

24

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Restrictive Page 1 of 24
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By SOUTHERN UTAH TITLE CO



COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

HEIGHTS AT WASHINGTON BENCH PHASE 3

WASHINGTON CITY, UTAH

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE
HEIGHTS AT WASHINGTON BENCH PHASE 3,
A RESIDENTIAL SUBDIVISION LOCATED IN
WASHINGTON CITY, UTAH**

This Declaration of Covenants, Conditions and Restrictions for the Heights at Washington Bench Phase 3, a Residential Subdivision located in Washington City, Utah ("Declaration") is made and executed effective this 20th day of September, 2021, by Yankee Heights, LLC, a Utah limited liability company (the "Declarant").

RECITALS

A. Declarant is the owner of the following described tract of land, to be known as the Heights at Washington Bench Phase 3, (hereinafter referred to as "Property", "Project," or "Subdivision"), a residential subdivision located in Washington City, Washington County, State of Utah, described as follows: See Exhibit "A" attached hereto and incorporated herein by this reference.

B. A Preliminary Plat of the Project ("Plat") has been recorded, or is being recorded concurrent with this Declaration. The easements indicated on said Plat are perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements. The terms of said Plat, and any amendments thereto, are incorporated herein and made a part hereof.

C. Declarant hereby includes all of the Property in the Plat and acknowledges division of the Property into Lots and Common Area (aka Retention Area) as shown on said Plat. This Declaration is being recorded against the entire Property, including all Lots, Common Area and development phases therein and the Declaration, and all covenants, conditions and restrictions stated therein shall run with the land. This Declaration shall also apply to any additional land that is hereafter annexed into the Property.

D. This Subdivision shall be subject to, and governed by the Community Association Act, U.C.A. 57-8a-101 *et seq.*, and other applicable law. The Subdivision is not a cooperative, as referred to in U.C.A. 57-8a-212. Nor does it include any condominiumized units.

E. Declarant further declares that all of the Property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and every Lot, part or portion thereof.

F. The acceptance of any deed to or conveyance of any Lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Declarant and with each other to accept, hold, improve, use and convey the Property described and conveyed in or by such deed or conveyance subject to said covenants, conditions, and restrictions. Upon recordation of this Declaration, all Lot Owners and prospective Lot Owners are on notice of the covenants, conditions and restrictions set forth in this Declaration, and shall be bound thereby.

G. During the Development Phase, as defined below, Declarant shall be exempt from the requirements and restrictions of these Covenants, as the same exists or as they may be amended, supplemented, or replaced in accordance with other provisions of the Covenants. Additionally, Declarant, in its sole discretion, may exempt BULK LOT PURCHASERS from certain provisions, restrictions and requirements herein.

H. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to the Association and its Board of Directors, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of this Declaration, and otherwise enforcing compliance with the terms of the Declaration. Notwithstanding, nothing in this Declaration or the conveyance referenced in this paragraph shall prevent Declarant from transferring fee title in any portion of the Property to third parties. However, any Lot that is transferred to a third party shall be subject to the Declaration.

ARTICLE 1 - DEFINITIONS

The following definitions shall control in these Protective Covenants:

1.1. **“Architectural Control Committee”** or **“ACC”** shall mean and refer to a committee whose members are appointed by the Board. Such committee shall be responsible to review, recommend, approve/deny architectural request applications from Members who intend to construct (a) structure(s) and/or improve/change the exterior of any structure or lot. *See Article 4.*

1.2. **“Architectural Guidelines”** shall refer to the Architectural Guidelines and Design Restrictions referenced in Article 4, Section 4.03, and attached hereto as Exhibit B.

1.3. **“Articles”** means and refers to the Articles of Incorporation of the Association.

1.4. **“Association”** shall mean Heights at Washington Bench Homeowners Association (“Association”), a Utah non-profit corporation, its successors and assigns.

1.5. **“Bulk Lot Purchaser”**. From time to time, Declarant may elect to sell/transfer Lots to a BULK LOT PURCHASER (hereinafter, “BLP”). A third-party purchaser shall be deemed a BLP if: (i) it/she/he purchased from Declarant more than one (1) Lot in a particular phase of the Subdivision; AND (ii) it/she/he is designated as a BLP by the Declarant. BLP does not include a person or entity who is not expressly designated as such by the Declarant. A BLP shall be considered an exclusive builder for the Lots so purchased within a phase(s), and enjoys certain other rights and privileges of the Declarant as outlined herein; notwithstanding, a BLP shall not become or be considered to be the Declarant. The Declarant may designate more than one BLP within each phase of the Subdivision, and may exempt (a) BLP(s) from certain provisions, restrictions and requirements herein.

1.6. **“Bylaws”** means and refers to the Bylaws of the Association.

1.7. **“Common Area(s)”** means all real property (including the improvements thereto and facilities thereon) owned or hereafter acquired by the Association for the common use, enjoyment and/or benefit of the Owners and includes that portion of Property owned by the Association, shown on the Plat as Common Area/Retention Area. Common Area is dedicated to the common use, enjoyment and/or benefit of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Directors. Specifically exempted from Common Area are Lots that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

1.8. **“Declarant/Developer”** shall be synonymous. Declarant shall mean and refer to YANKEE HEIGHTS, LLC, a Utah limited liability company, and its successors, and assigns. Declarant has the right to assign its rights under this agreement, and any assignee shall become the Declarant and have all of the same rights as the original Declarant.

1.9. **“Declaration”**, **“Covenants”** or **“Protective Covenants”** shall mean this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.10. **“Development Phase”** shall mean that time period during which Declarant owns any Lots or undeveloped property within the Project, including any land that may be hereafter annexed into the Project. The Development Phase shall continue even after Declarant no longer owns any property within the Project until such time as the Members elect a new three (3) member Board of Directors to govern the Association.

1.11. **“Directors,” “Board of Directors,” “Trustees,”** or **“Board”** shall mean the governing body of the Association and/or its governing members.

1.12. **“Limited Common Area.”** Limited Common area, if any, is that portion of the Common Area designated on the plat for exclusive use of the lot owner and shall be maintained by the lot owner. The Lot Owner is responsible to maintain and repair any Limited Common Area associated with his/her Lot, and to fully comply with all Rules and Regulations related to Limited Common Areas within the Subdivision.

1.13. **“Lot”** shall mean a separately numbered and individually described plot of land shown on the Plat, designated as a Lot for private ownership, but specifically excludes any Common Area, Limited Common Area,

roads, streets and/or parking areas within the Property.

1.14. **“Lot Owner”** shall mean and is synonymous with the term **“Owner”**.

1.15. **“Member;” “Membership.”** Every Owner of a Lot within the Property subject to these Covenants, including Declarant, shall be a Member of the Association and by being such Member shall hold Membership in the Association. Membership is appurtenant to and may not be separated from Lot ownership.

1.16. **“Mortgage”** includes **“deed of trust”** and mortgagee includes **“trust deed beneficiary.”**

1.17. **“Owner”** shall mean the entity, person, or group of persons owning fee simple title to any Lot that is within the Property. Regardless of the number of parties participating in the ownership of each Lot, the group of those parties shall be treated as one **“Owner.”** The term **“Owner”** includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.

1.18. **“Plat” or “Map”** shall mean the subdivision Plat recorded herewith entitled **“Heights at Washington Bench Phase 3”** consisting of one or more sheets, prepared and certified by a licensed Utah Registered Land Surveyor, including any replacements thereof, or additions thereto.

1.19. **“Property”, or “Project”, or “Subdivision”** shall mean that certain real property hereinbefore described that is subjected to these Covenants, and such additions thereto as may be brought within the jurisdiction of the Association by annexation and subjected to these Covenants as hereafter provided.

1.20. **“Residence,” “Home”, or “Unit”** shall mean a detached single-family dwelling and the Lot upon which it is constructed.

