

When Recorded Mail to:
Destination Homes
Attention: David Bailey
67 S. Main St.
Layton, Utah 84041

"W2274059"

E# 2274059 PG 1 OF 17
ERNEST D ROWLEY, WEBER COUNTY RECORDER
27-JUN-07 1201 PM FEE \$64.00 DEP LF
REC FOR: BEN LOMOND LAND LLC

DECLARATION OF PROTECTIVE COVENANTS, AGREEMENTS, RESTRICTIONS AND
CONDITIONS AFFECTING ALDER CREEK SUBDIVISION PHASE I

CLUSTER

PART A. PREAMBLE

THAT, WHEREAS, the undersigned (the "Declarant") being owner of the following described real property located in the city of Pleasant View City, Weber County, State of Utah, to-wit:

Lots 1 to 22 inclusive (each, a "Lot," and, collectively, the "Lots" or "Project," as the context requires), Alder Creek: according to the official plat thereof, as recorded in the office of the County Recorder of the above said County,

do hereby establish the nature of the use and enjoyment of all Lots in said Project and do declare that all conveyances of said Lots shall be made subject to the following conditions, restrictions and stipulations.

PART B. RESIDENTIAL AREA COVENANTS

1. Land use and Building Type. This is a residential subdivision and all Lots must be used exclusively for residential purposes, which include both the architecture and appearance of the dwellings and buildings and the nature of their use. Destination Homes shall be the exclusive builder and construct all of the homes on the Lots; however Destination Homes reserves the right to sell a Lot and/or Lots to another builder(s). Said builder(s) is to comply with all protective covenants herein. All building plans, specifications, and construction materials must be approved by Declarant or the ACC, as the case may be, in writing.
2. Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by Declarant or the ACC, as the case may be, as to the quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the front building setback line unless similarly approved.
3. Dwelling Cost. Quality and Size. No pre-existing building or structure of any kind shall be moved from any other location and placed upon any lot, nor shall any dwelling, other structure, or improvement be permitted to remain incomplete for a period in excess of one (1) year from the date construction with respect to such dwelling, other structure, or improvement was commenced, except with the prior written approval of the Architectural Control Committee.

All construction shall be comprised of new materials, except that used brick may be used with the prior written approval of the Architectural Control Committee.

All of the exterior wall surfaces of each dwelling or other structure within the subdivision shall consist of brick, rock, stucco, masonry plank (Hardi type) siding, or a combination of such materials. All roofs in the subdivision shall be of architectural grade asphalt shingles or better. All roofs shall have a pitch of 6-12 or greater (rise over run shall be 6-12 or

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greater). Other materials may be used with the prior written approval of the Architectural Control Committee.

The following minimum finished square foot living area requirements shall apply to each dwelling. Living areas shall be calculated exclusive of garages, one-story open porches, and basements.

One-Story Dwellings (Ramblers): The minimum square foot living area of a one-story dwelling shall not be less than 1,750 square feet.

Two-Story Dwellings: The combined living area of any dwelling which consists of two (2) stories above curb level shall not be less than 2,000 square feet.

If four (4) feet or more of foundation is above finished grade, then the level qualifies as a story. For the purposes of this Declaration, the basement area shall not be considered a story. The purpose of this Declaration is to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that this Declaration is recorded.

