proper. Nothing in this Section or Article shall in any manner limit the right of the Owner to exclusive control over the interior of his or her Residence.

**Section 7.5 Committee Authority.** The Committee shall have the right to enforce any applicable provision hereof in the same manner provided to the Association.

## ARTICLE VIII DURATION AND AMENDMENT

**Section 8.1 Duration.** This Declaration shall continue in full force and effect for a period of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded with the County Recorder of Utah County, meeting the requirements of an amendment to this Declaration as set forth in Section 8.2 of this Article. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from membership in the Association as long as this Declaration shall continue in full force and effect.

**Section 8.2 Amendment.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association either in writing or at a duly called meeting for such purpose.

No amendment to this Declaration shall be effective unless approved in writing by the Owners of not less than two thirds (2/3) of the Lots in the Subdivision at the time of such amendment, including Lots which may be owned by the Declarant.

Notwithstanding the foregoing, however, Declarant may at any time amend this Declaration to qualify the Subdivision with lending institutions, and until the close of the escrow established for the sale by Declarant of its last Lot in the Subdivision, Declarant shall have the sole right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. The "close of escrow" shall be deemed to be the date upon which a deed conveying the Lot is recorded.

ARTICLE IX  
MISCELLANEOUS

**Section 9.1 Severability.** Invalidation of any one of these covenants, or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

**Section 9.2 Singular Includes Plural.** Whenever the context of the Declaration requires the same, the singular shall include the plural, and the masculine shall include the feminine.

**Section 9.3 Covenants, Etc. Shall Run With the Land.** All of the limitations, restriction, easements, conditions and covenants herein shall run with the land and shall be binding on and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner and are imposed upon the Property as a servitude in favor of each parcel thereof as the dominant tenement or tenements.

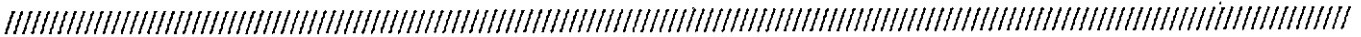
**Section 9.4 Limitation on Liability.** Neither the Declarant, its assignee, delegatee, the Committee or the Association shall be liable to any other person for any action or failure to act hereunder where such action or failure was in good faith.

**Section 9.5 Wildlife Area.** The Property encompasses wildlife areas. Owners should expect that wildlife will be in the area and possibly on their own Lot.

**Section 9.6 Paragraph Headings.** The headings which precede the paragraphs and subparagraphs of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed.

**Section 9.7 Foreclosure.** Should any Mortgage be foreclosed on the Property, then the title acquired by such foreclosure and the person or persons who thereupon and thereafter become the Owner or Owners of such Property, shall be subject to and bound by all the restrictions enumerated herein.

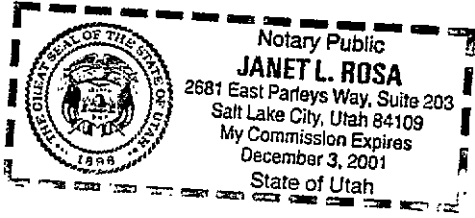
**Section 9.8 Effective Date.** This Declaration and any amendment(s) or supplement(s) thereto shall take effect upon its (their) being filed for record in the Office of the County Recorder of Utah County, Utah.



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

This Declaration dated and executed this 25 day of July, 2000.

**WESTFIELD DEVELOPMENT CORPORATION**, a Utah Corporation



By: [Signature]  
**RICHARD L.K. MENDENHALL**  
President

State of Utah  
County of Utah

On this 25<sup>th</sup> day of July, 2000, before me a Notary Public for the State of Utah, **RICHARD L.K. MENDENHALL**, on behalf of **WESTFIELD DEVELOPMENT CORPORATION**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

[Signature]  
Notary Public for the State of Utah  
Residing at: Salt Lake / Utah  
My Commission expires 12/3/01