1.21. **“Rules” or “Regulations”** shall mean and refers to any rules of regulations created by the Declarant or the Board of Directors, pursuant to its authority under the Articles, of this Declaration and/or the Bylaws, to govern the Association.

1.22. **“Single Family” or “Family”** shall mean persons related by blood or marriage, by legal adoption, or by operation of law; but in no event more than three (3) unrelated persons.

ARTICLE 2 – HOMEOWNERS ASSOCIATION

2.1. CREATION OF HOMEOWNERS ASSOCIATION; PURPOSE; BOARD

2.1.1. Establishment of Association. The Declarant shall cause to be incorporated a non-profit, non-stock corporation known as the Heights at Washington Bench Homeowners Association.

2.1.2. Purpose of Association; Powers and Duties. The Association is formed to own and maintain certain Common Area, and to carry out and enforce the terms of this Declaration. The Association shall have the duties and powers contained herein, in the Bylaws, and as otherwise provided under Utah law. Among other things, the Association shall operate, administer and maintain all Association property including the Common Area. The Association shall also have power to collect and disburse assessments and the power to administer and enforce the Covenants, Bylaws and Rules and Regulations. The Association shall adopt Rules and Regulations governing use of Association property (subject to the limitations contained herein), and establish and manage annual budgets, reserve funds and Association expenses.

2.1.3. Board of Directors.

2.1.3.1. Appointment. The Association shall be governed by a Board of Directors, consisting of at least three (3) Directors. During the Development Phase, Declarant shall have the right to appoint members of the Board of Directors. Declarant’s appointees need not be Members

of the Association. Following the Development Phase, the Board will be selected in accordance with the Bylaws of the Association.

2.1.3.2. Increasing Number of Directors. By majority vote of the Board, the number of Directors may be increased from three (3) to five (5); if that occurs, a meeting of the members shall be called to elect additional Board members.

2.1.3.3. Board Meetings. The Board shall hold Board meetings as required by the Association's Bylaws, Utah law, and as required to reasonably promptly address Association business. All board meetings shall be duly noticed, and open to the Owners, as required under U.C.A. 57-8a-226.

2.1.4. Management Company. The Board of Directors may delegate day-to-day management responsibilities of the Association to Association officers, as outlined in the Bylaws, and/or to a management agent.

2.1.5. Insurance on Lots and Homes. The Association shall have no duty or responsibility to procure or maintain any fire, liability, flood, earthquake or similar casualty or hazard insurance coverage for Lots or Homes, or for the contents of any Home. The Association also has no duty to insure against any negligent, criminal or terrorist acts or events occurring at, in or on any Lot or in any Home. Each Lot Owner shall be solely responsible for insuring his/her/its Lot and Home, and the consequences of any failure to do so shall be borne solely by said Lot Owner, and not by the Association.

2.2. BYLAWS.

2.2.1. Adoption/Amendment. The Association shall be governed by Bylaws, which shall be established by the Declarant or the Board of Directors, and which may be amended as set forth therein. A copy of the Association Bylaws is attached hereto as Exhibit "C".

2.2.2. Conflict/Priority. In the event any provision of the Bylaws is inconsistent with a provision of this Declaration, the provisions of this Declaration shall control. In the event of any conflict between the Bylaws and any Rules and Regulations of the Association, the Bylaws shall control.

2.3. MEMBERSHIP AND VOTING RIGHTS.

2.3.1. Membership. The legal owner of each Lot in the Subdivision shall be a member of the Association by virtue of these Covenants. Each Owner automatically becomes a Member of the Association upon acquisition of fee title to a Lot. Mortgage holders or other equitable holders of rights related to Lots within the Subdivision shall not be Members of the Association.

2.3.2. Voting Classes. The Association shall have two classes of voting membership:

CLASS-A. Class-A Members are all Members with the exception of the Declarant, until Declarant's membership converts to Class-A membership as provided for herein. Class-A Members are entitled to one vote for each Lot owned.

CLASS-B. The Class-B member is the Declarant. The Class-B member is entitled to ten (10) votes for each Lot owned. The Class-B membership will cease and be converted to Class-A membership on the happening of one of the following events, whichever first occurs: (a) upon termination of the Development Phase; (b) the expiration of seven (7) years from the first Lot conveyance to a third party purchaser; or (c) the voluntary surrender of Class-B membership status by the express written action of the Declarant. Notwithstanding, if Declarant shall exercise its option to annex additional land

into the Subdivision and/or adding additional Lots by platting additional phases as provided in these Covenants, then the seven (7) year provision herein shall be reset, commencing the date of the latest annexation.

2.3.3. Voting When Lot Has Multiple Owners. When more than one person or entity holds an interest in any Lot, the group shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

2.3.4. Transfer of Voting Rights. Upon sale or transfer of a Lot, the transferor's membership automatically terminates and the membership interest is transferred to the new Owner of said Lot.

2.3.5. Member Meetings; Notice and Quorum Requirements.

2.3.5.1. Annual Member Meetings. Member meetings shall be held at least annually. Among other things, the Board shall be elected at a duly noticed member meeting. Board candidates with the highest number of votes shall be elected to fill any vacancy on the Board.

2.3.5.2. Notice. Written notice of any member meeting called for the purpose of taking any action authorized herein shall be sent to all Members not less than twenty (20) days, no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Additional details regarding Member Meetings and related procedures, topics and voting rights, shall be set forth in the Association's Bylaws.

ARTICLE 3 – FINANCES AND OPERATIONS

3.1. **CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.** Each Owner of any Lot, by acceptance of a deed or conveyance from Declarant or from a Bulk Lot Purchaser therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association, assessments or charges and interest, costs of collection and a reasonable attorney fee, as hereinafter provided. All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such Lot at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent.

3.2. **PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair and preservation of the Common Area, as shown on the Plat and for other expenses as permitted herein. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing and maintaining the Common Areas including any related retention and detention basin(s) and related drainage infrastructure; the payment of administrative expenses of the Association; insurance premiums and deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the Common Areas which must be replaced on a periodic basis; enforcement of the Covenants, Bylaws and Rules and Regulations; and other amounts as the Directors shall determine to be necessary to meet the primary purposes of the

Association.

3.3. ANNUAL ASSESSMENTS. From recordation of these Covenants until changed by the Declarant or a majority vote of the Board, annual assessments shall be \$200 per Lot. The Board shall act in good faith to minimize any annual assessment increases. Absent extenuating circumstances, no increase in annual assessments shall be greater than 20% in a given year.

3.4. SPECIAL ASSESSMENTS. From time to time, the Board of Directors may, by unanimous vote, and without Member approval, impose special assessments to cover the cost of necessary capital improvements within the Subdivision. Alternatively, special assessments may be approved by a majority vote of the Members, so long as a Quorum is present. The Board shall act in good faith to minimize the amount of any special assessment.

3.5. SINGLE LOT ASSESSMENT. The Association may also levy a special assessment against any Member and Member's Lot to reimburse the Association for costs incurred in bringing a Member and Member's Lot into compliance with the provisions of these Covenants and other governing documents of the Association. The single lot assessment may be levied upon the vote of the Board after notice and the opportunity to be heard is given to the Lot Owner.

3.6. ADDITIONAL ASSESSMENTS. In addition to the assessments referenced above, the Association may levy such additional assessments as necessary from time to time for the purpose of: (i) settling litigation or complying with a court order; (ii) repairing or maintaining the Property or any part of it for which the Association is responsible to avert an imminent and serious safety threat; (iii) taking steps to improve or repair drainage, retention or detention of water, or otherwise complying with any drainage and retention requirements associated with the Property; (iv) repairing, maintaining or covering actual Association expenses that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates; landscape or maintenance contract services, etc.); and (v) repairing and restoring the damage or disruption resulting to streets or Common Area from the activities of Washington City or other utility provider in maintaining, repairing or replacing the utility lines and facilities thereon. Prior to the imposition or collection of any Assessment under this paragraph, the Board shall pass a resolution containing written findings detailing why the expenditure is necessary. If the expenditure stems from an unbudgeted utility maintenance or similar expense, the assessment shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment.

