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E# 2130178 PG 1 OF 12 84  
DOUG CROFTS, WEBER COUNTY RECORDER  
20-SEP-05 4:19 PM FEE \$84.00 DEP SGC  
REC FOR: MOUNTAIN VIEW TITLE

**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FORT BINGHAM SUBDIVISION**

THE STATE OF UTAH  
COUNTY OF WEBER

§  
§  
§

KNOW ALL BY THESE PRESENTS:

This Declaration of Covenants, Conditions and Restrictions for Fort Bingham Subdivision (the "*Declaration*") is made on the date hereinafter set forth by LUMBERMEN'S INVESTMENT CORPORATION, a Delaware corporation ("*Declarant*").

R E C I T A L S

A. Declarant is the sole owner of certain real property located in Weber County, Utah, as more particularly described as Fort Bingham, in Weber County, Utah, according to the Plat Records of Weber County, Utah (referred to herein as the "*Property*").

B. Declarant desires to convey the Property subject to certain protective covenants, conditions, restrictions, liens, and charges hereinafter set forth.

C. Declarant desires to create and carry out a uniform plan for the improvement, development, and sale of the Property for the benefit of the present and future owners of the Property.

NOW, THEREFORE, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions regardless of whether or not the same are set out or referred to in said contract or deed.

**Article I**  
**DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.01 **Declarant**. "*Declarant*" means Lumbermen's Investment Corporation, a Delaware corporation, its duly authorized representatives or their respective successors or assigns; provided that any assignment of the rights of Declarant must be expressly set forth in writing and the mere conveyance of a portion of the Property without written assignment of the rights of Declarant shall not be sufficient to constitute an assignment of the rights of Declarant hereunder.

1.02 **Declaration**. "*Declaration*" means this instrument as it may be amended from time to time.

1.03 **Improvement.** "*Improvement*" means every structure and all appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, swimming pools, garages, storage buildings, fences, screening walls, retaining walls, stairs, decks, landscaping, poles, signs, exterior air conditioning, water softener fixtures or equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers, and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.04 **Lot.** "*Lot*" or "*Lots*" means any parcel or parcels of land within the Property shown as a subdivided lot on the Plat of the Subdivision, together with all Improvements located thereon.

1.05 **Mortgage.** "*Mortgage*" or "*Mortgages*" means any mortgage(s) or deed(s) of trust covering any portion of the Property given to secure the payment of a debt.

1.06 **Mortgagee.** "*Mortgagee*" or "*Mortgagees*" means the holder or holders of any Mortgage or Mortgages.

1.07 **Owner.** "*Owner*" or "*Owners*" means the person(s), entity or entities, including Declarant, holding a fee simple interest in any portion of the Property, but shall not include the Mortgagee of a Mortgage.

1.08 **Person.** "*Person*" or "*Persons*" means any individual(s), entity or entities having the legal right to hold title to real property.

1.09 **Plat.** "*Plat*" collectively means the subdivision plats of the Property recorded in the Plat Records of Weber County, Utah, including without limitation, the subdivision plat of Fort Bingham, a subdivision in Weber County, Utah, according to the Plat Records of Weber County, Utah, as the same may be amended from time to time.

1.10 **The Restrictions.** The "*Restrictions*" means this Declaration, as the same may be amended from time to time.

1.11 **Subdivision.** "*Subdivision*" means Fort Bingham Subdivision, a subdivision in Weber County, Utah, according to the Plat.

**Article II**  
**DEVELOPMENT OF THE PROPERTY**

2.01 **Development by Declarant.** Declarant may divide, subdivide or re-subdivide the Property into several areas, develop some of the Property, and, at Declarant's option, sell or otherwise convey any portion of, or interest in, the Property free of these restrictions.

2.02 **Addition of Land.** Additional property may become annexed and made a part of the Property and made subject to this Declaration. Declarant may add or annex additional real property to the scheme of this Declaration by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of this Declaration to such property; provided, however, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

**Article III**  
**GENERAL RESTRICTIONS**

3.01 **Subdividing.** No Lot shall be further divided or subdivided. Provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot (sometimes referenced to herein as a "dwelling") and convey any easements or other interests less than the whole.

