

P-20

**DOC # 20070049687**

Restrictive Page 1 of 30  
Russell Shirts Washington County Recorder  
10/11/2007 09:45:22 AM Fee \$ 68.00  
By EQUITY TITLE

**AFTER RECORDING, RETURN TO:**



Parr Waddoups Brown Gee & Loveless  
Attn: Robert A. McConnell  
185 South State Street, Suite 1300  
Salt Lake City, Utah 84111-1537  
Telephone: 801-532-7840

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE OVERLOOK AT GREEN VALLEY**

Boyer Green Valley, L.C.  
Declarant

**TABLE OF CONTENTS**

**ARTICLE 1: DEFINITIONS ..... 2**

1.1 Additional Land.....2

1.2 Annual Assessment .....2

1.3 Architectural Guidelines.....2

1.4 Articles .....2

1.5 Assessments.....2

1.6 Assessment Unit .....2

1.7 Association .....2

1.8 Board.....2

1.9 Bylaws .....2

1.10 City.....2

1.11 Committee .....2

1.12 Common Areas.....2

1.13 County.....3

1.14 Declarant .....3

1.15 Individual Assessment.....3

1.16 Lot .....3

1.17 Member .....3

1.18 Mortgage .....3

1.19 Owner.....3

1.20 Person.....3

1.21 Plat.....3

1.22 Development.....3

1.23 Property.....3

1.24 Special Assessment.....3

1.25 State.....3

**ARTICLE 2: ASSOCIATION ..... 3**

2.1 Formation of Association.....3

2.2 Board of Trustees and Officers.....4

2.3 Membership.....4

2.4 Voting Rights .....4

2.5 Multiple Ownership Interests.....4

2.6 Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors.....5

2.7 Personal Liability.....5

**ARTICLE 3: POWERS AND OBLIGATIONS OF ASSOCIATION ..... 5**

3.1 General Powers and Obligations.....5

3.2 Specific Powers and Duties .....5

**ARTICLE 4: MAINTENANCE, UTILITIES AND SERVICES ..... 7**

4.1 Maintenance of Common Areas .....7

4.2 Services .....7

4.3 Owner’s Responsibility .....7

**ARTICLE 5: ASSESSMENTS ..... 7**

5.1 Purpose of Assessments.....7

5.2 Types of Assessments.....7

5.3 Apportionment of Assessments .....7

5.4 Annual Assessments.....7

5.5 Special Assessments.....8

5.6	Individual Assessments .....	8
5.7	Annexation of Additional Property.....	8
5.8	Creation of Lien and Personal Obligation of Assessments .....	8
<b>ARTICLE 6: ARCHITECTURAL CONTROL COMMITTEE.....</b>		<b>9</b>
6.1	General .....	9
6.2	Creation .....	9
6.3	Architectural Guidelines.....	9
6.4	Submission to Committee.....	10
6.5	Standard.....	10
6.6	Approval Procedure.....	10
6.7	Appeal .....	10
6.8	Fee.....	10
6.9	Enforcement .....	11
6.10	Majority Action .....	11
6.11	Liability .....	11
6.12	Nonwaiver .....	11
6.13	Effective Period of Consent.....	11
6.14	Estoppel Certificate .....	11
<b>ARTICLE 7: COVENANTS, CONDITIONS AND RESTRICTIONS .....</b>		<b>12</b>
7.1	Building Restrictions .....	12
7.2	Permitted Use .....	12
7.3	Construction Time .....	12
7.4	Building Setbacks.....	12
7.5	Building Height .....	13
7.6	Landscaping.....	13
7.7	Temporary Occupancy and Temporary Buildings .....	13
7.8	Accessory Structures and Facilities .....	13
7.9	Exterior Antennas, Lights, and Power Lines .....	13
7.10	Nuisances.....	14
7.11	Signs.....	14
7.12	Animals .....	15
7.13	Restriction on Further Subdivision, Property Restrictions, and Rezoning.....	15
7.14	Fuel Storage.....	15
7.15	Building Material Storage.....	15
7.16	Easements .....	15
7.17	Paving.....	15
7.18	Solar Equipment .....	16
7.19	Pools, Spas, Fountains, Game Courts .....	16
7.20	Fences and Walls.....	16
7.21	Parking and Storage.....	16
7.22	Disclosure Regarding Ground Water.....	16
7.23	Disclosure Regarding Blue Clay.....	16
7.24	Disclosure Regarding “No Disturbance” Areas.....	16
7.25	Declarant’s Exemption .....	17
7.26	Supplemental Use Restrictions Upon Expansion.....	17
7.27	Deviations.....	17
<b>ARTICLE 8: PROPERTY RIGHTS IN COMMON AREAS.....</b>		<b>17</b>
8.1	Easement of Enjoyment.....	17
8.2	Form for Conveyancing.....	17
8.3	Transfer of Title.....	18

8.4	Limitation on Easement.....	18
<b>ARTICLE 9: ENFORCEMENT .....</b>		<b>18</b>
9.1	Use of Common Areas.....	18
9.2	Nonqualifying Improvements and Violation of Declaration.....	18
9.3	Default in Payment of Assessments; Enforcement of Lien.....	19
9.4	Notification of First Mortgage .....	19
9.5	Subordination of Lien to Mortgages.....	19
9.6	Interest, Expenses and Attorneys' Fees .....	20
9.7	Nonexclusiveness and Accumulation of Remedies .....	20
<b>ARTICLE 10: AMENDMENTS.....</b>		<b>20</b>
10.1	Amendment and Repeal.....	20
10.2	Regulatory Amendments .....	20
<b>ARTICLE 11: EXPANSION OF DEVELOPMENT .....</b>		<b>21</b>
11.1	Right to Expand and State of Title to New Lots.....	21
11.2	Rights and Statements Respecting Additional Land.....	21
11.3	Procedure for Expansion .....	22
11.4	No Obligation to Expand.....	23
11.5	Owners' Obligation Concerning Expansion .....	23
<b>ARTICLE 12: MISCELLANEOUS .....</b>		<b>23</b>
12.1	Construction; Severability; Number; Captions; Exhibits.....	23
12.2	Rule Against Perpetuities .....	23
12.3	General Reservations.....	23
12.4	Run with the Land .....	23
<b>EXHIBIT A: LEGAL DESCRIPTION OF THE PROPERTY .....</b>		<b>25</b>
<b>EXHIBIT B: INITIAL ARCHITECTURAL GUIDELINES .....</b>		<b>26</b>

