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WHEN RECORDED, PLEASE MAIL TO:

The Boyer Company  
Attn: Richard Moffat  
90 South 400 West, Suite 200  
Salt Lake City, Utah 84101

ENT 17243;2003 PG 1 of 13  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2003 Feb 04 3:48 pm FEE 34.00 BY SS  
RECORDED FOR SECURITY TITLE AND ABSTRACT

**DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HIGHLAND HEIGHTS SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR HIGHLAND HEIGHTS SUBDIVISION (this "Declaration") is made and executed this 9<sup>th</sup> day of January 2003, by HIGHLAND HEIGHTS, L.C. ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property in Utah County, Utah, more particularly described on Exhibit A attached hereto (the "Property"). Declarant desires to develop the Property as a subdivision consisting of Highland Heights Subdivision (the "Project").

B. Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of the Project.

**DECLARATION**

NOW, THEREFORE, it is hereby declared that the Project shall be held, sold, conveyed, leased, rented, encumbered, and used subject to the following easements, rights, assessments, liens, charges, covenants, servitudes, restrictions, limitations, conditions, and uses, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title, or interest in the described Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**I. ARCHITECTURAL CONTROL COMMITTEE**

1.1 Purpose. In order to create, maintain and improve the Project as a pleasant and desirable environment, to establish and preserve a harmonious design for the community and to protect and promote the value of the Property, all exterior design, landscaping and changes or alterations to existing use, landscaping and exterior design and development shall be subject to design review by the Architectural Control Committee (the "Committee").

1.2 Creation. The initial Committee will consist of three members to be appointed by Declarant in its sole discretion.

The Architectural Control Committee shall consist of three members, the majority of which shall constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Committee. In the event of death or resignation of any of the members, the surviving members of the Committee shall have full authority to appoint another person to fill the said vacancy. Except for the initial members appointed to the Committee, all members of the Committee must be Owners at the time of their appointment. Should any member move his or her residence outside of the Project, such member shall be disqualified to serve and the Committee shall declare a vacancy. At such time that all lots owned by the Declarant are sold, or sooner at Declarant's sole option, the aforementioned Initial Committee shall be released from responsibility of the Committee. The reorganization of the Committee shall be by a two-thirds (2/3) majority vote of the then current Owners within the Project.

In the event of violation of any of the provisions of this Declaration, the Architectural Control Committee is authorized and empowered to take such action as may be necessary to restrain or enjoin the violations of these codes and covenants. All costs, including attorneys' fees, of such enforcement shall be borne by the Owners who are in violation of this Declaration.

1.3 Powers. The Committee is hereby authorized to perform (or to retain the services of one or more consulting architects, landscape architects, or urban designers, who need not be licensed to practice in the State of Utah, to advise and assist the Committee in performing) the design review functions prescribed in this Declaration and the Association's Bylaws and to carry out the provisions set forth therein.

Each Lot Owner shall be required to pay a \$300 Design Review Fee to the Committee before any home plans shall be reviewed or approved by the Committee. The \$300 fee will be used by the Committee to pay the costs of architects and other professionals retained by the Committee to review home plans. Lot Owners are encouraged to submit preliminary schematic drawings to the Committee as soon as possible in order to avoid unnecessary revisions and delays in construction.

## II. COVENANTS, CONDITIONS AND RESTRICTIONS

2.1 Land Use and Building Type. No Lot shall be used except for the residential purpose. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling not to exceed two (2) stories in height (not counting the basement) and private garage for not less than two (2) vehicles and not more than three (3) vehicles without the prior written approval of the Committee. Carports may not be built. Rambler-style houses shall have a minimum of 1,850 finished square feet of main floor area above finished grade, not counting the basement. Two-story houses shall have a minimum of 1,500 finished square feet of main floor area above finished grade, not counting the basement. Multi-level houses shall have a minimum of 2,000 finished square feet of main floor area above finished grade, not counting the basement (only two levels may be used to determine the 2,000 finished square feet and not all levels). Square footage of any style is excluding garages, porches, verandas, patios, basements, eaves, overhangs, and steps. Any square footage with any portion thereof beneath the top grade of the foundations will not qualify to offset the minimum square footage requirement. Any deviations from this requirement must be approved in writing by the Committee.