3.02 **Residential Use.** The Property shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family residence per Lot (sometimes referenced to herein as a "dwelling"), which dwelling shall be constructed to minimum Federal Housing Authority ("*FHA*") and Veteran's Administration ("*VA*") standards.

3.03 **Single Family Use.** Each dwelling shall be limited to occupancy by a single family as that term is defined in the applicable Ogden City ordinances. This provision shall be given the greatest effect allowed by law and limited as required by law, now existing or hereafter adopted by governing authority having jurisdiction of the Property.

3.04 **Dwelling Size.** All single-story dwellings shall contain not less than 1,200 square feet of enclosed air-conditioned living space, exclusive of porches (open or covered), decks, garages and carports, or the minimum floor area specified by the City, whichever is greater. All two-story dwellings shall contain not less than 1,550 square feet of enclosed air-conditioned living space, exclusive of porches (open or covered), decks, garages and carports, or the minimum floor area specified by the City, whichever is greater.

3.05 **Dwelling Height.** No dwelling greater than two (2) stories in height may be constructed on any lot.

3.06 **Garage Required.** Each dwelling shall have an enclosed garage suitable for parking a minimum of two (2) standard size automobiles, which garage shall conform in design and materials with the main structure.

3.07 **Building Materials.** At least one-third  $\frac{1}{3}$  of the exterior wall area (excluding windows, doors, other openings, soffits, eaves, trim, and gables) of the entire first floor of the front side of each dwelling constructed on a Lot shall be brick and/or stone. Only new building materials (except for used brick) shall be used for constructing any Improvements. Exposed metal roof decks which reflect light in a glaring manner such as galvanized steel sheets are specifically prohibited. All projections from a dwelling or other structure, including but not limited to chimney flues, vents, gutters, downspouts, utility boxes, porches, railings and exterior stairways shall match the color of the surface from which they project. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

3.08 **Windows; Doors.** Windows, jambs and mullions shall be composed of a vinyl material. All front elevation windows shall be divided light windows. The front door and garage door for each dwelling shall be raised-panel doors. No bars or obstructions intended for use as burglar bars or sold as

devices intended to prohibit forced entry into a dwelling may be placed on the exterior of a dwelling, including, but not limited to, windows and doors.

3.09 **Sidewalks.** All walkways along public right-of-ways shall conform to the minimum property standards of the City, County, FHA and VA.

3.10 **Landscaping.** Trees shall be installed by the developer as required by Ogden City. Each homeowner is responsible to properly maintain the installed trees. The front yard shall be installed on each Lot within twelve (12) months and the remainder of the yard shall be installed within eighteen (18) months after the construction of a home on such Lot is completed (subject to extension for delays caused by inclement weather and/or restrictions or delays caused by governmental regulations prohibiting new planting or watering due to restricted water use).

3.10 **Driveways.** All driveways shall be surfaced with concrete or similar substance.

3.11 **Antennae.** No exterior radio or television antenna, satellite dish or similar device shall be permitted to be erected or placed on any Lot unless the same is screened from view from adjoining Lots, streets and other portions of the Subdivision.

3.12 **Signs.** No sign of any kind shall be displayed to the public view on any Lot, except for (a) signs which are part of Declarant's overall marketing or construction plans or activities for the Property and (b) one (1) sign of not more than five (5) square feet, advertising any property within the Subdivision for sale or rent, and (c) political signs during political campaigns.

3.13 **Tanks.** The location of any tank used in connection with a single-family residential structure, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks, shall be such as to not be visible from the front of the Lot. No elevated tanks of any kind shall be erected, placed or permitted on any Lot. All tanks shall be screened so as not to be visible from any other portion of the Property.

3.14 **Temporary Structures.** No tent, shack, or other temporary building, improvement, or structure shall be placed upon the Property; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for salesmen, architects, builders, and foremen during actual construction and marketing may be maintained with the prior approval of Declarant, approval to include the nature, size, duration, and location of such structure. Notwithstanding any provision in this Declaration to the contrary, an Owner shall be permitted, to erect (a) one (1) children's playhouse, playscape, doghouse, greenhouse and gazebo on the Owner's lot if such items are not visible from any public street and (b) one (1) outbuilding on the Owner's Lot if (i) the surface area of the pad on which the outbuilding is placed is less than or equal to eighty (80) square feet, (ii) the height of the outbuilding, measured from the surface of the Lot to the highest portion of the outbuilding is less than or equal to six (6) feet, (iii) the outbuilding is constructed within an area completely enclosed by a privacy fence of not less than six (6) feet in height, (iv) the exterior of the outbuilding is constructed of the same or substantially similar materials as the exterior of any dwelling located on the Lot, and (v) the outbuilding is constructed within building setback lines in accordance with applicable building codes of the governmental entity having jurisdiction over the Property.