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE OVERLOOK AT GREEN VALLEY**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made and executed this 13 day ~~January~~, 2007, by **Boyer Green Valley, L.C.**, a Utah limited liability company ("**Declarant**"). September

**RECITALS**

A. Declarant is the owner of certain real property in Washington County, Utah, more particularly described on Exhibit A attached hereto (the "**Property**"). Declarant desires to develop the Property as a subdivision to be known as The Overlook at Green Valley (the "**Development**").

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

C. In order to efficiently manage and to preserve the value and appearance of the Development, Declarant has formed The Overlook at Green Valley Homeowners Association, Inc., a Utah nonprofit corporation, to serve as the homeowners association of the homeowners; to maintain the Development; to collect assessments and disburse funds as hereinafter set forth; and to perform such other acts as shall generally benefit the Development and the homeowners.

**DECLARATION**

NOW, THEREFORE, it is hereby declared that the Development 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 Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1: DEFINITIONS**

1.1 **Additional Land.** Any land located in the County, whether or not owned by Declarant, that is made subject to this Declaration pursuant to Article 11.

1.2 **Annual Assessment.** The charge levied and assessed each year against each Lot pursuant to Section 5.4.

1.3 **Architectural Guidelines.** The standards, rules, regulations, restrictions and guidelines, in addition to those set forth in Article 7, with respect to, but not limited to, design features, architectural styles, exterior colors and materials, details of construction, location and size of structures, landscaping and other matters requiring approval by the Committee pursuant to this Declaration.

1.4 **Articles.** The articles of incorporation of the Association, as may be amended from time to time.

1.5 **Assessments.** All assessments and other charges, fines and fees imposed by the Association on an Owner and his Lot in accordance with this Declaration, including, without limitation, Annual Assessments, Special Assessments and Individual Assessments.

1.6 **Assessment Unit.** A factor assigned to each Lot in accordance with Section 5.3 for purposes of determining such Lot's pro rata share of Annual Assessments and Special Assessments.

1.7 **Association.** The Overlook at Green Valley Homeowners Association, Inc., a Utah nonprofit corporation organized to administer and enforce the covenants and restrictions and to exercise the rights, powers, and duties set forth in this Declaration.

1.8 **Board.** The Board of Trustees of the Association.

1.9 **Bylaws.** The Bylaws of the Association, as may be amended from time to time.

1.10 **City.** The City of St. George, Utah.

1.11 **Committee.** The Architectural Control Committee established pursuant to Article 5.

1.12 **Common Areas.** All land within the Development that is from time to time owned by the Association, including the land specified as Common Areas on the Plat.

1.13 **County.** Washington County, Utah.

1.14 **Declarant.** Boyer Green Valley, L.C., a Utah limited liability company, and/or any successor to said company which, either by operation of law or through a voluntary conveyance or transfer, comes to stand in the same relationship to the Development as did its predecessor.

1.15 **Individual Assessment.** Any assessment levied and assessed pursuant to Section 5.6.

1.16 **Lot.** Any separately numbered and individually described parcel of land shown as a Lot on the Plat and intended for private use and ownership.

1.17 **Member.** Any Person holding a membership in the Association pursuant to Section 2.2.

1.18 **Mortgage.** A mortgage or a trust deed. **Mortgagee.** A mortgagee or a beneficiary of a trust deed. **Mortgagor.** A mortgagor or a grantor of a trust deed.

1.19 **Owner.** The record holder of legal title to the fee simple interest in any Lot. If there is more than one record holder of legal title to a Lot, each record holder shall be an Owner.

1.20 **Person.** A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

1.21 **Plat.**

(a) The plat recorded contemporaneously with this Declaration in the office of the County Recorder, entitled The Overlook at Green Valley and/or, depending on the context,

(b) Any duly recorded plat respecting any Additional Land, but only after recording a supplement to this Declaration in accordance with Article 11.

1.22 **Development.** The Overlook at Green Valley, as shown on the Plat and governed by this Declaration.

1.23 **Property.** That certain real property located in Washington County, Utah, and more particularly described on Exhibit A, together with any and all Additional Land that is added (from and after the time such Additional Land is added) to the Development in accordance with Article 11.

1.24 **Special Assessment.** Any assessment levied and assessed pursuant to Section 5.5.

1.25 **State.** The State of Utah.

## ARTICLE 2: ASSOCIATION

2.1 **Formation of Association.** The Association is a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, the

Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

2.2 **Board of Trustees and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board shall be composed of three natural persons, who need not be Members of the Association. The Board may also appoint various committees and may appoint a manager (subject to the approval of a majority of the Members) who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

2.3 **Membership.** Every Owner shall be a Member of the Association. No evidence of membership in the Association shall be necessary other than evidence of ownership of a Lot. Membership in the Association shall be mandatory and shall be appurtenant to the Lot in which the Owner has the necessary interest. The rights and obligations of a Member shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of a Member's Lot, and any such transfer shall automatically transfer the membership appurtenant to such Lot to the new Owner thereof.

