

**DECLARATION OF
SIDEYARD EASEMENTS BY
J. BALLARD HOMES, INC., A UTAH CORPORATION AT**

**321 EAST STATE STREET, SUITE 10, AMERICAN FORK, UTAH 84003
LPT050784**

Declarant: J. Ballard Homes, Inc., a Utah Corporation

Legal Description:

Lot 149, WINTER HAVEN, PHASE 1, AMENDED SUBDIVISION, according to the official plat thereof, on file in the office of the Utah County Recorder.

Assessor's Tax Parcel Id Number: 55-629-0149

THIS DECLARATION OF EASEMENTS ("Declaration") is made by J. Ballard Homes, Inc., a Utah Corporation ("Declarant").

RECITALS

- A. Declarant owns, Lot 149, Winter Haven Phase 1 Amended Subdivision, according to the official plat thereof of record with the County Recorder for Utah County, State of Utah ("The Property").
- B. Declarant desires to provide easements for the Property on the terms and conditions set forth herein.

DECLARATION

Declarant hereby declares that the Property shall be held, sold, used and conveyed subject to the provisions of this Declaration.

1. DEFINITIONS

1.1 **"Benefited Lot"** means a Lot that enjoys a Sideyard Easement over a portion of an adjacent Burdened Lot within the Property. A List of the Benefited Lots is attached as Exhibit "A".

1.2 **"Burdened Lot"** means a Lot within the Property over a portion of which an adjacent Lot enjoys a Sideyard Easement. A list of each Burdened Lots is attached as Exhibit "A", which shows which Benefited Lot enjoys a Sideyard Easement over each Burdened Lot.

1.3 **"Lot"** means a residential lot located within the Property.

1.4 "Owner" means the owner of a lot, and it also includes the spouse, children, or other family members of the owner that dwell at the lot with the owner, and it also includes lessees of the owner and the spouse, children, or other family members of the Lessee that dwell at the lot with the Lessee, and it includes social invitees of the owner or lessee.

2. **SIDEYARD EASEMENT**. Declarant hereby declares that the Owner of a Benefited Lot has a Sideyard Easement over that portion of the adjacent Burdened Lot described in Exhibit "B". The Sideyard Easement shall be appurtenant to and shall not be separated from ownership of the Benefited Lot. The Sideyard Easement shall be for the purpose of pedestrian ingress and egress and to provide a sideyard and the use and enjoyment of such Sideyard Easement is restricted as provided in this declaration.

3. **RESTRICTIONS ON BENEFITED OWNER**. The owner of the Benefited Lot shall not attach any object to a wall or dwelling belonging to the burdened Lot or disturb the grading of the Sideyard Easement area or otherwise act with respect to the Sideyard Easement area in any manner which would damage the Burdened Lot.

4. **DRAINAGE**. The owner of the burdened Lot shall have the right of surface drainage in, over, across and upon the Sideyard Easement area for water draining from the Burdened Lot and from any swelling or structure thereon and shall have the further right to concentrate drainage from the Burdened Lot under or through the subsurface of the Sideyard Easement area except that such subterranean drainage shall only be permitted through drainage devices installed by Declarant in the original construction of the dwellings in the Lot or through such draining devices as repaired or reconstructed as a result of any damage or destruction of drainage equipment installed by Declarant.

5. **RIGHTS OF BURDENED OWNER**. The owner of the Burdened Lot shall have the right to use the Sideyard Easement for purposes that are consistent with the rights conferred upon the owner of the Benefited Property by this declaration and at all reasonable times to enter upon the Sideyard Easement, including the right to cross over the Benefited Lot for such entry, in order to (i) maintain eaves and appurtenances of the Burdened Lot and the portions of any dwelling structure fronting the Sideyard Easement areas originally constructed by Declarant or as later approved by the Winter Haven at Traverse Mountain Homeowners Association, (ii) maintain and repair drainage facilities and systems servicing the burdened Lot located upon or within the Sideyard Easement area, or (iii) install, maintain, repair, replace and service (including meter reading) utilities serving the Burdened Lot. In exercising such right, the owner of the burdened Lot shall utilize reasonable care not to damage any landscaping or other items existing in the Sideyard Easement area; provided, however, the owner of the burdened Lot shall not be responsible for damage to such landscaping or other items to the extent such damage could not be reasonably avoided in connection with such entry upon the Sideyard Easement area for authorized purposes.

6. **MAINTENANCE.** The Owner of the burdened Lot shall have the duty to reasonably maintain landscaping and foliage on the Sideyard Easement and to prevent such landscaping and foliage from obstructing reasonable use of the Sideyard Easement by the owner of the Benefited Lot.