3.7. UNIFORM RATE OF ASSESSMENT; PERIODIC ASSESSMENT. Assessments shall be fixed at a uniform rate for all Lots; provided, however, that assessments shall not accrue against the Declarant or Lots owned by the Declarant, nor shall they accrue against a BLP(s) or Lots owned by a BLP(s).

3.8. EXEMPT PROPERTY. The following property subject to these Protective Covenants is exempt from the assessments created herein:

- All property dedicated to and accepted by any local public authority.
- All Common Areas and Limited Common Areas.
- All streets, rights of way, curbs and gutters within the Subdivision.
- All Lots owned by Declarant
- All Lots sold/transferred by Declarant to a BLP, as so-designated by Declarant.

3.9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The assessments provided for herein shall begin to accrue upon Settlement/Closing on the sale of a Lot, with or without a Home. The first assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination of a budget by the Board, the prior year's Annual Assessment amount shall continue. At least thirty (30) days prior to the commencement of each new assessment period, the Directors shall send, or cause to be sent, a written notice of the annual assessment to each Owner subject thereto. This notice shall

not be a pre-requisite to validity of the assessment. The assessment shall be payable on an annual, quarterly or monthly basis and the due dates shall be established by the Directors.

3.10. EFFECT OF NON-PAYMENT OF ASSESSMENTS — REMEDIES OF THE ASSOCIATION.

3.10.1. Default; Interest; Late Fees. Any assessment or installment thereof not paid within ten (10) days after the due date therefore shall be delinquent, resulting in default, and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall set by resolution) until paid. In addition, a late fee of \$15.00 for each delinquent installment shall be imposed.

3.10.2. Remedies. In the event of default by an Owner, the Directors may, in the name of the Association: (a) impose fines and/or late fees; (b) restrict use of common areas; (c) restrict an Owner's voting right; (d) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, (e) foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, (f) restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Lot Owner, and/or (g) pursue any other remedy available in law or equity.

3.10.3. Collection Costs; Costs of Foreclosure. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee.

3.10.4. Power of Sale. A power of sale is hereby conferred upon the Association. Under the power of sale, the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

3.10.5. Assessments Required Regardless of Use of Property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of the Lot.

3.11. WORKING CAPITAL FUND. Upon acquisition of record title to a Lot by the first Owner thereof, other than Declarant or BLP, a contribution shall be made at Settlement/Closing by or on behalf of the Lot purchaser to the working capital fund of the Association in an amount equal to six (6) months installments of the annual assessment currently in effect at the time of the purchase. Payment of this amount shall be in addition to, not in lieu of, the regular annual assessment and shall not be considered an advance payment of any assessment. The Association shall maintain the working capital fund in a segregated account for repair, maintenance and replacement of those Common Areas (including detention and retention basin(s)) which must be replaced on a periodic basis, to meet unforeseen expenditures, unbudgeted maintenance or repairs or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund shall not be refundable. Declarant may use any working capital funds to defray any of its Common Area expenses within the Project, or to make up any budget deficits.

3.12. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to payments that became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments. Moreover, assessment obligations shall immediately begin to accrue for any person or entity who acquires a Lot via foreclosure proceedings.

3.13. BOOKS, RECORDS AND AUDIT.

3.13.1. Assessment Records. The Directors shall prepare a roster of the Lots within the Subdivision, and the assessments applicable thereto, at the same time that it shall fix the amount of the assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

3.13.2. Certificate Regarding Payment of Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

3.13.3. Access to Records Free of Charge. The Association shall maintain current copies of the Protective Covenants, Articles, Bylaws, Rules and Regulations, and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. An Owner's access to said documents shall be free of charge. Notwithstanding, reasonable charges shall be made for copying, researching or extracting services related to said documents.

3.13.5. Processing Fee. Each Lot/Home Owner subsequent to the original Owner who purchased a Lot/Home from the Declarant shall pay a Processing Fee in the amount of not more than Two-hundred Fifty Dollars (\$250.00) to the Association or its Management Agent. Such Fee shall accommodate the cost of managing changes to the Association records associated with subsequent resales of Lots/Homes.

3.14. EXEMPTION. Neither the Declarant, nor Declarant's designated BLP(s), if any, shall be subject to any of the Assessments or Fees of this Article 3.

ARTICLE 4 - ARCHITECTURAL CONTROL COMMITTEE ("ACC")

4.1. APPOINTMENT AND OPERATIONS OF THE COMMITTEE

4.1.1. Appointment of ACC. During the Development Phase, the Declarant (or its appointee) shall serve as the ACC. Thereafter, the Board of Directors may appoint three (3) members to the ACC. The Board has the option to appoint themselves as the ACC or appoint one member of the Board as Chairman with a minimum of two committee members from the membership at large. One member of the ACC may be somebody other than a Member of the Association if the Board determines, by unanimous vote, that a person outside of the Association is needed to properly carry out ACC obligations. The Board may remove any member of the ACC at any time for any reason. Unless appointed by the Declarant, nobody may serve on the ACC for more than five (5) consecutive years.

4.1.2. Appointment of ACC Officers. The ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices.

4.1.3. Adoption of ACC Rules and Regulations. Subject to Board approval, the ACC shall adopt reasonable rules and regulations regarding its duties, the time and place for its meetings, and procedures for evaluating applications made to the ACC. Subject to Board approval, the ACC may also adopt a list of standards and design guidelines to supplement the Architectural Guidelines referenced in Section 4.3 below. Any rules, regulations, procedures and standards adopted by the ACC shall be consistent with this Declaration, the Architectural Guidelines and the Association's Bylaws, Rules and Regulations.

4.1.4. ACC Meeting Minutes. The ACC shall keep written minutes of its meetings, which shall be open for inspection upon request.

4.1.5. Notice of ACC Meetings. Notice of meetings shall be given to Members who have made application to the ACC for review of a proposed plan/improvement.

4.1.6. Reimbursement for Expenses. Unless authorized by resolution of the Board, the members of the ACC shall not receive any compensation for services rendered. However, they are entitled to reimbursement from the applicant, for any reasonable expenses incurred when evaluating an application. Professional consultants retained by the ACC shall be paid such compensation as the ACC determines, which fees shall be paid by the Member-applicant.

4.1.7. ACC Application Fee(s). Any ACC application fee must be established by the Association Board.

4.2. APPLICATIONS FOR ACC APPROVAL.

4.2.1. Submission of Application. Prior to the commencement of any excavation, construction or remodeling of any structure or Home or any addition to any structure or Home, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the ACC shall be required. A plan review application packet may be obtained from the Board or the ACC. When submitting the plan review application, three (3) complete sets of building plans and specifications shall be submitted to the ACC (one 2'x3' in size and one in 11"x17" in size). The application shall also include a site or plot plan showing grading, landscaping, lighting, and the exact part of the building site where the improvements will cover. It shall also include such samples of building materials as the ACC deems necessary. The application shall also include the application fee.

4.2.2. ACC Approval Required Before Commencement of Work. No work shall be commenced unless and until the ACC shall approve the plan review application and determine that the proposed plan is in compliance with the Covenants and the standards herein or as hereafter established by the ACC. Proceeding with work that has not been approved by the ACC shall constitute a violation of this Declaration, and shall result in fines, as approved by the Board, and a lien against the Lot of where the unapproved work/improvement is being done.