2.4 **Voting Rights.** The Association shall have the following-described two classes of voting membership:

(a) **Class A.** Class A Members shall be all Owners except Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Although each of the multiple Owners of a single Lot shall be a Class A Member, in no event shall more than one (1) Class A vote exist or be cast on the basis of a single Lot.

(b) **Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which the interest required for membership in the Association is held. The Class B membership shall cease and Declarant shall become a Class A Member upon the first to occur of the following:

- (i) Declarant elects to terminate its Class B Membership in writing.
- (ii) Ninety percent (90%) of all Lots in the Development (including any Additional Land added up to that time) have been conveyed to Owners other than Declarant.
- (iii) Fifteen (15) years have elapsed since Declarant first conveyed a Lot to an Owner.

2.5 **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as its Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person, by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event



such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

**2.6 Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors.** The Association shall maintain up-to-date records showing the name of each Person who is an Owner, the address of such Person, and the Lot that is owned by such Person. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Association with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder. The Association may for all purposes act and rely on the information concerning Owners and Lot ownership which is thus acquired by it, or, at its option, the Association may act and rely on current ownership information respecting any Lot or Lots which is obtained from the office of the County Recorder. The address of an Owner shall be deemed to be the address of the Lot owned by such Owner unless the Association is otherwise advised.

**2.7 Personal Liability.** Neither Declarant nor any member of the Board, officer, manager, or other employee or committee member of the Association shall be personally liable to any Member, or to any other Person, including the Association, for any damage, loss, claim, or prejudice suffered or claimed on account of any act, failure to act, negligence, or other matter, of any kind or nature except for acts performed intentionally and with malice.

### **ARTICLE 3: POWERS AND OBLIGATIONS OF ASSOCIATION**

**3.1 General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers and obligations:

- (a) The powers and obligations granted to the Association by this Declaration, the Articles and the Bylaws.
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State.
- (c) Any additional or different powers and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes to this Declaration made in accordance with its provisions, accompanied by changes in the Articles and the Bylaws made in accordance with their provisions and with the nonprofit corporation laws of the State.

**3.2 Specific Powers and Duties.** The powers and obligations of the Association shall include, without limitation, the following:

- (a) **Maintenance and Services.** The Association shall provide maintenance and services for the Development as provided in Article 4.

(b) **Insurance.** The Association shall obtain in its name and keep in full force and effect at all times, insurance policies for such casualty and public liability and other insurance policies as the Board deems necessary; provided, however, that the Association shall at all times maintain not less than One Million and 00/100 Dollars (\$1,000,000.00) of commercial general liability insurance.

(c) **Rules and Regulations.** The Association shall have the right to adopt rules and regulations ("Rules and Regulations") with respect to all aspects of the Association's rights, activities, and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles and the Bylaws.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 5.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers, hire employees to manage, conduct and perform the business, obligations and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, recreational experts, architects, planners, lawyers and accountants, and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Development.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of maintaining and improving the Common Areas and encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements across all or any portion of the Common Areas, and shall accept any real or personal property, leasehold or other property interests within the Development conveyed to the Association by Declarant.

(h) **Create Classes of Service and Make Appropriate Charges.** The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including but not limited to reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Board deems proper. In addition, the Board shall have the right to discontinue any service upon nonpayment or to eliminate such service for which there is no demand or adequate funds to maintain the same.

(i) **Implied Rights and Obligations.** The Association may exercise any other right or privilege reasonably to be implied from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

#### ARTICLE 4: MAINTENANCE, UTILITIES AND SERVICES

4.1 **Maintenance of Common Areas.** The Association shall perform or provide for all maintenance of the Common Areas. The Common Areas shall be maintained in an attractive condition and in a good and workmanlike manner so as to carry out the purpose for which the Common Areas are intended.

4.2 **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Development, including, without limitation, garbage and trash removal for the Common Areas and security services for the Development.

4.3 **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and all structures, landscaping, parking areas, and other improvements thereon, shall be the sole responsibility of the Owner thereof, who shall maintain such in accordance with the community-wide standard of the Development. The Association shall, in the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within thirty (30) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 9.6. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 5.6 and 9.3.

#### ARTICLE 5: ASSESSMENTS

5.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Development and for the improvement, operation and maintenance of the Common Areas and the Lots.

5.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments and Individual Assessments, all as more particularly described below.

5.3 **Apportionment of Assessments.** Lots owned by Declarant shall not be subject to Assessments. All other Lots shall pay a pro rata share of the Annual Assessments and Special Assessments commencing upon the date such Lots are made subject to this Declaration. The pro rata share shall be based upon the total amount of each such Assessment divided by the total number of Assessment Units of Lots subject to assessment, times the number of Assessment Units assigned to such Lots. Each Lot shall be assigned one Assessment Unit for each residence located on the Lot. Each Lot shall be assigned one Assessment Unit, regardless of whether a residence has been constructed on the Lot.

5.4 **Annual Assessments.** The Board shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and

services, the future needs of the Association, any previous overassessment and any common profits of the Association. Based on the foregoing, the Board shall determine the amount of the Annual Assessment, which Annual Assessment shall be apportioned among the Lots as provided in Section 5.3. The method of adoption of the budget and the manner of billing and collection of Assessments shall be as provided in the Bylaws.

**5.5 Special Assessments.** In addition to the Annual Assessments authorized above, the Board may levy during any fiscal year a Special Assessment for the purpose of defraying all or any part of the cost of any construction or reconstruction, unexpected repair, acquisition or replacement of a described capital improvement, or for any other extraordinary expenses not to be paid for out of Annual Assessments. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B Member, if any. Special Assessments shall be apportioned as provided in Section 5.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

In addition to annual, usual and special assessments for maintenance or common nonpublic improvements contained within this Development, the Board shall levy such assessments as may be necessary from time to time to repair, restore, or replace landscaping, or other private improvements contained within this Development resulting from damage or disruption caused by the City of St. George in installing, maintaining, repairing, or replacing water, sewer, drainage, and power improvements.

