

WHEN RECORDED, MAIL TO:

Paul M. Durham, Esq.
DURHAM JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84111

Ent 248305 Bk 0575 Pg 0399-0403
ELIZABETH PARCELL, Recorder
WASATCH COUNTY CORPORATION
2002 SEP 5 9:38am Fee 19.00 MWC
FOR HOMESTEAD THE

**BOUNDARY AGREEMENT AND AMENDMENT TO
GOLF COURSE LICENSE AGREEMENT**

**THIS BOUNDARY AGREEMENT AND AMENDMENT TO GOLF COURSE
LICENSE AGREEMENT** (this "*Agreement*") is entered into as of the 4 day of August, *September*
2002 by and between THE HOMESTEAD GOLF CLUB, INC., a Utah corporation *BRW*
 ("*Homestead*") and LACY ENTERPRISES, LTD. ("*LACY ENTERPRISES*"), a limited *2/12*
 partnership, one of the successors-in-interest to Calvin E. Clark ("*Clark*") under that certain Golf
 Course License Agreement and Lease of Water Shares (the "*License Agreement*"), which was
 entered into between Clark and the Homestead on August 22, 1988.

RECITALS

A. The License Agreement was recorded as entry 147557, at pages 120-138 of Book 205 of the official records of the Wasatch County Recorder, State of Utah, granting to the Homestead the exclusive right and license to construct, operate and maintain a golf course known as "The Homestead Golf Course" upon, over and across a portion of that certain real property (the "*Licensed Property*") which is now owned by Lacy Enterprises, among others, and located in Wasatch County, State of Utah.

B. The original legal description of the Licensed Property is described in the License Agreement (the "*Original Legal Description*"), a portion of which has been acquired by Lacy Enterprises, which is described in Exhibit "A" hereto; and other portions of which have been acquired by other parties, whose property is also subject to the License Agreement.

C. The Homestead and Lacy Enterprises acknowledge that there are gaps, overlaps and other discrepancies in the Original Legal Description which need to be corrected.

D. The Homestead and Lacy Enterprises desire to amend the License Agreement and to confirm, establish, recognize and record a new description of the Licensed Property as the corrected and permanent legal boundary of the Licensed Property as applicable between the Homestead and Lacy Enterprises, and to reaffirm the rights and obligations of Lacy Enterprises, as "licensor," and of the Homestead, as "licensee," under the License Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and in further consideration of the mutual covenants and promises set forth herein, the parties hereto agree as follows:

1. **Corrected Legal Description.** Homestead and Lacy Enterprises hereby agree that the legal description contained in Exhibit "A" (attached hereto and incorporated herein) shall be the correct and permanent legal boundary of the Licensed Property (the "**Corrected Legal Description**") as between the Homestead and Lacy Enterprises from and after the date this Agreement is executed by both parties hereto. They also acknowledge that the Homestead continues to have license rights in other portions of the Original Legal Description with respect to real property owned by other parties who have acquired the title to such other property.

2. **Grant of License Rights to Additional Property / Quit Claim.** Lacy Enterprises hereby confirms that the License Rights of the Homestead under the License Agreement are in full force and effect with respect to the real property described in the Corrected Legal Description. Lacy Enterprises hereby confirms it is a "licensor" under the License Agreement, and confirms and grants to the Homestead all its rights as a "licensee" under the License Agreement with respect to the real property described in the Corrected Legal Description. The Homestead hereby quit claims to Lacy Enterprises all of Homestead's license rights and property interests in any and all real property of Lacy Enterprises which is not located within the Corrected Legal Description. This quit claim of interests by the Homestead shall not, however, be effective with respect to any other portions of the Original Legal Description which are owned by parties other than Lacy Enterprises, as to which the Homestead hereby continues to claim license rights under the License Agreement.

3. **General Provisions.**

a. **Assignments and Successors.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

b. **Attorneys' Fees.** In the event a suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to all other sums provided by law. In the event that both parties prevail on various issues in such suit or action, the prevailing party for purposes of this subparagraph shall be the one entitled to the net award thereof.

c. **Prior Agreements.** This Agreement amends the License Agreement to the extent the License Agreement is inconsistent with the terms and conditions of this

Agreement. In all other respects, the License Agreement shall remain in full force and effect. The License Agreement, as amended by this Agreement, supersedes and replaces all written and oral agreements previously made or existing between the parties hereto or their predecessors.