4.2.3. Additional Application Required If Material Change In Scope Of Work. An additional plan review application must be submitted to the ACC if an Owner makes material changes to plans approved by the ACC.

4.2.4. Review/Approval of Application. The ACC shall act in good faith to evaluate plan review applications within fifteen (15) business days of receipt. In the event the ACC fails to approve or disapprove in writing a plan review application within said fifteen (15) business day period, the Owner shall submit a written inquiry to the ACC requesting a status update. If the ACC fails to approve or disapprove of the proposed plan within fifteen (15) business days after receipt of the Owner's written inquiry, then Owner may proceed with the proposed plan as if the ACC had approved the application provided Owner fully complies with this Declaration, the Architectural Guidelines and all existing rules and regulations of the ACC. The ACC is authorized to approve a proposed plan subject to conditions that it deems necessary and appropriate.

4.2.5. Grounds for Rejection/Denial. The ACC may deny any ACC application for good cause including without limitation concerns about suitability of the proposed building, color scheme, quality or type of building materials, the site location and features, incongruency or lack of harmony with the surroundings, and the effect of said improvements on adjacent or neighboring property. Any denial shall be

in writing and shall specify the basis of the denial, and shall be delivered to the applicant, and shall be final upon delivery to applicant.

4.2.6. Appeal of Adverse ACC Decision. An applicant may appeal to the Board any adverse ACC decision within seven (7) calendar days after receiving notice of the adverse decision. The Board shall schedule a hearing within thirty (30) days after receipt of a timely appeal. The Board shall review the ACC decision de novo and may affirm or overturn an ACC decision, or permit the appellant to proceed with the proposed improvements subject to certain conditions.

4.2.7. ACC Not Liable. The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. **The ACC's review of plans shall in no way be concerned with structural or mechanical integrity or soundness, or safety considerations. Said matters are the sole responsibility of the Owner, and Owner must comply with all applicable law and all engineering recommendations.**

4.2.8. Review on Case-By-Case Basis. The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted by the same or another Owner.

4.3. **ARCHITECTURAL GUIDELINES AND DESIGN RESTRICTIONS.** When evaluating applications for ACC approval, the ACC shall refer to and be governed by the Architectural Guidelines and Design Restrictions which are attached hereto and incorporated herein as Exhibit "B". The Architectural Guidelines and Design Restrictions may be unilaterally amended by Declarant during the Development Phase and, thereafter, amended by a majority vote of the Board, without formal amendment of these Covenants. The ACC may also refer to its own rules and regulations when evaluating ACC applications.

4.4. **GOVERNMENTAL PERMIT REQUIRED.** No improvement on a Lot shall occur unless and until the Owner has first obtained approvals/permits from all applicable governmental entities/agencies. The granting of a permit or approval by a governmental entity shall not bind or otherwise affect or limit the power of the ACC to refuse to approve any such intended improvement.

4.5. **EXEMPTION – DECLARANT.** While Declarant shall serve as the ACC during the Development Phase, Declarant shall be exempt from the provisions, restrictions, and requirements of this Article, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Covenants.

ARTICLE 5 – GENERAL USE RESTRICTIONS

5.1. **LAND USE AND BUILDING TYPE.** All Lots shall be used only for Single Family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof. The provisions of this section shall not preclude an occupant who is engaged in individual professional work (e.g. accountant, bookkeeper, among other ACC-approved professional undertakings) without external evidence thereof (such as signage, excessive vehicular or foot-traffic associated with clients or shipping related thereto), so long as: (i) such occupant conducts its activities in conformance with all ordinances, (ii) such business activity is merely incidental to the use thereof as a dwelling, (iii) such occupant does not solicit or invite the public to the Lot or Home as part of such business activity. No Owner shall allow or permit any time-share or fractional ownership of a Lot or any of its improvements thereon.

5.2. CARE AND MAINTENANCE OF LANDSCAPING AND OTHER LOT FEATURES.

5.2.1. Owner's Responsibility. An Owner shall be responsible for the maintenance of his/her front, side and rear-yard. The Owner shall also be responsible for the maintenance of all other areas of the Owner's Lot, including any walls, fences and other barriers that may surround the Home and/or Lot. The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times.

5.2.2. Easement to Complete Repairs. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures provided however, that:

(A) Any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same;

(B) Any such entry shall be made following proper notification to the adjoining Lot Owner(s) and only at reasonable times and with as little inconvenience as possible to the adjoining Lot Owner(s); and

(C) In no event shall said easement be deemed to permit entry into the interior portion of any Home on said adjoining Lot(s).

5.2.3. Owner's Failure to Maintain Lot. In the event any Owner fails to perform any required maintenance and upkeep, the Board shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

5.3. INSTALLATION, CARE AND MAINTENANCE OF THE COMMON AREA FEATURES.

5.3.1. Association's Responsibility. The Association shall be responsible for care and maintenance of any Common Area(s) and improvements thereon, which the Declarant has installed. The maintenance of the foregoing shall be perpetual until and unless the City agrees to assume said maintenance and repair, by agreement. Maintenance and care of the Limited Common Area, if any, shall be the responsibility of the Lot Owner benefitting from same.

5.3.2. Owner's Responsibility. Any damage caused to Common Areas and improvements thereon by any Lot Owner and/or their agents, guests or invitees shall be repaired by the Lot Owner as soon as possible after such damage is discovered; and, in the event of failure of such Owner to make such timely repairs, the Association may make such repairs and the expense of such repair shall be added to and become part of the assessment to which such Lot is subject.

5.4. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot 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. The title holder of each Lot shall from time to time, as may be reasonably required, grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

5.5. NO HAZARDOUS ACTIVITIES. No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit

unit, while attended and in use for cooking purposes or within a safe and well-designed interior fireplace. Outdoor fire pits may not be used during any period when restricted by local, state or federal law.

5.6. SIDE-BY-SIDES, MOTORBIKES, ETC. All side-by-sides, trail bikes, dirt-bikes, off-road motorcycles, three-wheel powered devices, ATVs, scooters, golf-carts, and two or four-wheel drive recreational type vehicles may be operated within the Property ONLY: (i) by individuals with 'current and appropriate-to the 'vehicle' driver's licenses'; (ii) for the limited purpose of accessing open areas outside of the Subdivision if such exists immediately outside of the Subdivision; and (iii) if said use complies with applicable laws and regulations, including speed limits. Such vehicles may not be used for recreational purposes within the Subdivision. Any use of such vehicles/equipment within the Subdivision that is not expressly authorized in this paragraph is specifically prohibited. Notwithstanding, the Board may authorize use of a golf cart within the Property on a case-by-case basis. This provision is NOT TO BE UNDERSTOOD as a "license" or authorization to use any land that is adjacent to or neighboring the Project.

5.7. WEED CONTROL. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on the Owner's Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Units, the Common Area, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants that are injurious to crops, livestock, land, or the public health, and those that grow on their own. The Board may address weed control requirements in further detail in its Rules and Regulations.

5.8. NUISANCES. No use of a Lot shall endanger the health, or disturb the reasonable enjoyment, of any other Owner or resident. Likewise, no noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood. This includes, among other things, animals that are not kept within the Lot boundaries of an Owner, and smells, noises and lights that may be offensive to the neighborhood.

5.9. OUTSIDE RESTRICTIONS. Absent pre-approval from the Board or ACC, Lot Owners may not store things outside of the Home that are visible from the street. Under no circumstances shall clothes drying facilities be placed outside a Home. This restriction does not pertain to functioning vehicles which are governed by Section 5.22.

5.10. SAFE CONDITION. Without limiting any other provision of these Covenants, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition, and refrain from any activity, which might interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

5.11. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Property.