2.2 Architectural Control. To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite. Designs shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as a part of the approval process. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, along with a topographical plan showing the location of all improvements, including a detailed landscaping plan, have been approved in writing by the Committee. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade on any Lot, shall be subject to the prior written approval of the Committee. Once approved by the Committee, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the Committee. Subsequent to receiving approval of the Committee and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from Highland City.

No construction of home or landscaping may commence without approval by the Committee of the working drawings.

- (a) Plot Plans to scale showing the entire site, building, garages, walks, drives, fences, lights, and retaining walls, with elevations of the existing and finished grades and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts and elevations of floors from a designated point on the street.
- (b) Detailed floor plans showing dimensions and measurements.
- (c) Detailed elevations, indicating all materials and showing existing and finished grades.
- (d) Detailed sections, cross and longitudinal.
- (e) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc.

Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence.

2.3 Construction Quality, Size, and Cost. The Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations on the acceptability and harmony of the external design of the proposed structures with respect to topography and grade, quality of materials, size, height, color, etc. All structures constructed on the Property shall be of new materials, except pre-approved used brick, and shall be of good quality workmanship and materials and shall have a fair market value upon competition of not less than \$150,000.00, excluding land value, and closing fees. Only those exterior materials which will blend harmoniously with the natural environment, with earth-toned colors, shall be permitted. All exterior material shall be new, except pre-approved used brick, and consist of brick, rock, stucco, or combination approved in writing by the Architectural Control Committee. Aluminum soffit and fascia is acceptable. No aluminum exterior siding homes shall be permitted in the Project. No wood exterior siding shall be

permitted in the Project with the exception of a masonite-type material in combination with brick, rock, and/or stucco if approved by the Committee. All exterior materials and colors are to be specified on plans and submitted for approval by the Committee. No pre-manufactured homes shall be permitted. No flat roofs shall be permitted in the Project without the prior written approval of the Committee. Pitched roofs shall be at least 6/12 pitch and no greater than 10/12. A minimum width of 6 inches shall be required on the fascia. All stacks and chimneys from fireplaces in which combustible materials other than natural gas are burned shall be fitted with spark arresters. All Owners shall strictly comply with all state laws and city ordinances pertaining to fire hazard control.

2.4 Construction Time. The Committee shall have final control for approval of all color and material plans. There is no time limit for beginning construction; however, upon commencement, the construction time for the exterior portion of any structure shall not exceed 18 months from start to finish. "Start" shall be the instant any foliage is cut or removed in anticipation of the landscaping or construction to be built. All building debris, excavation, dirt, etc. associated with the building process shall be removed within the 18-month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks within the Project.

2.5 Building Location and Setback. No building shall be located on any lot nearer to the front lot line than thirty (30) feet. On corner lots which have side yards that border a street, no building shall be located on that lot nearer to the side lot line than thirty (30) feet. No building shall be located on any lot nearer to the rear lot line than thirty (30) feet. On lots which have no side yard that borders a street, no building shall be located nearer than fifteen (15) feet to the lot line. These locations and set backs shall be measured to the nearest project of encroachment or overhang of the building including roofs, soffits and fascias. No lot shall be accessed, whether on a temporary or permanent basis, whether for vehicles or pedestrians from 6000 West. If Highland City Ordinances are more restrictive, then they shall govern.

2.6 Landscaping. Only such foliage shall be removed from each Lot as is necessary for clearing the driveway, excavating for the foundation, and for lawns and patio areas. Lawn, patio, and garden areas must be approved by the Committee. Owners are encouraged to plant trees and shrubs to enhance the natural beauty, provide windbreaks, and improve erosion control. The planting of trees that will have a high profile and obstruct the view from neighboring Lots is prohibited. Such trees may be pruned or removed at the discretion of the Committee.

No planting or structures shall be placed or permitted which may damage or interfere with established slope ratios, create erosion, or change the direction of drainage channels. All materials used to retain and contour the slope of any Lot or improvement must conform with the natural beauty and color of the Property and must be approved by the Committee.