**5.6 Individual Assessments.** Any common expense or any part of a common expense benefitting fewer than all of the Lots may be assessed exclusively against the Lots benefitted as an Individual Assessment. Individual Assessments include, without limitation, default assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board, an Individual Assessment shall be due thirty (30) days after the Board has given written notice thereof to the Owner subject to the Individual Assessment.

**5.7 Annexation of Additional Property.** When Additional Property is annexed to the Development, the Lots included therein shall become subject to Assessments from the date of such annexation. Lots owned by Declarant shall not be subject to Assessments until occupied for residential or commercial use, as applicable. All other Lots shall pay such Assessments in the amount then being paid by other Lots based upon the number of Assessment Units applicable to the Lot in question. The Board may, however, at its option, elect to recompute the budget based upon the additional Lots subject to Assessments and additional Common Areas and recompute Assessments for all Lots, including the new Lots, for the balance of the fiscal year.

**5.8 Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Development, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed,

established and collected from time to time in the manner provided in this Declaration or the Bylaws. Such assessments and charges, together with any interest, expenses or attorneys' fees imposed pursuant to Section 9.6, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made; provided, however, that no lien shall attach to any Lot owned by Declarant. Such Assessments, charges and other costs shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 9.

#### **ARTICLE 6: ARCHITECTURAL CONTROL COMMITTEE**

6.1 **General.** No improvements of any kind, including, without limitation, the construction of any residence, garage, outbuilding, parking area, driveway, tennis court, walkway, swimming pool, outdoor hot tub or spa, fence, wall, curb, pool, trampoline, swing set or playground equipment, satellite dish or antenna, solar panel, outside air conditioning equipment, or any other permanent structure may be constructed, erected or installed on the Property without the approval of the Architectural Review Committee (the "**Committee**"). No excavation, grading, filling, draining, landscaping or installation or removal of existing vegetation shall be made without the approval of the Committee. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his residence without approval. However, modifications to the interior of screened porches, patios and similar portions of a Lot visible from outside the structure shall be subject to approval. All residences constructed on the Lots shall be designed by and built in accordance with the plans and specifications of a licensed architect. This Article shall not apply to Declarant's activities. Unless otherwise specified in this Declaration or the Architectural Guidelines, "approval" of the Committee shall mean advance written approval.

6.2 **Creation.** The Committee shall consist of three members to be appointed by Declarant in its sole discretion. 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 Development, such member shall be disqualified to serve and the Committee shall declare a vacancy. Upon Declarant's sale of the last Lot owned by Declarant in the Development, replacement of members of the Committee shall take place upon the approval of two-thirds (2/3) of the then Owners.

6.3 **Architectural Guidelines.** Declarant shall prepare Architectural Guidelines which establish standards, rules, regulations, restrictions and guidelines, in addition to those set forth in Article 7, with respect to, but not limited to, design features, architectural styles, exterior colors and materials, details of construction, location and size of structures, landscaping and other matters requiring approval by the Committee pursuant to this Declaration. The Architectural Guidelines shall also specify the content of the Application that must be submitted to the Committee by an Owner seeking approval of proposed improvements and shall establish the procedures for submitting the Application. The Architectural Guidelines are incorporated herein and shall be deemed to be a part of

this Declaration and shall be binding on all Owners and their agents. In the event of a conflict between the Architectural Guidelines and this Declaration, this Declaration shall prevail. The Committee may amend the Architectural Guidelines, subject to the approval of the Board and the Class B Member (if any). Amendments to the Architectural Guidelines shall be applied prospectively only and shall not be applied so as to require modifications to or removal of improvements previously approved once construction of the approved improvements has commenced. The Architectural Guidelines are not the exclusive basis for Committee decisions, and compliance with the Architectural Guidelines does not guarantee approval of any Application. The Committee shall make the Architectural Guidelines available to Owners and builders who seek to construct improvements within the Development.

**6.4 Submission to Committee.** The Owner seeking to construct improvements (the “**Applicant**”) shall submit an application (“**Application**”) to the Committee for review, as specified in the Architectural Guidelines. The required Application materials may include, without limitation, plans and specifications showing site layout, structural design, exterior elevations and building heights on each elevation, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation and other features of the proposed improvements, as applicable. The Architectural Guidelines and the Committee may require the submission of such additional information as may be reasonably necessary to consider any Application.

**6.5 Standard.** The Committee shall have the right to approve any Application in compliance with the Architectural Guidelines and this Declaration if the Committee reasonably determines that proposed improvements are consistent with, among other things, (a) the architectural character and nature, shape, color, size, material, location and kind of all proposed improvements, taking in consideration the aesthetic quality of any structure with respect to height, form, proportion, volume, sitting and exterior materials; (b) the adequacy of Lot dimensions for proposed improvements; (c) the conformity and harmony of exterior design with neighboring Lots and improvements; (d) the relation of topography, grade and finished ground elevations to that of neighboring Lots and improvements; (e) the screening of mechanical and other installations; (f) the functional appropriateness with respect to drainage, utility service systems and lighting; and (g) the extent and quality of landscaped areas.

**6.6 Approval Procedure.** The Committee shall make a determination on each Application within thirty (30) days after receipt of a completed Application and all required information. The Committee may (a) approve the Application, with or without conditions; (b) approve a portion of the Application and disapprove other portions; or (c) disapprove the Application. The Committee shall notify the Applicant in writing of its decision within five (5) days thereafter. In the case of disapproval, the Committee shall specify the reasons for disapproval and/or offer suggestions for curing any objections. In the event the Committee fails to render its decision within thirty (30) days after receipt of a completed Application, approval will not be required and the provisions of this Article shall be deemed to have been fully complied with.