4. Location of Dwelling. Declarant or the ACC, as the case may be, shall determine the location of a home upon a Lot, which must be within the Buildable Area designated on the Plat.
5. Storm Water Matters. The construction of each dwelling, other structure, landscaping, or other improvement shall be in full compliance with all now or hereafter effective federal, state, and local laws, rules, and regulations (collectively, storm water laws) relating to storm water pollution. Lot owners shall be fully and finally responsible for: (i) becoming apprised of the terms, conditions, and requirements of all storm water laws, (ii) causing their contractors, subcontractors, material suppliers, and other appropriate persons and entities (collectively, construction parties or, individually, a construction party) to become apprised of the terms, conditions, and requirements of all storm water laws, and (iii) strictly complying with, and causing their construction parties to strictly comply with, all storm water laws which are from time to time in effect. Although the terms, conditions, and requirements relating to storm water laws will almost certainly be changed, modified, or replaced, in whole or part, from time to time, it is expected that terms, conditions, and requirements relating to such storm water laws may include, but would not necessarily include or be limited to, the following:
 - a. Provisions stipulating that such storm water laws apply to, and must be complied with by, all lot owners, construction parties, and all other persons and entities which are from time to time involved, in any way, with construction upon any lot or associated area.
 - b. In order to assure that they are in full compliance with all now or hereafter effective storm water laws, lot owners and all construction parties are directed to contact appropriate federal, state, and local agencies and authorities including, but in no event limited to, the Utah Department Of Environmental Quality, Division of Water Quality or any successor agency or authority (collectively, the DEQ).
 - c. Each lot owner and each construction party shall be required to obtain, prior to the commencement of construction, such permits (collectively, storm water permits) as are from time to time required by applicable storm water laws. In order to ascertain the requirements for storm water permits, the lot owners and the construction parties should contact the DEQ and other applicable agencies or authorities.
 - d. The DEQ and other applicable federal, state, and local agencies and authorities are expected to possess and retain the right to impose significant fines and penalties (collectively storm water fines) in connection with violations of storm water laws. Except in the event of storm water fines resulting from the negligent actions of the Developer, each applicable lot owner shall be responsible for promptly paying all

storm water fines which in any way relate to such owner=s lot - regardless of whether such storm water fines arise as a consequence of the actions of the lot owner, any of the construction parties, or third parties - and shall indemnify, defend, and hold harmless the Developer in connection with all matters relating to the violation of storm water laws and the payment of storm water fines.

- e. Current and future storm water laws are expected to prohibit all conditions that do or could result in storm water carrying silt or other materials away from a lot. Examples of such conditions might include, but would not necessarily include or be limited to, dirt or other material located on or near streets that is not properly contained, the failure to install silt fences, and the non-usage of wattles surrounding drains and drainage areas. The foregoing are examples only, and do not comprise a complete or exhaustive list of conditions which are or might be in violation of storm water laws. Lot owners and construction parties should refer to specific storm water laws in order to ascertain the full range of violated conditions.
6. Easement. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat and over the rear ten (10) feet of each Lot. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance 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.
7. Prohibited Activities. No noxious or offensive activity shall be carried in, on or about any Lot. Nothing shall be done or omitted on a Lot or the Common Elements which may be or may become an annoyance or nuisance to the neighborhood. The following acts or activities shall be deemed to constitute a nuisance:
 - a. The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot;
 - b. The storage of any item, property or thing that will cause any Lot to appear to be in an unsightly, unclean, unhealthy, or untidy condition or that will be noxious to the senses;
 - c. The storage of any substance, toxin, hazardous waste, pollutant, thing or material in, on or about any Lot or the Common Elements that do or are likely to emit any foul, unpleasant or noxious odors, or that do or are likely to cause any unreasonable amount of noise or other condition that does or is likely to disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
 - d. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, or their guests or invitees, particularly if the local law enforcement agencies must be called to restore order; and
 - e. The maintenance of any plants, animals, devices, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the neighborhood by other residents, their guests, visitors or invitees.
 - f. The drying of clothes or storage of any articles which are unsightly (in the sole opinion of the ACC) will not be permitted unless in enclosed areas designed for such purposes.
8. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other outbuildings shall be used on any lot at any time as a

residence either temporarily or permanently. No Mobile Homes, pre-fabricated homes, or homes built off the Project are permitted.