Each dwelling shall have installed surrounding it an outdoor sprinkler system for fire protection and irrigation.

Landscaping may include a combination of lawn, shrubs, or ground cover. Ground cover may include vegetative vines, low-spreading shrubs, or annual or perennial flowering or foliage plants. Ground cover may also include mineral or non-living organic permeable material in not more than 25% of the net landscaped area. Mineral ground cover may include such materials as rocks, boulders, gravel, or brick over sand. Species, size, and placement of landscape elements shall

be determined by the homeowner and approved by the Committee prior to commencement of landscaping.

(a) Deadline for Completion of Landscaping. The front yard of each Lot (from the street to the front line of the residence on the Lot) shall be landscaped within one (1) year of the occupancy date of any structure built upon said Lot. The remainder of the Lot shall be landscaped within two (2) years of the occupancy date of any structure built upon said Lot.

(b) Revegetation of Slopes. Where any slope on any Lot has a slope of 30% or greater, the Owner thereof shall be required to immediately revegetate said slope and present a revegetation plan to the Committee for review and approval.

2.7 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage, or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

2.8 Accessory Structures. Patio structures, trellises, sunshades, gazebos, and any other appurtenant buildings shall be constructed of materials consistent with the colors, textures, and materials approved for the dwelling and shall be integral to the architecture of the house and subject to the prior written approval of the Committee. It is understood that out buildings such as swimming pool and tennis court dressing facilities may be constructed on any Lot as long as they are in conformity with the requirements of this Declaration. All pools must be fenced in strict compliance with local ordinances and with the prior written approval of the Committee as to fence design and material.

Any detached accessory building erected on the lots shall conform in design and materials with the primary residential home on the lot and must be approved as to its permissibility, design and location by the Committee.

2.9 Exterior Antennas, Lights, and Power Lines. Exterior antennas are prohibited. Exposed metal flues, vents, ventilator, or other metallic rooftop protrusions shall be coated or painted with a neutral color which will blend harmoniously with the surrounding Property. TV dishes will be allowed, provided they are placed or screened so they are not readily visible to neighboring Lots and streets. The location of TV dishes must be approved by the Committee. Exterior lighting that is detached from the dwelling will not be allowed unless approved by the Committee. It is anticipated that variances for exterior lights, detached from the dwelling, that are positioned above a one-story level (i.e. tennis court lighting) will rarely be given. All power lines and similar type cables shall be buried underground. No shortwave radio antennas may be constructed on any Lot or attached to any structure thereon without the prior written approval of the Committee.

2.10 Nuisances: Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity

thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick block, lumber, and other building materials will be piled only in such areas as may be approved by the Committee. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Committee, which may require screening of the storage areas.

No articles, material, equipment, or vehicles of any nature shall be parked or stored on any street located within the Property. Licensed, regularly used passenger vehicles (i.e., visitor vehicles) may be parked on streets within the Project for brief periods of time (i.e., less than twenty-four hours). Overnight parking of such vehicles should generally be restricted to the driveway of the dwelling being visited.

The use or operation of snowmobiles on Project streets is not permitted. The use of motorcycles and other motorized recreational vehicles which may produce audible annoyance to the Owners shall be limited to ingress and egress of the Property.

No oil or gas drilling, development, operations, refining, storage, quarrying, or mining operation of any kind shall be permitted upon or in any Lot.

The burning of rubbish, leaves, or trash on the Property is prohibited. Trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during collection.

No Owner shall permit any thing or condition to exist upon any Lot which shall induce, breed, or harbor infectious plant diseases or noxious insects.

The Committee, in its sole discretion, shall have the right to determine the existence of any nuisance.

2.11 Signs. Except as provided in this Section 2.11, no signs of any kind shall be displayed to public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent. Notwithstanding the foregoing, signs used by a builder or developer may be up to 160 square feet in size and may be displayed to advertise the improvement or Lot during the construction period. The placement of signs, graphics, or advertisements which are permanent in nature or represent advertisement for small business conducted in the home or on a Lot is prohibited.