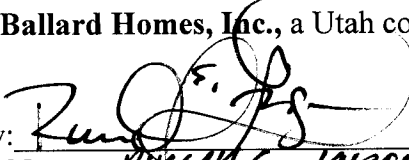
7. **NONEXCLUSIVE EASEMENT.** The Sideyard Easement is nonexclusive and is subject to any easement previously granted (i.e., public utility easement).

8. **SEVERABILITY.** Invalidation of any provision or application of a provision of this Declaration by any court shall not affect any other provision or application.

9. **EASEMENT RUNNING WITH THE LAND.** The easement contained herein shall be an easement running with the land and shall inure to the benefit of, and shall be binding upon, all persons having any right, title or interest in such land and their respective successors, grantees, heirs and assigns.

EXECUTED this 6 day of September, 2006.

DECLARANT: **J. Ballard Homes, Inc.,** a Utah corporation

By: 
 Name: RUSSELL E. LARSON
 Title: V.P.

STATE OF UTAH)
) : ss
 COUNTY OF Utah)

On the 6 day of September, 2006 day personally appeared before me RUSSELL E. LARSON who acknowledged that he executed the foregoing instrument as V.P. of J. Ballard Homes, Inc., a Utah corporation.




 NOTARY PUBLIC

EXHIBIT A
TO
DECLARATION OF SIDEYARD EASEMENTS

Burdened Lot

A parcel of land situate in Lot 149, Winter Haven Phase 1 (Amended), according to plat thereof.

Beginning at the Southeasterly corner of said Lot 149, said point being the common rear lot corner of Lot 149 and Lot 150: Thence North $62^{\circ}04'53''$ West 69.60 feet coincident with the common line of Lot 149 and Lot 150; Thence North $65^{\circ}20'00''$ East 6.46 feet; Thence South $62^{\circ}15'11''$ East 67.72 feet to the perimeter of said subdivision; Thence Southwesterly 5.71 feet along the arc of a non-tangent 628.00 foot radius curve to the Left (chord bears South $48^{\circ}49'37''$ West 5.70 feet) through a central angle of $00^{\circ}31'14''$ coincident with said perimeter to the Point of Beginning.

Parcel contains 359 square feet or 0.01 acres more or less.

Benefited Lot

A parcel of land situate in Lot 148, Winter Haven Phase 1 (Amended), according to plat thereof.

Beginning at the Southeasterly corner of said Lot 148, said point being the common rear lot corner of Lot 148 and Lot 149: Thence North $51^{\circ}59'48''$ West 70.34 feet coincident with the common line of Lot 148 and Lot 149; Thence North $55^{\circ}38'57''$ East 12.56 feet; Thence South $72^{\circ}41'36''$ East 84.14 feet to the perimeter of said subdivision; Thence South $54^{\circ}28'56''$ West 29.69 feet to the beginning of a 628.00 foot radius curve to the left; Thence Southeasterly 13.76 feet along said curve (chord bears South $53^{\circ}51'16''$ West 13.76 feet) through a central angle of $01^{\circ}15'19''$ coincident with said perimeter to the Point of Beginning.

Parcel contains 1878 square feet or 0.04 acres more or less.

EXHIBIT B
TO
DECLARATION OF SIDEYARD EASEMENTS

Beginning at the Southeasterly corner of said Lot 149, said point being the common rear lot corner of Lot 149 and Lot 150: Thence North $62^{\circ}04'53''$ West 69.60 feet coincident with the common line of Lot 149 and Lot 150; Thence North $65^{\circ}20'00''$ East 6.46 feet; Thence South $62^{\circ}15'11''$ East 67.72 feet to the perimeter of said subdivision; Thence Southwesterly 5.71 feet along the arc of a non-tangent 628.00 foot radius curve to the Left (chord bears South $48^{\circ}49'37''$ West 5.70 feet) through a central angle of $00^{\circ}31'14''$ coincident with said perimeter to the Point of Beginning.

Beginning at the Southeasterly corner of said Lot 148, said point being the common rear lot corner of Lot 148 and Lot 149: Thence North $51^{\circ}59'48''$ West 70.34 feet coincident with the common line of Lot 148 and Lot 149; Thence North $55^{\circ}38'57''$ East 12.56 feet; Thence South $72^{\circ}41'36''$ East 84.14 feet to the perimeter of said subdivision; Thence South $54^{\circ}28'56''$ West 29.69 feet to the beginning of a 628.00 foot radius curve to the left; Thence Southeasterly 13.76 feet along said curve (chord bears South $53^{\circ}51'16''$ West 13.76 feet) through a central angle of $01^{\circ}15'19''$ coincident with said perimeter to the Point of Beginning.