3.15 **Unsightly Articles; Vehicles.** Trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment shall be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Lot Owners shall not keep more than three (3) automobiles in such manner as to be visible from any other portion of the Property for any period in excess of seventy-two (72) hours. No (a) racing vehicles, or (b) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag shall be permitted to remain visible on any Lot or to be parked on any roadway within the Subdivision. No commercial vehicles larger than a standard one (1) ton pickup truck or standard two-axle passenger van shall be permitted to remain on any Lot or to be parked on any roadway within the Subdivision, except those used by a builder during construction of Improvements or other contractors working on Improvements on a Lot. No vehicle of any size which transports flammable or explosive cargo may be kept on any portion of the Property at any time.

3.16 **Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes shall be parked or placed on the front part of any Lot or used as a dwelling, either temporary or permanent, at any time. Any motor homes, travel trailers or recreational vehicles shall be parked on any Lot in accordance with applicable Ogden City ordinances.

3.17 **Basketball Goals; Permanent and Portable.** Basketball goals, whether permanent or portable, are allowed. The basketball goal must be properly maintained and painted, with nets in good repair.

3.18 **Hazardous Activities.** No activities shall be conducted on the Property and no Improvements 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 the Property, and no open fires shall be lighted or permitted except within safe and well-designed interior fireplaces, or in contained barbecue units while attended and in use for cooking purposes. Fireworks are permitted to be discharged upon the Property only on the July 4<sup>th</sup>, July 24<sup>th</sup> and New Years Day holidays.

3.19 **Mining and Drilling.** No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth, and no Improvements related to such activities may be erected or maintained on any portion of the Property.

3.20 **Noise.** No exterior speakers, horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any of the Property so as to be audible beyond the boundaries of the Lot on which any such item is located. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to any other portion of the Property or to its occupants.

3.21 **Animals - Household Pets.** No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on the Property. No Owner may keep on such Owner's Lot more than a total of four (4) cats and dogs, in the aggregate, not more than two (2) of which may be dogs. No animal shall be allowed to

make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on the Property other than on the Lot of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Property, and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large, and all animals shall be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. Such enclosed area shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof, and shall be screened so as not to be visible from any other portion of the Property.

3.22 **Rubbish and Debris; Storage Areas.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property, and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash shall be kept at all times in covered containers, and such containers shall be kept within enclosed structures or appropriately screened from view. Each Owner shall contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Property except within enclosed structures or appropriately screened from view.

3.23 **Air-Conditioning Equipment.** No air-conditioning apparatus shall be installed on the ground in front of a dwelling. No air-conditioning apparatus shall be attached to any front wall or window of a dwelling. No evaporative cooler shall be installed on the front wall or window of a dwelling.

3.24 **Business Activities.** No Lot or improvement thereon shall be used for a business, professional, commercial or manufacturing purposes of any kind for any length of time. No business activity shall be conducted on the Property which is not consistent with single family residential purposes. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's temporary use of a dwelling as a sales/construction office for so long as such builder is actively engaged in construction on the Property. Nothing in this subparagraph shall prohibit an Owner's use of a dwelling for quiet, inoffensive activities such as a home office, tutoring or giving art or music lessons so long as such activities do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' peaceful use and enjoyment of their dwellings and yards.

3.25 **Sight Lines.** No fence, wall, hedge or shrub planting shall be placed or permitted to remain on any corner Lot in violation of applicable Ogden City ordinances. No tree shall be permitted to remain within ten (10) feet from an intersection such unless the foliage line is maintained at a minimum height of six feet above the adjacent ground line.

3.26 **Utility and Drainage Interference.** Within those easements on each Lot as designated on the Plat, no Improvement, planting or materials shall be placed or permitted to remain which might damage or interfere with the installation, operation and maintenance of public utilities, or which might alter the direction of flow within drainage channels or which might obstruct or retard the flow of water

through drainage channels. The general grading, slope and drainage plan of a Lot as established by Declarant's approved development plans may not be altered without the approval Declarant, of the City and/or other appropriate agencies having authority to grant such approval.