2.12 Animals. The Association is committed to the preservation and protection of native animal wildlife which may from time to time wander onto and through the Property. Such wildlife shall not be fed or hunted within the Project. No animal, bird, fowl, poultry, or livestock of any kind shall be raised, bred, or kept on any Lot except that domestic dogs (a maximum of two), cats, and other household pets may be permitted as long as they are maintained in accordance with this Declaration and any additional rules and regulations imposed by the Committee and are not a

nuisance or kept, bred, or maintained for any commercial purposes. No dog shall be allowed to roam unattended on the Project. All dogs going outdoors must be on a leash under the direct supervision and control of the Owner or confined to a dog run or kennel on the Owner's Lot. The manner and location of all dog runs or kennels must be approved by the Committee. No farm animals are permitted.

2.13 Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Section 2.1 above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

2.14 Restriction on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Committee, which approval must be evidenced on the Plat or other instrument creating the subdivision, easement, or other interest. No further covenants, conditions, restrictions, or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Committee, and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. No application for rezoning of any Lot and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Committee and the proposed use otherwise complies with this Declaration.

2.15 Building Height. No Lot in the subdivision shall have a building or structure which exceeds a height of two stories (not counting the basement) or thirty-five (35) feet, whichever is less. Height shall be measured as the vertical distance from average finish grade surface at the building wall to the deck line of a mansard roof or the mean level between eaves and ridge for gable, hip or gambrel roofs. Chimneys, flag poles and similar structures not used for human occupancy are excluded for purposes of calculating the height of a structure. If Highland City Ordinances are more restrictive, then they shall govern.

2.16 Non-Residential Use. No gainful occupation, profession, or other non-residential use shall be conducted on the Lot, and no persons shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval of the Committee and the appropriate officials of Highland City.

2.17 Fuel Storage. No tank for storage of fuel may be maintained above the surface of the ground without the prior written consent of the Committee.

2.18 Building Material Storage. No building material of any kind or character shall be placed or stored upon any Lot until the Owner thereof is ready to commence improvements, and then the material shall be placed within the property lines of the Lot upon which the improvements are to be erected and shall not be placed in the streets or between the curb and the property line.

2.19 Easements. Easements for installation of and maintenance of utilities, drainage facilities, and water lines are reserved as shown on the recorded Plat. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or water lines or which may change the direction of flow of drainage channels in the area or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each of the Lots and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(a) Pacificorp Easement. Lots 1, 16, 17 and 23 are subject to an easement recorded October 17, 2001, which grants a right of way for the installation and maintenance of overhead power lines. This easement allows Pacificorp (without payment) the right to access and to keep the right of way and adjacent lands clear of all brush, trees, timber, structures and other hazards which might endanger Pacificorp's facilities or impede Pacificorp's activities. Owners of lots 1, 16, 17 and 23 further agree not to permit the erection of any buildings or structures of any kind or nature, or place or use or permit any equipment or material of any kind that exceeds 12 feet in height, or light and fires, or place or store any flammable materials on or within the boundaries of the right of way. Subject to the foregoing limitations the surface of the right of way may be used for other purposes not inconsistent with the purposes for which this easement has been granted.

2.20 Paving. Driveway and other flat paved areas may be concrete, exposed aggregate concrete, stamped concrete, asphalt, quarry tile, brick, or paving blocks. Gravel areas are not permitted.

2.21 Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be compatible with roof colors, all equipment must be screened from view, and prior written approval must be obtained from the Committee.

2.22 Pools, Spas, Fountains, Game Courts. Pools, spas, fountains, and game courts must be approved by the Committee and shall be located to avoid impacting adjacent properties with light or sound. No game courts shall be located in front yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Nothing herein shall be construed as permitting the construction of skateboard areas and/or similar areas and ramps, which structures shall be prohibited.