5.12. ANIMALS, LIVESTOCK, POULTRY, AGRICULTURE. Pets are a privilege in the Subdivision, not a right. All Owners must see that their pets maintain a current license from Washington City and be registered with the Association. Subject to ACC approval, a Lot Owner may own a maximum of two (2) household pets. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Areas. All dogs, while not in a Home or in the enclosed rear-yard area of a Lot, shall be on a leash and shall at no time be allowed to run free or be unattended while not in the Owner's rear yard. Cats shall not be allowed to roam the neighborhood. A pet owner shall not allow his/her dog (or other pets) to disturb the peace, quiet and enjoyment of other Owners within the Subdivision. Animal owners shall not allow their pets to defecate or urinate

on Common Areas, Limited Common Areas or on the Lots of other Owners. Pet owners shall immediately clean up after their pets. Failing to do so shall be considered a nuisance hereunder. A pet owner shall be solely responsible for the conduct and actions of his/her pet

5.13. GARBAGE AND REFUSE DISPOSAL. No Lot, or part or portion of the Property, shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced or located within the Property shall be promptly placed into, and kept within, City-approved sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon the Property. Each Lot Owner shall use the standard, City-approved trash container for garbage collection, using same in accordance with City policies. Other such containers, as permitted by the City, may be used. All containers that are used shall be kept clean and in good repair by the Owner and shall not be placed on the street for collection in a broken or unsightly condition. Such containers shall be kept neatly by a Lot Owner in the rear-yard, the side-yard(s) of the Lot, or in the garage; in no case, shall containers be kept or placed in the front-yard set-back of the Home. Containers are not to be placed on the street except on collection day or the night before collection day. An Owner is responsible to remove empty containers from the street not later than the day following garbage collection.

5.14. WATER; SEWER. Each Home on a Lot shall be connected to and use the municipal culinary water supply and municipal sewage disposal system. No individual culinary water supply system, septic tank or alternative sewer disposal systems shall be used or permitted to be used on any Lot, part or portion of the Property.

5.15. DECLARANT BUSINESS AND SALES. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of Homes and sale of lots during the Development Phase, and upon such portion of the Property as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of developing the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Property and any Common Area and or facilities thereon without charge during the Development Phase to aid in its marketing activities. As part of Declarant's "Business and Sales" activities, a golf cart may be used on the streets of the Subdivision.

5.16. LEASE OCCUPANCY OR OTHER TEMPORARY OCCUPANCY. No Owner shall lease a Home for transient, vacation-rental or hotel purposes. No Home shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Home rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of months or years. Notwithstanding, an Owner may rent or lease the Owner's Home subject to the following restrictions:

- (a) Any temporary or other occupancy, other than by the titled Owner, the Owner's family, friends, and invited guests, must be for a period of at least twelve (12) months. All persons occupying the Home are to abide the provisions of this Declaration and/or Community Rules; notwithstanding, the Association shall always look to the Owner as the 'responsible party.' Violation by an Owner's tenant shall be considered as violation of the Owner, and any related fines shall be levied against the Owner, not the tenant.
- (b) Each such tenant-occupancy shall be established between the Owner and the tenant(s) by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board, or appointee, together with a signed copy of the Temporary Occupancy Notification Form, if any (available from a Board Member or the designated management agent). All such tenant occupancies, as well as family, friends, and invited guests must comply with the provisions of this Declaration.
- (c) Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Bylaws of

the Association, and all Rules and Regulations enacted by the Board and in place at time of lease signing OR AS MAY BE ADOPTED OR CHANGED DURING THE LEASE TERM. The lease agreement shall provide that any failure by lessee/renter to comply with the terms of such documents shall be a default under the lease. An Owner, as renter/lessor of his/her Home, notwithstanding the presence of a tenant, shall be responsible for any infraction or violation by his/her tenant, guests and invitees, hereunder.

- (d) Absent express written approval of the Board, temporary Occupancy for a period less than twelve (12) months shall not be allowed. Violation of this provision shall be considered a nuisance hereunder.
- (e) The Association may require a tenant to pay its rent to the Association if the Owner fails to pay assessments issued against the Owner or his/her Lot.

5.17. OCCUPANTS. No Home or Lot shall be occupied by three or more unrelated people; rather, each Home or Lot shall be occupied by an individual or a Single Family, as defined in paragraph 1.22.

5.18. GARAGE USE. Each Owner shall use the garage portion of the Owner's Lot for the storage of motor vehicles. No Owner shall use a garage for any purpose which prevents storing of motor vehicles, unless doing so would not result in motor vehicles, or other property being stored outside the Owner's garage. No Owner shall remodel a garage or use a garage on any Lot for residential or any other purposes.

5.19. INSURANCE AND GOVERNMENTAL REQUIREMENTS. No Owner shall permit or cause anything to be done or kept within the Property which may increase the rate of insurance within the Property or result in the cancellation of any Association insurance. Additionally, each Owner shall comply with all of the requirements of the local and state health authorities and with all other governmental authorities with respect to the occupancy and use of their Home or Lot.

5.20. PARKING AND VEHICLES.

5.20.1. Garages and Driveways. An Owner's vehicle(s) shall be parked within the Owner's garage. If two operating vehicles are parked within the Owner's garage, the Owner may park additional vehicles on his/her driveway. Vehicles parked on a driveway shall not be parked so as to extend over any portion of the sidewalk adjacent to the driveway apron.

5.20.2. Street Parking. Parking on the streets shall be governed by Washington City's laws and ordinances and subject to the additional restrictions as set forth herein or in the Association's Rules and Regulations. Unless otherwise prohibited by Washington City, guest parking and service vehicle parking is permitted along the street on a short-term basis (no longer than 48 hours in any consecutive seven-day period). Street parking is not permitted unless there are no available parking spots in Owner's garage and driveway.

5.20.3. Additional Restrictions for Certain Types of Vehicles. Owners shall not park, store, or keep on their driveway or on any street within the Property (i) any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, or delivery truck); (ii) any recreational vehicle (including, but not limited to, any camper, travel trailer, or motor home); (iii) any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or (iv) any inoperable vehicle. Notwithstanding, unless otherwise prohibited by the laws and ordinances of Washington City, motorhomes, boats, trailers, campers, and similar recreational vehicles may be parked in a driveway once every seven (7) days for no more than twenty-four (24) hours to allow for loading, unloading, and cleaning. This provision may be changed or stricken by the Board, as a Rule, without amendment of this Declaration.

5.20.4. **Parking Restriction If Nuisance.** Notwithstanding the above, no Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board.

5.20.5. **Oil/Fluid Leaks.** Owners shall be responsible to ensure any vehicle or vehicular equipment is in good repair and does not leak oil or fluids of any kind. Owners are responsible for removal of any oil or grease marks on driveways, sidewalks or roads within the Subdivision. Cost for any oil or grease marks, or damage to any Common Area having to be removed or repaired by the Association will be assessed to the responsible owner.

5.20.6. **Towing.** Members should report violations of this Section 5.20 to the Association. Violations of any of the restrictions in Section 5.20, and its subsections, may result in towing of the wrongfully parked vehicle, without any notice to the vehicle owner. The owner(s) of the towed vehicle shall be responsible to pay all fines and costs associated with the towing as charged by the towing company.

5.21. VEHICLE REPAIRS. Generally, repair of Vehicles and Recreational vehicles is not permitted within the Subdivision. However, on rare occasions, to address minor repairs of vehicles of Owners, the repair may be conducted within an Owner's garage when the garage door is closed. The Board shall have the right to altogether prohibit vehicle repair activity within the Subdivision if the Board, in its sole discretion, determines that such activity is undesirable or constitutes a nuisance.

5.22. RULES. In addition to the foregoing, the Declarant and Board of Directors of the Association shall have the authority to promulgate Rules and Regulations for the governance of the Property, and persons within the Property, provided they are not in conflict with this Declaration or with State Law, or with any Rules and Regulations adopted by the Declarant unless the Development Phase has lapsed.