3.27 **Dwelling Elevation Patterns.** Front elevations of dwellings shall not be repeated within 2 (two) Lots on either side of each Lot.

3.28 **Setback Requirements.** All dwelling setbacks shall be in accordance with applicable Ogden City ordinances.

3.29 **Waiver Of Setback Requirements.** With the written approval of the Declarant and subject to plat and zoning restrictions, any building may be located further back from the front property line of a Lot than provided above, where, in the opinion of the Declarant, the proposed location of the building will enhance the value and appearance of the Lot and will not negatively impact the appearance of adjoining Lots.

3.30 **Fences and Walls.** Any fences along any street frontage shall be constructed of vinyl and all fencing of any portion of the yard that is not adjacent to street frontage may be constructed of either chain link or vinyl. Fencing installed on corner lots shall be vinyl along all street frontages to include the backyard return portion of the fence that extends beyond the front of any adjacent home. Fencing installed behind the front of any home that does not protrude beyond the front of adjacent homes may be installed with chain link. No privacy slats for chain link fencing shall be allowed, regardless of location. No fencing shall be allowed beyond the front corners of the dwelling or its attached garage except for a three (3) foot vinyl decorative fence that extends from the front edge of the dwelling to the sidewalk as a means of separating the yards. No portion of any fence shall exceed six (6) feet in height. All fences shall be constructed according to Ogden City regulations and a permit shall be obtained from Ogden City prior to commencement of construction.

3.31 **General Maintenance of Lots.** Each Owner shall maintain and care for the dwelling, all Improvements and all trees, foliage, plants, and lawns on such Owner's Lot and otherwise keep the Lot and all Improvements thereon in good condition and repair and in conformity with the general character and quality of properties in the immediate area, such maintenance and repair to include but not be limited to: (a) the replacement of worn and/or rotted components, (b) the regular painting of all exterior surface, (c) the maintenance, repair and replacement of roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, drives, parking areas and other exterior portions of the Improvements to maintain an attractive appearance, and (d) regular mowing and edging of lawn and grass areas. Upon failure of any Owner to maintain its Lot in the manner prescribed herein, Declarant at its option and discretion, but without any obligation to do so, but only after ten (10) days written notice to such Owner to comply herewith, may enter upon such Owner's Lot and undertake to maintain and care for such Lot to the condition required hereunder and the Owner thereof shall be obligated, when presented with an itemized statement, to reimburse Declarant for the cost of such work within ten (10) days after presentment of such statement.

3.32 **Compliance with the Restrictions.** Each Owner, his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding shall comply strictly with the provisions of the Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this Declaration, and shall give rise to a cause of action to

recover sums due for curing the same, actual and consequential damages, and injunctive relief, or a combination thereof. The Restrictions may be enforced by any Owner, Declarant, or the City in which the Lot is located. In such action, the parties agree to waive any bond required to be placed by the City where the Lot is located, or Declarant, or if waiver is not allowed by the court, to set the bond in an amount not exceeding \$100.00. Each Owner is strictly liable for the noncompliance of his or her family, occupants of a Lot, tenants, and the guests, invitees, and licensees of the preceding.

3.33 **Construction Activities.** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant or home builders who purchase lots from Declarant) upon any Lot within the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. If during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Declarant may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.

#### **Article IV** **EASEMENTS**

4.01 **Installation and Maintenance.** There is hereby created an easement upon, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, water, wastewater, gas, telephones, and electricity lines and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service line, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstanding any provision contained in this section, no electrical lines, water lines, or other utilities or appurtenances thereto may be relocated on the Property until approved by Declarant. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Plat, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

4.02 **Drainage Easements.** Each Owner covenants to provide easements for drainage and water flow, as contours of land and the arrangement of Improvements approved by the City or Declarant thereon, require. Each Owner further covenants not to disturb or displace any trees or other vegetation within the drainage easements as defined in this Declaration and shown on the Plat. There shall be no construction of Improvements, temporary or permanent, in any drainage easement which would impede flow of water in the drainage easement.

4.03 **Surface Areas.** The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers. However, neither Declarant nor any supplier of any utility service using any easement area shall be liable to any Owner for any damage done by them or



either of them, or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation, or repair of any facility in any such easement area.