2.23 Fences and Walls. Fencing and walls shall be stucco, wood, brick, masonry, stone, vinyl, or wrought iron. Fences and walls are to be color coordinated with the approved dwelling colors. Use of landscaping materials for hedges and fencing is encouraged. No structures or fences shall be permitted in any area designated by Highland City as non-buildable. Fences, walls, or hedges shall not exceed six (6) feet in height; provided, however, that no wall, fence, or opaque hedge or screening materials (other than pre-construction natural vegetation) shall be maintained within: (i) a required front yard; (ii) in any portion of a rear yard which is highly visible from any Project street or non-adjointing Lot because of the elevation or slope of the portion of the rear yard concerned unless specifically permitted by the Committee; and (iii) any portion of the Lot having a slope greater than 30%.



On corner Lots, no fence or other similar structure shall be erected to a height in excess of three and one-half (3.5) feet in any side yard bordering a street. All fences and walls require a building permit from Highland City and must have prior written approval of the Committee.

Per Highland City Standards, fencing along 6000 West must be located no closer than 14 feet to the top back of curb. In addition, property owners of lots that border 6000 West are responsible for the maintenance and upkeep of property and any associated landscaping beginning from the top back of curb.

2.24 Parking and Storage. No major mechanic work or repairs are to be conducted in streets or front yards of houses. No inoperative automobile or vehicle shall be placed or remain on any Lot or adjacent street for more than 48 hours. No commercial-type vehicles and no trucks shall be parked or stored on the front yard setback of any Lot or within the side yard buildings setback on the street side of a corner Lot, or on the residential street except while engaged in transportation. Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall be parked or stored behind the front yard setback in an enclosed area screened from street view as approved by the Committee. Sufficient side yard gate access should be planned and provided for in the design of the home to permit ingress, egress, and storage of trailers and recreational type vehicles on the side and rear yards. The storage or accumulation of junk, trash, manure, or other offensive or commercial materials is prohibited. No pads used for the storage of vehicles or other material either temporarily or permanently shall be constructed within the front yard set back requirements of a given Lot. For additional information contact Highland City, Utah.

2.25 Water Discharge. It shall be unlawful for any person owning, occupying, or having control of any premises to suffer or permit irrigation or water from the roof or eaves of any house, building, or other structure or from any source under the control of such person, to be discharged and spread upon the surface of any sidewalk, street, or adjoining Lot. This is intended to require that the Owner maintains water on his property.

2.26 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project.

2.27 Supplemental Use Restrictions Upon Expansion. In any supplement to this Declaration which is recorded in conjunction with the addition to the Project of a portion of the Additional Land, Declarant shall have the right in its sole discretion to specify use restrictions and standards applicable to such portion. In Declarant's sole discretion, the restrictions and standards so specified may be different than or in addition to the restrictions and standards set forth in the foregoing Sections of this Article II.

2.28 Detention Ponds. Parts of Lot 23 and 24 consist of a Detention Pond as shown on recorded plat. The homeowner of lot 23 and lot 24 shall be required to establish grass within, and provide maintenance for the storm detention basins as constructed on said lot 23 and 24. No permanent structures can be erected on the ponds.

### III. AMENDMENTS

3.1 Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of recordation. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners (based upon one vote per lot) casting seventy-five percent (75%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if at least ninety percent (90%) of the votes cast by all Owners shall be cast in favor of termination at any election held for such purpose. If the necessary votes and consents are obtained, the Committee shall cause to be recorded in the Utah County records a "Certificate of Termination", duly signed by a member of the Committee and acknowledged before a Notary Public. Thereupon the covenants herein contained shall have no further force and effect, and the Committee shall be dissolved pursuant to the terms set forth in its articles.

3.2 Amendments. This Declaration may be amended by recording in the office of the Utah County Recorder a "Certificate of Amendment," duly signed by a member of the Committee and acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted. The Declaration may be amended at any time if at least sixty-seven percent (67%) of the votes cast by all owners shall be in favor of the Amendment.

3.3 Until 90% of lots are sold, Declarant can modify Declaration to accommodate any public use, school use, park use, church use, or street or easement use.

### IV. MISCELLANEOUS

4.1 Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive, and binding as to all persons and property benefitted or bound by the covenants and provisions hereof.