**6.7 Appeal.** Any Owner adversely affected by an action of the Committee may appeal such action to the Board. Appeals shall be made in writing within ten (10) days of the Committee’s action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Board within thirty (30) days after receipt of the appeal.

6.8 **Fee.** Each Lot Owner shall be required to pay a \$150.00 Design Review Fee to the Committee before any Application will be reviewed or approved by the Committee, which fee shall be deposited into the Association's general account. If necessary, the applicable Owner shall pay additional costs of architects and other professionals retained by the Committee to review the Application. The Committee may, subject to the approval of the Board, change the amount of the Design Review Fee at any time to account for increasing costs or inflation.

6.9 **Enforcement.** Subject to the approval of the Board, the Committee may enforce the provisions of this Article in accordance with Section 9.2.

6.10 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

6.11 **Liability.** Neither the Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, provided only that the member has, in accordance with the actual knowledge possessed by him, acted in good faith.

6.12 **Nonwaiver.** Consent by the Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.13 **Effective Period of Consent.** The Committee's consent to any proposed improvements shall automatically be revoked one year after issuance unless construction of the proposed improvements has been commenced or the Owner has applied for and received an extension of time from the Committee.

6.14 **Estoppel Certificate.** Within thirty (30) days after written request is delivered to the Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such improvements do not so comply, in which event the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any Mortgagee or other encumbrancer shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Committee, the Association and all Owners, and such purchaser or Mortgagee.

**ARTICLE 7: COVENANTS, CONDITIONS AND RESTRICTIONS**

**7.1 Building Restrictions.** No building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family residence and private garage sufficiently sized for not less than two (2) vehicles (i.e. not less than 22 feet by 22 feet). Carports may not be built. On all Lots: (a) all residential structures shall have 1,500 usable square feet of floor area, including the basement; (b) rambler-style houses shall have a minimum of 1,500 finished square feet of main floor area above finished grade; (c) houses with two or more stories shall have a minimum of 1,200 finished square feet of main floor area above finished grade; and (d) multi-level houses shall have a minimum of 1,500 finished square feet of main floor area above finished grade (only two levels may be used to determine the 1,500 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. The building exteriors of residential structures shall be constructed of brick, stone, rock, stucco, or a combination thereof. Hardyboard may be used as an accent material where appropriate. No vinyl siding or aluminum siding shall be permitted. Roof pitch shall not exceed 12:12, nor shall it be less than 4:12.

**7.2 Permitted Use.** Except for the Common Areas, which shall be used for the purposes set forth on or contemplated by the Plat, no Lot shall be used except for single family residential purposes. Except with the consent of the Board, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted in the Development, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on the Property. Nothing in this Section shall be deemed to prohibit (a) activities relating to the rental or sale of Lots; (b) the right of Declarant, the Association or any contractor or homebuilder to construct a residence on any Lot, to store construction materials and equipment on a Lot in the normal course of construction, and to use a residence as a sales or rental office or model home or apartment for purposes of sales or rental in the Development; and (c) the right of an Owner to maintain his professional personal library, keep his personal business or professional records or accounts, handle his personal business or professional telephone calls, or confer with business or professional associates, clients or customers in his residence, provided, however, there is no external evidence thereof and such use complies with Section 10-7B-2 of the City Code permitting home occupations. The Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of City ordinance.

**7.3 Construction Time.** Upon commencement, the construction time for the exterior portion of any structure shall not exceed twelve (12) 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 twelve (12)-month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks within the Development.

**7.4 Building Setbacks.** No building shall be located on any Lot nearer to the front, rear and side lot lines than the minimum building setback lines shown on the applicable Plat or required



by applicable local ordinance. Subject to the foregoing, all Lots are subject to the following building setbacks: (a) twenty-five feet (25') for front yards; (b) eight feet (8') and ten feet (10') for side yards; and (c) ten feet (10') for rear yards. Notwithstanding the foregoing, side yards and rear yards that adjoin a public street shall be subject to the setback requirements for front yards.

**7.5 Building Height.** No Lot in the Development shall have a residential structure that exceeds thirty-five (35) feet in height, nor any other building that exceeds twenty-five (25) feet in height. Unless a different measuring standard is specified in local ordinance, 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 applicable local ordinances are more restrictive, then they shall govern.

**7.6 Landscaping.** All landscaping must be approved by the Committee. Xeriscape landscaping is encouraged due to soil conditions and conservation of water. Xeriscape is a landscape concept which emphasizes water conservation through the use of low water demand plant material. By using plants which survive in the arid climate and blend with the surrounding desert foliage, plant material, once established, can survive with little or no watering. Each front yard shall have installed an outdoor automatic sprinkler system for irrigation.

**7.7 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 residence on any Lot shall be removed immediately after the completion of construction.

**7.8 Accessory Structures and Facilities.** 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 residence and shall be integral to the architecture of the house and subject to the prior written approval of the Committee. Outbuildings such as sheds and 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 as determined by the Committee upon its review pursuant to the approval process set forth in 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.

**7.9 Exterior Antennas, Lights, and Power Lines.** Exterior antennas are prohibited. Exposed metal flues, vents, ventilators, or other metallic rooftop protrusions shall be coated or painted with a neutral color that will blend harmoniously with the surrounding Property. TV satellite dishes are allowed, provided they are placed or screened so they are not readily visible from the street in front of the residence and are not in excess of twenty-four inches (24") in diameter. All power lines and similar type cables shall be buried underground. No shortwave radio antennas or large ground-mounted satellite dishes may be constructed on any Lot or attached to any structure thereon.

7.10 **Nuisances.** No 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. The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

(a) **Noxious or Offensive Activity.** No noxious or offensive activity shall be carried out on any Lot or in any part of the Development, including, without limitation, the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of the Development. 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.