d. **Disclaimer of Representations, Warranties, and Agreements.** The only representations, agreements and warranties made by Homestead and Lacy Enterprises are those set forth in writing in the License Agreement and this Agreement. No representations, agreements, or warranties, express or implied, not expressly set forth in writing in the License Agreement and/or in this Agreement are made by Homestead to or with Lacy Enterprises.

e. **Covenants Run With the Land.** This Agreement (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Licensed Property or the Lacy Enterprises Property; and (c) shall benefit and be binding upon any person whose title is acquired by voluntary conveyance, judicial foreclosure, trustee=s sale, deed in lieu of foreclosure or otherwise.

f. **Applicable Law.** This Agreement shall be construed, applied and enforced in accordance with the laws of the State of Utah and shall be recorded in the Office of the County Recorder of Wasatch County, Utah.

g. **Changes in Writing.** This Agreement and any of its terms may only be changed, waived, discharged or terminated by a written instrument signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

h. **Waiver.** The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

i. **Authority.** Homestead represents and certifies that it is the sole owner of the rights as licensee of the Licensed Property as provided by the License Agreement, and that it has the power and authority to execute, enter into and perform its obligations as provided in this Agreement. Lacy Enterprises represents and certifies that he is the successor in interest to the rights of licensor under the License Agreement, he is the sole owner of the Lacy Enterprises Property, and that he has the power and authority to execute, enter into and perform his obligations as provided in this Agreement.

j. **Counterparts and Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, binding between the executing parties, and all of which shall together constitute one and the same instrument. Original, facsimile or power of attorney signatures shall be binding upon the executing party.

EXECUTED as of the day and year first above written.

THE HOMESTEAD GOLF CLUB, INC.,
a Utah corporation

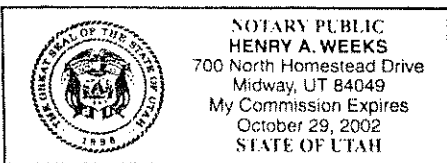
By: Britt Mathwich
Name: Britt Mathwich
Title: President

LACY ENTERPRISES, LTD., a limited partnership

By: Jay S. Fitzgerald
Name: Jay S. Fitzgerald
Title: owner/trustee

STATE OF UTAH)
)ss.
COUNTY OF Wasatch)

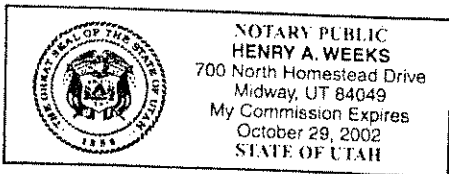
The foregoing instrument was acknowledged before me on the 4th day of ~~August~~ ^{September}, 2002,
by BRITT MATHWICH, the PRESIDENT of THE HOMESTEAD GOLF CLUB, INC.



Henry A. Weeks
Notary Public
Residing at: Midway, Utah

STATE OF Utah)
)ss.
COUNTY OF Wasatch)

The foregoing instrument was acknowledged before me on the 4th day of ~~August~~ ^{September}, 2002,
by JAY S. FITZGERALD, the OWNER/TRUSTEE of LACY ENTERPRISES, LTD., a limited partnership.



Henry A. Weeks
Notary Public
Residing at: Midway, Utah

EXHIBIT A

(Corrected Legal Description of the Licensed Property)

The real property is located in Wasatch County and is more particularly described as follows:

Beginning at a point that is East 1961.74 feet and South 155.10 feet from the West ¼ corner of Section 27 Township 3 South, Range 4 East, Salt Lake Base and Meridian.

Thence S 89°36'14" E 202.27 feet;
Thence S 04°57'18" E 81.66 feet;
Thence S 38°48'10" E 23.05 feet;
Thence S 42°15'00" W 41.10 feet;
Thence S 51°20'00" E 33.25 feet;
Thence S 19°35'46" W 171.80 feet;
Thence S 20°34'36" E 639.61 feet;
Thence S 86°56'00" E 372.86 feet;
Thence S 26°54'27" E 61.67 feet;
Thence S 14°01'50" E 739.44 feet;
Thence S 89°26'11" W 51.59 feet;
Thence S 14°01'50" E 41.09 feet;
Thence S 89°44'16" W 217.46 feet;
Thence N 00°23'46" E 431.40 feet;
Thence N 89°12'00" W 722.77 feet;
Thence N 00°37'10" E 587.44 feet;
Thence S 89°36'14" E 4.63 feet;
Thence N 00°23'46" E 250.00 feet;
Thence N 89°36'14" W 3.70 feet;
Thence N 00°07'28" E 467.38 feet to the point of beginning.

DMI-0210

DMI-0210-2

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of title.

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