9. Accessory Buildings: Any accessory building larger than 200 sq. feet will be required to be approved by the ACC. Accessory buildings shall not be erected to a height greater than one story or twenty feet. No accessory building or group of accessory buildings shall cover more than twenty-five percent (25%) of the rear yard.
10. Signs. No sign of any kind shall be displayed to the public view on any lot except the one professional sign of not more than one (1) square foot, one sign of not more than 2'x2' square feet advertising the property "For Sale" or "For Rent," except signs used by Declarant to advertise the Lots during the construction and sales period may be as large as deemed appropriate by Declarant.
11. Pets, Animals, Livestock and Poultry. No pets, animals, livestock or poultry of any kind shall be bred in, or about the Project. Up to two (2) domestic pets per unit are allowed; provided, however, pets must be properly licensed and registered (if required) with the appropriate governmental agencies, owners may be required to pay a pet deposit to the local ordinances and pet rules and regulations adopted from time to time. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.
12. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, refuse, garbage or other waste, which shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of rubbish, trash, refuse, garbage, waste, litter, weeds, and other, similar items by the Lot owner.
13. Unightly Materials and Objects. No unsightly materials, items, objects or things which impair the aesthetics or value or use or utility of the Project are to be stored on any Lot in view of the general public.
14. Sight Distance at Intersections. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
15. 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, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon a Lot.

16. 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 or flow of drainage channels or obstruct or retard the flow of water through 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.
17. Fencing. Fences should be kept to a minimum to encourage the use and aesthetics of the natural habitat. All fencing or any other structures dividing, denoting or running along property boundaries within the Project shall be made of vinyl, masonry, or wrought iron only. All fences must be reviewed and approved in writing by the ACC prior to installation. Exceptions may be made to these fence standards and requirements at the sole discretion of the ACC, if the ACC, in its sole discretion, determines the fence conforms to the general feel of the native surroundings and does not distract from the feel of the community. These restrictions shall not apply to any fencing installed by Destination Homes. All fencing installed must comply with Pleasant View City Ordinances. Fences bordering 500 West and 4300 North shall be of the same construction and style as determined by the ACC. No solid privacy fence shall be constructed over the 30' easement running parallel to Alder Creek. The use of rail fence or other non - privacy fencing is encouraged in this area to preserve the aesthetics of the native trees in the area. Any exceptions must be approved in writing by the ACC.
 - a. Non-Corner Lots: No fence or other similar structure shall be erected in any required front yard of a dwelling to a height in excess of three and one-half (3.5') feet; nor shall any fence or other similar structure be erected in any side or rear yard to a height in excess of six (6') feet.
 - b. Corner lots: No fence or other similar structure shall be erected in any yard bordering a street or front yard of an adjoining lot to a height in excess of three and one-half (3.5') feet. A fence may be erected to a height not to exceed six (6') feet upon a finding by the Pleasant View City building inspector that the height of the fence will not obscure the line of sight of one entering upon the street or intersection from the driveway or garage access bordering said corner lot.
18. Parking and Storage. All motor vehicles driven on or transported into the Project shall be subject to the following restrictions:
 - a. No damaged (in excess of \$1,000.00) or inoperative motor vehicle or transportation device of any kind shall be placed or remain on any Lot or adjacent street for more than forty-eight (48) hours.
 - b. No recreational, oversized, or commercial type vehicles and no tractor-trailer trucks shall be parked on the front yard setback of any Lot, or within the side yard building setback on the street side of a corner Lot, or on the residential street except while loading or unloading (no more than forty-eight (48) hours or more than one (1) time during any seven (7) day period), or engaged in transportation.
 - c. No pads used for the storage of vehicles or other materials either temporarily or permanently shall be constructed or installed, nor shall any trailers, mobile homes, trucks over three (3) quarter ton capacity, boats and watercraft, campers not on a truck bed, motor homes, buses, tractors, commercial, oversized or recreational vehicles, or maintenance and commercial equipment of any kind be parked or stored in the Project unless it is behind the front yard setback and without the side yard building setback on the street side of a corner Lot, and in an enclosed area screened from street and public view (so as not to be visible to the public or other Owners), and in a manner so as not to impair the view or line of sight of another Lot.