(b) **Unsightliness.** No unsightliness shall be permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Residence or addition); open storage or parking of farm or construction equipment, inoperable motor vehicles, boats, recreational vehicles, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers screened from view in an enclosure such as a garage; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any street. 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 Committee approval, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

(c) **Lights.** Outdoor lighting shall be designed to direct the light downward and limit the field of light to the confines of the Lot on which it is installed.

(d) **Sounds.** No continuously barking dogs, loud speakers or other noise-making devices may be used, maintained or permitted to continue on any Lot in a way that annoys or disturbs other Owners or residents in the Development or creates noise that might reasonably be expected to annoy or disturb other Owners or residents in the Development, except for security or fire alarms and noise incident to legitimate construction and maintenance work.

(e) **Pests.** No Owner shall permit any thing or condition to exist upon any portion of the Development which shall induce, breed or harbor infectious plant diseases or noxious insects or vermin.

7.11 **Signs.** Except as provided in this Section, 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 that are permanent in nature or represent advertisement for small business conducted in the home or on a Lot is prohibited.

7.12 **Animals.** The Association is committed to the preservation and protection of native animal wildlife that may from time to time wander onto and through the Property. Such wildlife shall not be fed or hunted within the Development. All animals kept on any Lot shall be maintained in accordance with the rules and regulations imposed by City ordinances applicable to residential zoning, this Declaration and any Rules and Regulations imposed by the Association provided such animals are not kept, bred, or maintained for any commercial purposes. Owners desiring to keep animals on their Lots must have Committee approval as to the number and types of animals they wish to keep. No large animal or wild or dangerous animals shall be kept within the Development. No more than two (2) dogs and/or cats may be kept on any Lot. No dog shall be allowed to roam unattended on the Development.

7.13 **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 Board, 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 Board, and any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon shall be null and void. No application for re-zoning 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 Board and the Committee and the proposed use otherwise complies with this Declaration.

7.14 **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.

7.15 **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.

7.16 **Easements.** Easements for installation of and maintenance of utilities, and drainage facilities 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 tank 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. Each Lot Owner shall retain storm water and water used in connection with watering landscaping and otherwise on their own Lot.

7.17 **Paving.** Driveway and other flat paved areas may be concrete, stamped concrete, quarry tile or paving blocks. Gravel areas are not permitted.

**7.18 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.

**7.19 Pools, Spas, Fountains, Game Courts.** Pools, spas, fountains, and game courts must be approved by the Committee and shall be located to avoid excessive impact to 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.

**7.20 Fences and Walls.** No front yard fences shall be permitted. Fencing and walls may be constructed of wrought iron, pre-cast concrete, brick, cinder block or other masonry material approved by the Committee. No other materials may be used for the construction of fences within the Development. Fences and walls are to be color coordinated with the approved residence colors. Use of landscaping materials for hedges and fencing is encouraged. No structures or fences shall be permitted within eight feet (8') of the right-of-way line for any street or public way. Fences, walls, or hedges shall not exceed six feet (6') in height; provided, however, that no wall, fence, or opaque hedge or screening materials shall be maintained within a required front yard. All fences and walls must have prior written approval of the Committee.

**7.21 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 forty-eight (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. Travel trailers, motorhomes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motorhomes, 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.

**7.22 Disclosure Regarding Ground Water.** MANY AREAS IN AND AROUND THE CITY OF ST. GEORGE HAVE GROUND WATER PROBLEMS DUE TO SEASONALLY HIGH (FLUCTUATING) WATER TABLE. APPROVAL OF THIS DEVELOPMENT DOES NOT CONSTITUTE A REPRESENTATION BY THE CITY THAT THE BUILDING AT ANY SPECIFIED ELEVATION WILL SOLVE GROUND WATER PROBLEMS, IF ANY.

**7.23 Disclosure Regarding Blue Clay.** MANY AREAS IN AND AROUND THE CITY OF ST. GEORGE EXPERIENCE FOUNDATIONAL AND LANDSCAPING PROBLEMS DUE TO THE PRESENCE OF MONTMORILLONITE, COMMONLY KNOWN AS "BLUE CLAY". BLUE CLAY MAY BE FOUND ON ANY OR ALL OF THE LOTS IN THE DEVELOPMENT. EACH OWNER: (1) ACKNOWLEDGES THAT HE HAS BEEN INFORMED OF THE POTENTIAL EXISTENCE OF BLUE CLAY ON HIS LOT; AND (2) ASSUMES ALL RISK ARISING OUT OF OR RELATING TO THE PRESENCE OF BLUE CLAY ON HIS LOT.

**7.24 Disclosure Regarding "No Disturbance" Areas.** CERTAIN AREAS WITHIN THE DEVELOPMENT, INCLUDING PORTIONS OF CERTAIN LOTS, AS SHOWN ON THE PLAT, HAVE BEEN

CLASSIFIED BY THE CITY AS "NO DISTURBANCE" AREAS PURSUANT TO SECTION 10-13A OF THE CITY CODE. NO PERSON SHALL UNDERTAKE ANY ACTIVITY ON, CONSTRUCT ANY IMPROVEMENTS ON OR DISTURB IN ANY WAY THE NO DISTURBANCE AREAS WITHOUT THE PRIOR APPROVAL OF THE CITY.

**7.25 Disclosure Regarding Water Level.** THE FOLLOWING EXCEPTION APPEARS ON THE TITLE REPORT THAT MAY EFFECT THE PROPERTY AS OUTLINED IN THE TITLE REPORT: ANY ADVERSE CLAIM BASED UPON THE ASSERTION THAT (A) SOME PORTION OF THE LAND FORMS THE BED OR BANK OF A NAVIGABLE RIVER OR LAKE, OR LIES BELOW THE MEAN HIGH WATER MARK THEREOF; (B) THE BOUNDARY OF THE LAND HAS BEEN AFFECTED BY A CHANGE IN THE COURSE OR WATER LEVEL OF A NAVIGABLE RIVER OR LAKE; (C) THE LAND IS SUBJECT TO WATER RIGHTS, CLAIMS OR TITLE TO WATER AND TO ANY LAW OR GOVERNMENTAL REGULATION PERTAINING TO WETLANDS.