ARTICLE 6 - MISCELLANEOUS

6.1. DURATION OF RESTRICTIONS. The covenants and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. Until the Declarant or its designee ceases to act as the ACC, the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part only by the Declarant or its successor or assigns by a written recorded instrument.

6.2. AMENDMENT. During the Development Phase, Declarant hereby reserves the right to unilaterally amend this Declaration and its amendments and plats without any vote or approval of Owners/Members. Upon completion of the Development Phase, this Declaration and its amendments may be amended if the amendment is approved in writing by no less than the Owners of two-thirds (2/3) of the Lots, and provided further that all signatures are obtained within a 180-day period. After the Declarant or its designee ceases to act as the Board and/or the ACC, written notice of any such proposed amendment shall be sent to every Owner of any Lot, part or portion of the Property at least 30 days in advance. When an amendment to the Declaration is duly approved by the Owners, the amendment must be executed by the Board of Directors, with each signature notarized, and recorded against the Property.

6.3. ANNEXATION OF ADDITIONAL PROPERTY. Additional property may be annexed in and made subject to these Covenants by the Declarant, without approval of the Members. The Declarant shall indicate its intent to have such property bound by these Covenants on the plat of such property, and by recording a Declaration of Annexation and thereafter such additional property shall be considered as part of the Property in all

respects, and Lots therein shall constitute Lots under these Covenants. Declarant's Class-B Membership shall extend to all Lots in the annexed areas. This right of the Declarant shall be assignable to one or more assignees.

6.4. NOTICES. Any notice required under the provisions of this document to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner. Except as otherwise stated herein, all notices shall be given in accordance with Title 16, Chapter 6a of the Utah Revised Nonprofit Corporation Act.

6.5. CONSTRUCTION AND SEVERABILITY. All of the restrictions, covenants and conditions contained in this document shall be construed together. If any restriction, covenant or condition stated herein conflicts with Utah law, it shall be replaced with and superseded by the conflicting Utah law. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

6.6. RECITALS. Each of the Recitals set forth above is fully incorporated into, and made a part of, this Declaration, and each recital shall be deemed a covenant as well as a recital.

6.7. VIOLATION CONSTITUTES NUISANCE; ENFORCEMENT. Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by fine(s) levied by the Association or appropriate legal action by the Declarant, the Association, or a Lot Owner or Owners. Remedies hereunder shall be deemed cumulative and not exclusive. The Board or ACC may levy a fine or penalty not to exceed 50% of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after seven (7) days written notice, and opportunity for hearing. An additional fine may be levied for each day of a continuing violation. All attorneys' fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Lot Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefore is made. Any appeal rights that an Owner may have relative to assessed fines or an adverse decision by the ACC shall be governed by applicable provisions in the Association's Bylaws, Rules and Regulations, and applicable Utah law.

6.8. ENFORCEMENT. These Covenants are for the benefit of the Declarant, the Association and Lot Owners, and they constitute covenants that run with the land. If the Association elects not to take court action to address violations by a Lot Owner, court action may be initiated by another Lot Owner (at his/her own expense) offended by the actions or missions of the first Lot Owner.

6.9. OPPORTUNITY FOR A HEARING. An Owner who objects to a fine, penalty or adverse decision by the Board or ACC may request an opportunity for a hearing (if not already scheduled or provided by the Association). At said hearing, the Owner shall be given an opportunity to present argument in support of the Owner's position. All such hearings shall be before the Board of Directors. The decision of the Board of Directors shall be final.

6.10. ASSIGNMENT OF RIGHTS, POWERS. Any and all rights and powers of the Declarant herein contained may be delegated, transferred or assigned. Wherever the term "Declarant," as used herein, includes Declarant and its successors and assigns

ARTICLE 7 - WCWCD NOTICE OF IMPACT

THE WASHINGTON COUNTY WATER CONSERVANCY DISTRICT ("WCWCD") under provisions of its Water Conservancy Program, impacting all developable land in the County, restricts the landscape area which may be irrigated or make alternative use of water, to a maximum of 10,000 square feet. Lots larger than 10,000 square feet in area may be subject to additional WCWCD Fees by means of a WCWCD Water Conservation Easement which is required of the Declarant to be recorded against Lots exceeding 10,000 sq. ft. in total size.

Current WCWCD conservancy provisions provide that Lots in excess of 10,000 sq. ft., will be subject to additional WCWCD Impact Fees, as the 'excess square footage in Lot size is put to use requiring additional water usage for additional landscaped area (or other, alternative uses requiring additional water (than is 'assumed' for a 10,000 square foot Lot usage).

All Lot Owners are bound to observe the WCWCD policies relating to water conservation, as such policies may affect lots in the Subdivision. All landscaping plans as submitted to the ACC shall indicate compliance with such provisions. It shall be each Lot Owner's responsibility to obtain WCWCD Program Guidelines and comply with applicable provisions as published and amended from time to time by WCWCD.

SECTION 8 - NOTIFICATION AS TO "PLAT NOTES"

Owners are advised to become familiar with all notes and details ("Plat Notes") set forth in the Official Plat of the Heights at Washington Bench Phase 3, and any amendments thereto, and any plats related to any land annexed into the Property. Said Plat Notes pertain to, affect and govern the Property; in the case of any conflict between provisions herein and the Plat Notes, the meaning, intent and understanding of the Plat Notes shall prevail.

IN WITNESS WHEREOF, the undersigned has hereunto executed this document effective this 20th day of September, 2021.

**DECLARANT:
YANKEE HEIGHTS, LLC**




By: Oren Bliss, Manager

ACKNOWLEDGMENT

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 21 day of September, in the year 2021, personally appeared before me Oren Bliss, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of Yankee Heights, LLC, and that said document was signed by him in behalf of entity by authority of its operating agreement and/or corporate resolution, and Oren Bliss acknowledged to me that said entity, in effect, executed the same.

Witness my hand and official seal.



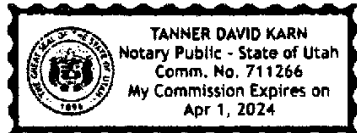
Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION FOR HEIGHTS AT WASHINGTON BENCH PHASE 3

Commencing at the Southwest corner of Lot 36, Heights @ Washington Bench Phase 2, Document No. 967175, Official Records Washington County, Utah, said point lies South 89°35'25" East along the section line 907.10 feet and due South 460.22 feet, from the West Quarter Corner of Section 25, Township 42 South, Range 15 West, Salt Lake Base and Meridian, and running thence along the south boundary of said subdivision the following eight (8) courses and distances: 1) South 86°53'43" East 273.97 feet, 2) South 01°52'43" West 21.56 feet, 3) South 63°36'28" East 128.92 feet, 4) South 66°19'27" East 50.00 feet, 5) thence northeasterly along a 225.00 foot radius non-tangent curve to the left, (long chord bears North 23°06'40" East a distance of 4.44 feet), center point lies North 66°19'27" West through a central angle of 01°07'47", a distance of 4.44 feet, 6) South 67°27'14" East 110.79 feet, 7) South 72°02'56" East 101.10 feet and 8) North 89°53'41" East 276.62 feet; thence South 00°06'19" East 1.29 feet; thence southerly along a 175.00 foot radius curve to the right, (long chord bears South 04°58'06" West a distance of 30.95 feet), center point lies South 89°53'41" West through a central angle of 10°08'49", a distance of 30.99 feet; thence southeasterly along a 20.00 foot radius reverse curve to the left, (long chord bears South 24°06'50" East a distance of 22.46 feet), center point lies South 79°57'29" East through a central angle of 68°18'41", a distance of 23.85 feet; thence South 14°57'08" West 53.21 feet; thence westerly along a 20.00 foot radius non-tangent curve to the left, (long chord bears South 83°00'57" West a distance of 28.66 feet), center point lies South 38°47'20" West through a central angle of 91°32'47", a distance of 31.96 feet; thence southwesterly along a 175.00 foot radius reverse curve to the right, (long chord bears South 50°44'45" West a distance of 81.72 feet), center point lies North 52°45'27" West through a central angle of 27°00'23", a distance of 82.49 feet; thence South 25°45'04" East 107.11 feet; thence South 00°07'50" West 56.04 feet to a point on the north line of Silver Falls @ Washington Bench 4, Document No. 20070042525, said official records, thence North 89°52'10" West along said line and the north line of Silver Falls @ Washington Bench 3, Document No. 944638, said official records, 669.27 feet; thence North 00°13'30" East 200.33 feet; thence North 89°52'26" West 197.50 feet to the southeast corner of Lot 30 upon the west line of Heights @ Washington Bench Phase 1 Amended, Document No. 963869 said official records, thence along said west line the following three (3) courses and distances: 1) North 00°07'22" East 126.37 feet, 2) North 05°09'04" West 50.02 feet and 3) North 05°47'39" East along said line and the east line said Heights @ Washington Bench Phase 2, 116.63 feet to the point of beginning.