4.2 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not effect the validity or enforceability of any of the other provisions hereof.

4.3 Rule Against Perpetuities. Each provision contained in this Declaration which is subject to the laws or rules sometime referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation shall continue and remain in full force and effect for the period of 21 years following the death of the last survivor of the issue of Kem C. Gardner, and the now living children of such issue, or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions contained in this Declaration shall continue and remain in full force and effect in accordance with Section 3.1 hereof.

4.4 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Committee shall have the right to adopt rules and regulations with respect to all other aspects of the Committee's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration.

4.5 General Reservations. Declarant reserves the right to grant, convey, sell, establish, amend, release, and otherwise deal with easements, reservations, exceptions, and exclusions with respect to the Property which do not materially interfere with the best interests of Owners including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails, and easements and drainage easements.

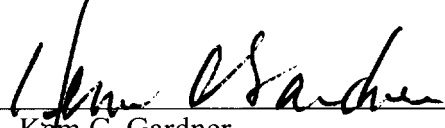
4.6 Run with the Land. Declarant for itself, its successors, and assigns, hereby declares that all of the Property shall be held, used, and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in the Property.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 9<sup>th</sup> day of January 2003.

HIGHLAND HEIGHTS, L.C., a Utah limited liability company,

By Its Members,

The Boyer Company, L.C., a Utah limited liability company

By   
Ken C. Gardner  
President and Manager

STATE OF UTAH )  
 ) SS:  
COUNTY OF SALT LAKE )

On the 9<sup>th</sup> day of ~~December~~ <sup>January, 2003</sup>, 2002, personally appeared before me Kem C. Gardner, who, being by me duly sworn, did say that he is the President and Manager of The Boyer Company, L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of the Company by authority of its Operating Agreement, and that the Company executed the same.

[SEAL]

*Barbara L. Clary*  
\_\_\_\_\_  
Notary Public

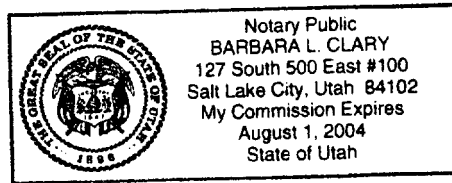


EXHIBIT A

## BOUNDARY DESCRIPTION

BEGINNING 1308.30 FEET S. 0°16'03" E. ALONG THE QUARTER SECTION LINE AND 26.30 FEET S. 89°43'57" W. FROM THE NORTH QUARTER CORNER OF SECTION 26, T.4S., R.1E., SLB&M.; THENCE S. 0°25'03" E. 918.43 FEET TO THE NORTHERLY BOUNDARY LINE OF DRY CREEK HILLS SUBDIVISION PLAT "A"; THENCE ALONG THE BOUNDARY LINE OF SAID DRY CREEK HILLS SUBDIVISION THE FOLLOWING TWO (2) COURSES AND DISTANCES: (1) WEST 606.92 FEET; (2) THENCE S. 0°16'01" E. 412.46 FEET TO THE NORTHERLY BOUNDARY LINE OF DRY CREEK SUBDIVISION PHASE 2; THENCE WESTERLY ALONG SAID NORTHERLY BOUNDARY THE FOLLOWING TWO (2) COURSES AND DISTANCES: (1) S. 89°59'27" W. 260.75 FEET; (2) THENCE S. 88°32'41" W. 447.09 FEET; THENCE N. 0°16'02" W. 1334.30 FEET; THENCE N. 89°59'33" E. 0.40 FEET; THENCE N. 0°16'02" W. 6.82 FEET TO A FENCE LINE; THENCE N. 89°56'57" E. 1311.86 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING. THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 34.435 ACRES.

BASIS OF BEARING: N. 71°13'06" W. BETWEEN THE NORTH QUARTER CORNER OF SECTION 26, T.4S., R.1E., SLB&M. AND THE CONTROL TOWER VIEW 2.

[FOR REFERENCE PURPOSES ONLY: Out of Tax Parcel Numbers 11-025-0070 and 11-025-0072]

ORIGINAL NOT LEGIBLE