**7.26 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 Development.

**7.27 Supplemental Use Restrictions Upon Expansion.** In any supplement to this Declaration which is recorded in conjunction with the addition to the Development 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 this Article.

**7.28 Deviations.** Deviations from the standards and restrictions set forth in this Article may be allowed only with the approval of the Committee or, where specified, the Board, for good cause shown.

#### **ARTICLE 8: PROPERTY RIGHTS IN COMMON AREAS**

**8.1 Easement of Enjoyment.** Each Owner shall have a right and easement of use and enjoyment in and to any Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Owner's Lot.

**8.2 Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, contained within The Overlook at Green Valley as the same is identified in the Plat recorded in Book \_\_\_\_\_, at Page \_\_\_\_\_, and in the Declaration of Covenants, Conditions and Restrictions for The Overlook at Green Valley recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of the Washington County Recorder. TOGETHER WITH a right and easement of use and enjoyment in and to any Common Areas described and provided for in said

Declaration of Covenants, Conditions and Restrictions and in the Plat thereof in the official records of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

8.3 **Transfer of Title.** Declarant agrees to convey to the Association title to the Common Areas, free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), as each such parcel is substantially completed. Upon such conveyance, each such parcel shall become part of the Common Areas.

8.4 **Limitation on Easement.** An Owner's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the City, the County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Development for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association.

#### ARTICLE 9: ENFORCEMENT

9.1 **Use of Common Areas.** In the event any Owner shall violate any provision of this Declaration, the Bylaws or the Rules and Regulations adopted by the Association governing the use of Common Areas, then the Association, acting through the Board, shall notify the Owner in writing that the violations exist and that he is responsible for them, and may, after reasonable notice and opportunity to be heard, do any or all of the following: (a) suspend the Owner's voting rights and right to use the Common Areas for the period that the violations remain unabated; (b) impose reasonable fines as an Individual Assessment upon the Owner, in a manner and amount the Board deems appropriate in relation to the violation; or (c) bring suit or action against the Owner to enforce the provisions of this Declaration. Nothing in this Section, however, shall authorize the Association to deprive any Owner of access to and from his Lot.

9.2 **Nonqualifying Improvements and Violation of Declaration.** In the event any Owner constructs or permits to be constructed on his Lot an improvement contrary to the provisions of this Declaration, or causes or permits any improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated on his Lot, then the Association

shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same in order to bring his Lot, the improvements thereon and his use thereof, into conformance with this Declaration. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, the Association shall, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, have the right to do any or all of the following:

(a) Impose reasonable fines against such Owner in the manner and amount the Board deems appropriate in relation to the violation, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may levy and Individual Assessment against such Owner for the entire cost of the work done; provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

**9.3 Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine or charge is due. The Association may foreclose on the lien and may, through its duly authorized agents, bid on the Lot at such foreclosure sale and may acquire, hold, lease, mortgage or convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in Section 9.3(b). Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

**9.4 Notification of First Mortgagee.** The Board shall notify any first Mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days after notice of default to the Owner.

9.5 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any Mortgage on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot which is subject to any Mortgage pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment notice of which was recorded after the recording of the Mortgage. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

9.6 **Interest, Expenses and Attorneys' Fees.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate three (3) percentage points per annum above the prime rate published in the *Wall Street Journal* at the time, or such other rate as may be established by the Board, but not to exceed the lawful rate of interest under the laws of the State. A late charge may be levied for each delinquent Assessment in an amount established from time to time by resolution of the Board; provided, such late charge may not exceed thirty percent (30%) of such Assessment. In the event the Association files a notice of lien, the lien amount shall also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, which fee shall be established from time to time by resolution of the Board. If the Association prevails in any procedure to enforce the provisions of this Declaration, the Association is entitled to an award of its costs and reasonable attorneys' fees associated with the action.

9.7 **Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for in this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law. Failure by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

#### ARTICLE 10: AMENDMENTS

10.1 **Amendment and Repeal.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the approval of at least sixty-seven percent (67%) of the votes entitled to be cast by the Class A Members participating in a meeting in person, by proxy or by written ballot, together with the written consent of the Class B Member, if the Class B Membership has not been terminated as provided in this Declaration. Any such amendment or repeal shall become effective only upon recordation in the official records of the County. In no event shall an amendment under this Section create, limit or diminish special Declarant rights without Declarant's written consent.

10.2 **Regulatory Amendments.** Notwithstanding the provisions of Section 10.1, until termination of the Class B Membership, Declarant shall have the right to amend this Declaration or



the Bylaws in order to comply with the requirements of any applicable statute, ordinance or regulation of the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State, or any corporation wholly owned, directly or indirectly, by the United States or the State which insures, guarantees or provides financing for a planned community or lots in a planned community.

#### **ARTICLE 11: EXPANSION OF DEVELOPMENT**

**11.1 Right to Expand and State of Title to New Lots.** There is hereby granted unto Declarant, and Declarant hereby reserves, the absolute right and option to expand the Development at any time (within the limits herein prescribed) and from time to time by adding to the Development the Additional Land. Notwithstanding any provision of this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any Owner, Mortgagee, or the Association) and shall be limited only as specifically provided in this Declaration. Any Additional Land shall be deemed added to the Development and, subject to the terms of this Article, to the jurisdiction of the Association at such time as a duly approved subdivision plat and a supplement to this Declaration containing the information required by Section 11.3 have been recorded with respect to the Additional Land concerned. After the recordation of such supplement and plat, title to each Lot thereby created within the Additional Land concerned and its appurtenant right and easement of use and enjoyment in and to Common Areas shall be vested in and held by Declarant, and none of the other Owners or the Association shall have any claim or title to or interest in such Lot and such Lot's appurtenant nonexclusive right and easement of use and enjoyment to the Common Areas.