Containing 305,467 square feet or 7.01 acres.

EXHIBIT "B"

ARCHITECTURAL GUIDELINES AND DESIGN RESTRICTIONS

In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines, together with any guidelines hereafter established by the ACC, are applicable to the Property, and each Lot therein:

1. **Purpose and Intent.** The intent of these Architectural Guidelines is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture within the Property. These standards allow design latitude and flexibility, while ensuring that the value of the Property will be enhanced through the control of site planning, architecture and landscape elements. The Architectural Guidelines serve as an evaluative aid to Owners, builders, project Declarants, design professionals, City staff, the Planning Commission, City Council and the ACC in the design review of individual, private and public developments within the Property. All improvements on any Lot must be constructed in accordance with all applicable building and zoning ordinances of the City of Washington.

2. **Permitted Structures; Height; Size.** Except as otherwise permitted herein, the only buildings or structures permitted to be erected, placed or permitted to be located on any Lot within the Property shall be a Single-Family detached dwelling, a detached casita, and a detached garage, each and all subject to ACC-approval. Split-level entry homes, modular homes, basement homes, round homes, octagon homes, pre-fabricated homes, rebuilt homes, and concrete homes are prohibited. No structure on a Lot shall exceed 35 feet in height (from the highest point of street curb along the frontage of the Lot). The minimum square footage for any Home within the Subdivision shall be 1,800 square feet, exclusive of porches, balconies, patios and garages. For a two-story building, the minimum square footage for the main floor shall be 1,500 square feet. All construction shall be of new materials, which materials are utilized on-site to construct said structure. All structures shall be new construction, of good quality, workmanship, and materials, and shall be constructed in accordance with the zoning and building ordinances of Washington City.

3. **Setbacks.** Minimum setbacks for the buildable area on each Lot are governed by the laws of Washington City and any additional restrictions as may be set forth on the Official Plat for the Subdivision. All measurements shall be made from the applicable Lot line to the foundation, porch or other extension of such building, whichever is nearer to such Lot line. In no event shall any portion of any building, including eaves or steps, encroach upon any other Lot. The ACC may require more stringent setback requirements for cause, on a case-by-case basis, and may establish additional setback requirements in its Rules and Regulations or otherwise.

4. **Home Exteriors, Soffit and Fascia.** Home exteriors shall be constructed using a) a partial synthetic stucco system, which may have accents of a) masonry, b) stone, or c) siding, as approved by the ACC; said accents of masonry, stone, or siding in combination with the partial synthetic stucco system shall be required on the front elevation. In the event the synthetic stucco elevation is accented with masonry, stone, or siding; the accent feature(s) to a front elevation may be, at the Owner's election, extended to include side and rear elevations; however, such front elevation accents shall not be required on side and rear elevations. All fascia and soffit materials shall be of synthetic stucco unless otherwise approved by the ACC.

5. **Colors.** Colors shall be limited to those established or approved by the ACC. Generally, colors shall be complimentary to previous construction or as otherwise approved by the ACC. Pastels and/or florescent colors are prohibited. Window frames shall be of a color permitted by ACC, on a case-by-case basis; such ACC approval in one instance shall not set a precedent for ACC approval in another instance. Sheet Metal, Flashing, Vents and Roof Pipe Vents shall be colored or painted to match the material to which they are attached or from which they project. No reflective exterior surfaces or materials shall be used.

6. **Garages.** All Homes constructed on a Lot in the Property shall include a fully enclosed, private garage, attached or detached, built to accommodate not less than two (2) full-sized vehicles. The height of the garage door header shall not exceed eight feet, except that the ACC may approve a greater height based on its

review of the Home design, on a case by case basis; one such approval, if given by the ACC, shall not constitute a "precedent." Carports shall not be permitted. All garages shall be constructed of the same exterior materials as the Home and in harmony with and architecturally compatible with the Home constructed on the Lot.

7. Driveways and Walkways. Any driveways and walkways shall be constructed of concrete, stamped concrete, or other hard materials as approved by the ACC. In no event shall a driveway or walkway be constructed of dirt, sand, cinders, clay or road base material, or asphalt. Any proposed stamped concrete designs and colors must first be submitted and approved by the ACC. Driveways must provide for sufficient parking space so that at least two (2) full-sized vehicles may be parked side-by-side on a driveway. Some Lots have areas designated as "No Driveway Access Permitted." An Owner may not access his driveway by traversing a No Driveway Access area.

8. Landscaping.

8.1. Front and Side-Yard. All front and side-yard landscaping reaching to the half-way point of the total depth of the home, including grass, trees and shrubs must be completed as part of the initial construction of the Home on a Lot. Not less than 10% of the front/side yard area shall be grass. Said landscaping shall be completed prior to the date of a City-issued Certificate of Occupancy ("CO") or occupancy of a Home on a Lot, whichever first occurs. The Owner shall be responsible for timely completing front and side-yard landscaping if his/her/its builder failed to do so.

8.2. Rear Yard. Within nine (9) months after receipt of a Certificate of Occupancy, the Owner must substantially complete the landscaping of the rear yard of the Lot (including enclosed portions of the side yard), as approved by the ACC. Notwithstanding the above provisions, the ACC may extend the time frame an Owner has in which to complete the rear-yard landscaping of a Lot, and any such extension will be determined on a case-by-case basis.

8.3. Style/Design. All landscaping shall be compatible with other homes in the Subdivision, and must be of a size and design that is approved by the ACC. Features of such landscaping may include, among others, xeriscaping to facilitate water conservation, lawn areas or accents, trees, shrubs, and planting beds. All such landscaping must include a clock-controlled automatic irrigation system; access to such clock shall be located on the exterior of the Home, to facilitate access by the Association during maintenance or emergencies and/or the absence of the Owner. Landscaping must comply with Washington City standards, including those regarding sight obstructions near intersection corners.

8.4. Maintenance. All landscaping must be properly watered and maintained by each Lot Owner at a reasonable standard as required by the ACC and/or the Association.

8.5. Penalties for Violations. If an Owner fails to comply with any requirement herein, the Association shall provide notice of the violation and an opportunity to cure. Failure to cure shall result in penalties as the Association or ACC may establish.

9. Walls. All walls, fencing, gates, front courtyard walls and other such barriers must be pre-approved by the ACC or the Declarant before they are constructed/installed. The following provisions shall guide the construction of all walls and fences within the Property.

9.1. Construction; Maintenance. Rear walls and side walls shall be installed/ constructed at the time of Home construction and shall be completed prior to the issuance of a Certificate of Occupancy. Each Lot Owner shall be wholly and solely responsible for the repair and maintenance of walls facing his/her Lot. To the extent not inconsistent with the provisions of this Section, general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall govern.