- d. Sufficient side yard gate access should be planned and provided for in the design of the home, to permit ingress, egress and storage of trailers, oversized, or recreational type vehicles on the side and rear yards.
 - e. No motor vehicle or any other transportation device of any kind may be parked or stationed in a fire lane or in a red zone, in an unsafe or dangerous manner, or so as to obstruct or block access to any Lot, driveway, street, or other transportation device.
 - f. No Owner or resident may repair, change the oil or other fluids of, or restore any motor vehicle of any kind in, on or about any Lot or Common Elements, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
 - g. The storage or accumulation of junk, trash, manure or other offensive or commercial materials is prohibited.
 - h. Facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view.
 - i. Open yard space shall remain unoccupied and unobstructed by buildings, vehicles and/or hard surfaces such as asphalt, cement and packed surface from this time henceforth and forever.
 - j. Any violations of Pleasant View City ordinances are expressly prohibited.
19. Pools, Spas, Game Courts and Batting Cages. Pools, spas, game courts, and batting cages shall be located so as to avoid unreasonably impacting adjacent properties with balls, light or sound. Pool heaters and pumps must be screened from view from the street.
 20. Unightly Work, Hobbies or Unkempt Condition. The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.
 21. Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Project is prohibited. The term firearms includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.
 22. Energy Conservation Equipment. Subject to the requirements of U.C.A., 17-19-901, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on a Lot without the prior written consent of the Declarant or the ACC, or as the case may be.
 23. Business Use. No commercial trade or business may be conducted in or from any Lot unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Declarant or ACC.
 24. Insurance. Nothing shall be done or kept in, on or about any Lot which may result in the cancellation of or increase the premium for the insurance on the Project.

25. Laws. Nothing shall be done or kept in, on or about any Lot, or any part thereof, which would be a violation of any statute, rule, law, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
26. Maintenance. The Lots and Common Elements, including without limitation any landscaping buffer easement and entry monument, shall be maintained in a usable, clean, functional, aesthetic, attractive and good condition.
27. Landscaping.
- a. Each Lot Owner is responsible for the landscaping and maintenance of the landscaping on his Lot. Home owners will be required to complete their lot landscaping by the end of the summer the year after the home is sold to the original owner. No less than (3) 2" caliper trees of the same type shall be planted upon parking strips of the same street in order to give an appearance of uniformity. The Architectural Control Committee shall have authority to specify and limit the type and placement of trees and other foliage to preclude and minimize the creation of obstructions to drainage systems and for other reasonable purposes. All trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the lot owner's expense upon request of the Architectural Control Committee. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of the Lot. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with community standards. All landscaping shall be maintained in an aesthetic, tasteful, clean, safe, sanitary, neat, and orderly fashion. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. Aesthetic considerations are important and all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Lot, or to detract from the uniform design and appearance of the Project.
- b. The Association is required to care for the entry monuments, fencing and landscaping installed by the Developer for the community in a manner consistent with the standards of design and quality when these items were originally installed. Care for landscaping may include but is not limited to: irrigation, lawn care, tree trimming and weed removal. Owners of Lots 1 & 35 shall be required to provide irrigation water and electricity for any such landscaping or entry monuments maintained by the Association on their respective lots.
28. Default in Fulfillment of Landscaping Obligation. If any Lot Owner fails to fulfill his landscaping obligations, and fails to cure the default within thirty (30) days after written notice, the ACC shall have the right, but not the duty, without further notice or warning to perform the maintenance and the cost thereof shall constitute the individual assessment of that Lot Owner.
29. Storage of Commercial Equipment. No Lot shall be used or maintained as a storage area for commercial equipment of any kind for use in a trade or business except as permitted by county codes for a residential area and then it should be stored out of the general view.
30. Subdivision of Lots. No Lot Owner shall at any time be permitted to subdivide or attempt to subdivide his Lot.