**11.2 Rights and Statements Respecting Additional Land.** Declarant hereby furnishes the following information and statements respecting the Additional Land and Declarant's right and option concerning expansion of the Development by the addition thereto of the Additional Land or a portion or portions thereof:

(a) The Additional Land may be added to the Development at any time (within the limits herein prescribed) and from time to time.

(b) There are no limitations or requirements relative to the size, location, or configuration of the Additional Land which can be added to the Development or relative to the order in which the Additional Land can be added to the Development.

(c) There are no limitations or requirements (other than zoning and subdivision restrictions as they may exist or be modified from time to time) relative to the layout, design, size, location, density, permitted uses, legal structure, or other characteristics of the Lots to be created on the Additional Land added to the Development.

(d) Any structure erected on a portion of the Additional Land added to the Development will be constructed in a good and workmanlike manner.

(e) In conjunction with the addition to the Development of the Additional Land, Declarant shall have the right to reserve, in the instruments through which the addition is accomplished, rights-of-way and/or easements for purposes of enabling access to, furnishing utilities to, and facilitating or enabling development of, such other land as Declarant deems necessary.

(f) There shall be no maximum number of Lots which may be created on the Additional Land, subject to applicable zoning requirements. There is no restriction concerning the size of commercial, retail, or recreational facilities that may be constructed on the Additional Land, subject, however, to applicable zoning requirements.

(g) Taxes and assessments relating to the Additional Land added to Development and relating to a period prior to the addition of such Additional Land to the Development shall, prior to such addition, be either paid by Declarant if then due or escrowed for later payment with a title company in the State if not then due.

**11.3 Procedure for Expansion.** The supplements to this Declaration by which addition to the Development of the Additional Land is accomplished shall be executed by Declarant; shall be in recordable form; shall be filed for record in the office of the County Recorder, on or before twenty (20) years from the date that this Declaration is recorded; and shall contain the following information for the Additional Land which is being added to the Development:

(a) Data sufficient to identify this Declaration and the plat respecting the Additional Land being added to the Development.

(b) The legal description of the Additional Land being added to the Development.

(c) Any amendments, supplements, or replacements to or for the standards and restrictions set forth in this Declaration.

(d) A statement that such Additional Land shall thereafter be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens set forth in this Declaration, as said Declaration may be amended or supplemented in accordance with the immediately foregoing subsection.

(e) A statement that Declarant agrees to convey by special warranty deed to the Association, at or prior to the time it conveys to an Owner the first Lot located on the Additional Land being added to Development, good and marketable title to any parcels or Lots located therein intended by Declarant to be Common Areas situated in the Additional Land being added to the Development, free and clear of all monetary liens and encumbrances (other than the lien of current general taxes and the lien of any current assessments, charges, or taxes imposed by governmental or quasi-governmental authorities).

(f) Such rights-of-way and/or easements as are being reserved by Declarant pursuant to Section 11.2(e).

(g) Such other matters as Declarant may deem to be necessary, desirable, or appropriate.

Upon the recordation of any supplement contemplated above, it shall automatically supplement this Declaration and any supplements previously recorded. At any point in time, the Declaration for the Development shall consist of this Declaration, as amended and expanded by all supplements theretofore recorded pursuant to the terms hereof.

**11.4 No Obligation to Expand.** Except to the extent specifically indicated herein, this Declaration is not intended, and shall not be construed so as, to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (a) the addition to the Development of any Additional Land; (b) the creation or construction of any Lot or other improvement; (c) the carrying out in any particular way or within any particular time of any development or addition to the Development which may be undertaken; or (d) the taking of any particular action with respect to the Additional Land.

**11.5 Owners' Obligation Concerning Expansion.** Each Owner, by acquiring his interest in the Development, agrees not to inhibit or oppose Declarant's future development of the Additional Land. Without limiting the scope of the immediately foregoing sentence, no Owner shall oppose such development in public meetings, by petition, or by legal actions.

#### ARTICLE 12: MISCELLANEOUS

**12.1 Construction; Severability; Number; Captions; Exhibits.** This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration. All Exhibits hereto are incorporated by reference.

**12.2 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 on alienation shall continue and remain in full force and effect for a period of twenty-one (21) years following the death of the last survivor of the issue of Patrick Moffat, 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.

**12.3 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 Common Areas that do not materially interfere with the best interests of Owners and/or the Association including, but not limited to, access and utility easements, road easements, pedestrian easements, pedestrian and hiking trails, and easements and drainage easements.

**12.4 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 13 day of September, 2007.

BOYER GREEN VALLEY, L.C.,  
a Utah limited liability company, by its Manger

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

By [Signature]

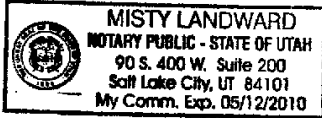
Name: Steven B. Ostler

Title: Manager

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

On the 13 day of September, 2007, personally appeared before me Steven B Ostler, who being by me duly sworn, did say that he is a Manager of The Boyer Company, L.C., the Manger of Boyer Green Valley, L.C., a Utah limited liability company, and that the foregoing instrument was signed on behalf of the said company by authority of its organizational documents and that the company executed the same.

[SEAL]



[Signature]  
Notary Public

**EXHIBIT A**

Legal Description of the Property

All of Lots 1 through 50 and all Common Areas, The Overlook at Green Valley,  
According to the official plat thereof on file and of record in the Washington County  
recorder's office.