9.2. Material: Height. Unless otherwise approved by the ACC, walls shall be no more than seven (7) feet high (or the maximum wall height permitted by applicable law, whichever is lower), and shall consist of masonry block walls of a color and type as approved by the ACC. Vinyl or wood gates (or fencing) shall not be allowed in the Property.

9.3. Retaining Walls. Notwithstanding the above, retaining walls are restricted to a maximum height of five (5) feet, unless otherwise approved by the ACC and the City. In the event approval is given for a retaining wall higher than the restrictions herein, the retaining wall must be tiered and landscaping must be installed to help 'hide' the tiering of the retaining wall. It is the Owner's exclusive responsibility to ensure that retaining walls are properly engineered and constructed.

10. Heating/Cooling Systems. Swamp coolers and roof mounted air conditioners and furnaces are prohibited. The exterior location and design of any heating and cooling systems must be approved by the ACC.

11. Antennas, Satellite Dishes. No radio or shortwave antennas are allowed. Unless an exception is granted by the ACC, all satellite dishes, antenna systems, and TV antenna must be placed on the back side of the roof (or in the attic) so that no part of the antenna or satellite dish can be seen from the street in front of the House. They must also be properly maintained. The ACC shall have the right to remove or cause removal of any antenna or satellite dishes that fails to comply with any of the requirements of this paragraph.

12. Accessory Buildings. No storage or utility buildings are allowed unless first submitted to and approved by the ACC. Any approved accessory building must meet Washington City requirements for zoning, size, etc., and must have the appropriate governmental approval or permit before construction commences. Any approved Accessory Buildings must be stick-built, of a permanent nature, and similar in design, appearance, and materials, so as to be compatible with the Home on the Lot. No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, or other outbuilding shall be used at any time as a Home either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time.

13. External Lighting and Illumination. Lighting fixtures used to illuminate other areas of a Lot, such as patios, side-yard parking, rear-yard areas or for any other exterior purposes, shall be of such design and installation as to not adversely affect or impact neighboring Owners or streetscapes, and as otherwise required by Washington City. Low-level outdoor illumination may be used for particular landscape features (trees, rock formations, etc.), as approved by the ACC.

14. Addressing. The address numbers for the Lot must be placed on the front of the Home and there must be adequate lighting for address numbers to be seen easily at night from the road.

15. Solar Panels Solar Panels or Solar Panel Arrays (group of connected solar panels) of any type shall only be allowed provided the ACC approves an Owner's submission of an ACC plan review application which must detail Owner's Solar Panel Proposal. Approval or Denial by the ACC on one occasion shall not constitute a precedent for any other Request submission for Solar Panels; rather, approval or Denial by the ACC shall be on a case-by-case basis. All Solar Panel Proposals shall be in full compliance with all ACC-published Solar Panel Guidelines, as well as 'current input' to their evaluation. Such Guidelines, as of the date hereof include, but shall not be limited to, the following:

Solar Panel Guidelines

- A. All roof mounted solar (photovoltaic) systems must be constructed of non-reflective materials, including racking materials and panel frames: and
- B. All solar panels must be mounted parallel to roof surface, which surface is part of a pitched roof system. No additional pitch will be permitted: and
- C. All racking or mounting material must be underneath solar array (grouping of panels). No racking may extend beyond area of array. Also, all conduit, wiring, and roof penetrations must be located beneath the solar array. No conduit shall be exposed on the rooftop(s): and

- D. No panels may extend beyond roof area, either hanging over eaves or a ridge-line of a Home's roof: and
- E. All solar panel systems must adhere to National Electrical Code and Local Code and inspection, as applicable: and
- F. Panels and all associated pieces and portions, thereof, must be maintained and repaired so as NOT to look old and dilapidated: and
- G. Owner's proposed location of the Panels or Array shall be subject to the ACC's consideration of near or adjoining Lots. Panels will not be approved by the ACC for mounting on the front-facing portions of the Home's roof:
- H. All solar panel systems must adhere to applicable law including the laws of the State of Utah and all applicable laws and regulations of Washington City, Utah; and
- I. As a general rule, rear-yard, ground installation of solar panels will not be permitted; however, the ACC, on the condition of case-by-case review, may permit such installation PROVIDED such solar panel system shall be located in the Home's rear-yard which is to be totally enclosed by an ACC-approved block wall(s) with approved screened wrought-iron gate(s) with locking mechanism(s). Furthermore, any ACC-approved ground installation shall not be visible from the public streets of the Subdivision.

FINAL NOTE REGARDING THESE SOLAR PANEL GUIDELINES: The foregoing Guidelines (within subsection 15) are not part of the Declaration; these Guidelines are a published work of the ACC and are here-presented for 'informational purposes only.' These Guidelines may be amended or added-to by the ACC and/or Board for any reason or purpose, at any time, and without amendment to the Declaration and without need for provide notice to Members, except as such may be a part of a periodic Board Meeting, and without need of any Member Vote thereof.

16. External Apparatus. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof of a Home or any part thereof, or on the outside of windows or doors of a Home, without the prior written consent of the ACC. Notwithstanding, a Lot Owner is permitted to display a flag as permitted under U.C.A. 57-8a-219.

17. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Lot Owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property. An Owner shall be solely responsible for all damage proximately caused by drainage from the Owner's Lot to adjacent landowners.

18. Signs; Commercial Activity - Restrictions. Other than the developer's signs, no builders' commercial signs will be allowed larger than seven (7) square feet and such signs may be placed only on the lot which is being built upon. No other signs will be allowed anywhere on the Property other than standard "No Trespassing" signs during construction. On re-sale of homes and/or lots, no sign larger than standard real estate signs will be permitted. All signs must conform to City of Washington standards and guidelines. Notwithstanding, the foregoing sign restrictions shall not apply to the Association when carrying out its duties as set forth herein or in the Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

19. Pools and Spas. Swimming pools and spas are allowed only following written approval from Washington City and the prior written approval of the ACC. The ACC shall not consider an application for a pool installation until the Owner presents an engineering study indicating the sub-surface soils are suitable for such; additionally, such engineering report shall provide indication that drainage from such installation will be properly accommodated. An Owner who has received written approval for a pool or spa may not commence construction without, first, entering into an indemnification agreement with the Association that will indemnify the Association for claims, damages, or any other such matters involving said pool or spa. Before using any pool or spa,

appropriate walls and gates must be installed for safety purposes. Above ground pools are prohibited within the Subdivision. The ACC may impose additional setback requirements for pools and spas.

20. Construction Deadlines. Construction of all Homes must be started within two (2) years of purchase of a Lot and completed within three (3) years of purchase of the Lot. Additionally, unless otherwise approved in writing by the ACC, construction of the primary dwelling on a Lot must be completed, with construction materials and equipment removed and the ground graded, within twelve (12) months from the time the ground is broken for the structure. A six (6) month construction deadline shall apply to any other improvement on a Lot. Each Lot Owner is responsible to see that any contractor hired to construct improvements receives a copy of this Declaration and abides by it. In the event work remains uncompleted at the end of the construction period, the Association may undertake to complete the work on the exterior of the structure being built, and the cost of said labor/materials shall be a lien against the Lot which benefitted from the construction. Additionally, or alternatively, the Association may invoke a daily fine of fifty dollars (\$50.00) per day, until completion of all construction activity and cleanup.

21. Maintenance of Lot; Payment for Damages. Each Lot Owner is responsible to make certain that any contractors working on his/her/its Lot clean up the construction site on a daily basis. The Lot owner shall be responsible for any damage or harm caused by construction activities on Owner's Lot to any other Lot, the Common Area or any curb, gutter, sidewalk or street.