**Article V**  
**MISCELLANEOUS**

5.01 **Term.** This Declaration, including all of the covenants, conditions, and restrictions hereof, shall run until January 1, 2034, unless amended as herein provided. After January 1, 2034, this Declaration, including all such covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished as set forth in Section 5.02 below.

5.02 **Amendment/Extinguishment.** This Declaration may be amended or extinguished by the recording in the Official Public Records of Weber County, Utah, of an instrument setting forth the amendment or extinguishment and executed and acknowledged by Owners of at least eighty-five percent (85%) of the number of Lots subject to the amendment or extinguishment. So long as Declarant owns a Lot in the Property, the joinder of Declarant shall be required to make any such amendment or extinguishment effective. So long as Declarant owns any Lot in a section of the Property, Declarant may amend this Declaration as it applies to that section without the joinder of any other person or party by recording a written amendment in the appropriate real property records of Weber County, Utah.

5.03 **Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either by certified mail, return receipt requested, or personally delivered and a written receipt received therefor. If delivery is made by certified mail, it shall be deemed to have been delivered the date on which it was received by the person to whom such notice was addressed. Such address may be changed from time to time by notice in writing given by such person to the Association.

5.04 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Property and of promoting and effectuating the fundamental concepts of the Property set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Utah.

5.05 **Exemption of Declarant.** This Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct any and alter drainage patterns and facilities, to construct any and all other types of Improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales, and leasing anywhere within the Property, or to allow its designees to do any of the foregoing.

5.06 **Assignment of Declarant.** Notwithstanding any provision in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Declaration to any other Person and may permit the participation, in whole or in part, by any other Person in any of its privileges, exemptions, rights, and duties hereunder.

5.07 **Enforcement and Nonwaiver.** Except as otherwise provided herein, any Owner at his own expense, Declarant and the City in which the Lot is located, shall have the right to enforce all of the

provisions of the Restrictions. Such right of enforcement shall include both damages for, and injunctive relief against, the breach of any such provision. The failure to enforce any provision of the Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said Restrictions.

5.08 **Construction.** The provisions of the Restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective on the 2nd day of September, 2005.

**DECLARANT:**

**LUMBERMEN'S INVESTMENT CORPORATION,**  
a Delaware corporation

By:  \_\_\_\_\_  
Craig A. Knight, President

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the 2<sup>nd</sup> day of September 2005, by Craig A. Knight, President of Lumbermen's Investment Corporation, a Delaware corporation, on behalf of said corporation.

  
\_\_\_\_\_  
Notary Public, State of Texas



AFTER RECORDING, PLEASE RETURN TO:

Brian C. Rider, General Counsel  
Lumbermen's Investment Corporation  
1300 S. MoPac Expressway  
Austin, Texas 78746

ALL OF LOTS 1 THROUGH 53, INCLUSIVE, FORT BINGHAM PHASE 1, OGDEN CITY,  
WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

11-347-0001-0002-0003-0004-0005-0006-0007-0008-0009-0010-0011-0012,  
11-347-0013-0014 ✓  
11-348-0001-0002-0003-0004-0005-0006-0007-0008-0009-0010-0011-0012  
11-349-0001-0002-0003-0004-0005-0006-0007-0008-0009-0010-0011-0012  
11-349-0013-0014-0015-0016-0017-0018-0019-0020-0021-0022-0023-0024 ✓  
11-349-0025-0026-0027 ✓

ALL OF LOTS 53 THROUGH 115, INCLUSIVE, FORT BINGHAM PHASE 2, OGDEN CITY,  
WEBER COUNTY, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF.

12-205-0001-0002-0003-0004-0005-0006-0007-0008-0009-0010-0011 ✓  
12-205-0012-0013-0014-0015-0016-0017-0018-0019-0020 ✓  
12-206-0001-0002-0003-0004-0005-0006-0007-0008-0009-0010-0011 ✓  
12-206-0012-0013-0014-0015-0016-0017-0018-0019-0020-0021-0022 ✓  
12-207-0001-0002-0003-0004-0005-0006-0007-0008-0009-0010-0011 ✓  
12-207-0012-0013-0014-0015-0016-0017-0018-0019-0020 ✓