PART C. ARCHITECTURAL CONTROL COMMITTEE

1. Organization of the Architectural Control Committee. There shall be an Architectural Control Committee ("ACC") consisting of not fewer than three (3) members. The members of the ACC need not be Owners. Declarant shall have the right to appoint, remove and increase the number of members of the ACC; provided that such right shall

vest in the Board upon the expiration of any continuous period of eighteen (18) months during which Declarant at all times owns less than ten percent (10%) of the Lots then covered by this Declaration. Declarant may voluntarily relinquish control of the ACC to the Board at any time. Whenever the ACC consists of more than three (3) members, it may designate subcommittees, each consisting of at least three (3) members. Unless authorized by the Board, the members of the ACC shall not receive any compensation, but all members shall be entitled to reimbursement from the Association for reasonable expenses incurred in the performance of any ACC function.

2. Actions Requiring Approval. No fence, wall, dwelling, accessory or addition to a dwelling visible from the Common Elements or public streets within the Project, or landscaping or other improvement of a Lot visible from the Common Elements or public streets within the Project shall be constructed or performed, nor shall any alteration of any structure on any Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the ACC.
3. Standard of Design Review. Before granting any approval of plans and specifications, the ACC shall determine to its reasonable satisfaction that such plans and specifications (a) conform to all architectural standards contained in this Declaration and all further architectural standards promulgated from time to time by the Board and (b) provide for a structure, alteration, landscaping or other improvements in harmony as to external design and location with surrounding structures and topography.
4. ACC Rules and Architectural Standards. The Board may, upon recommendation from the ACC, adopt and file as a matter of public record reasonable rules related to the efficient review of plans and specifications including requirements as to the number of sets of plans and specifications to be submitted, the fixing of a review or variance request fee not exceeding Fifty Dollars (\$50.00) per review or variance request, the details to be shown on plans and specifications, and design guidelines consistent with this Declaration and covering such matters as setbacks, height limitations, restrictions on minimum or maximum size and quality of structures.
5. Approval Procedure. The ACC and any subcommittees thereof shall meet from time to time as necessary to perform the duties of the ACC. The vote or written consent of a majority of the ACC or any authorized subcommittee shall constitute the act of the ACC. Any plans and specifications submitted to the ACC shall be approved or disapproved within thirty (30) days after receipt by the ACC. If the ACC fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.
6. Variance Procedure. If plans and specifications submitted to the ACC are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the ACC, which shall make a written recommendation of approval or disapproval of the requested variance to the Board. The Board shall approve or disapprove the request for variance in writing. If the Board fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the ACC, such request shall be deemed to be approved.
7. Nonwaiver. The approval by 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.
8. Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the ACC shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the ACC.
9. Exemption of Declarant. The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Lot or portions of the Common Elements at any time during the twenty-year period

following the date on which this Declaration is filed for record in the office of the County Recorder of Weber County, Utah.

10. Estoppel Certificate. Within thirty (30) days after written demand therefor is delivered to the ACC by any Owner and upon payment therewith to the Association of a reasonable fee from time to time to be fixed by the Board, the ACC shall issue an estoppel certificate in recordable form executed by any two of its members, certifying with respect to any Lot of such Owner that as of the date thereof either (a) all improvements and other work made or done upon or within such Lot by the Owner, or otherwise, comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also (i) identify the nonconforming improvements or work, and (ii) set forth the nature of such noncompliance. Any mortgagee or purchaser from the Owner shall be entitled to rely on such certificate with respect to the matters therein set forth.
11. Disclaimer of Liability. Neither the ACC, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Project, or (d) any engineering or other defect in approved plans and specifications.

PART D. OPEN SPACE COVENANTS

1. Reservation. Declarant hereby designates as open space and conveys in fee simple to the Association (or a designee established by the Association) that certain real property more particularly described on Exhibit "B" attached hereto and incorporated by this reference (the "Open Space"). The Open Space shall be for the common use and enjoyment of the Owners, subject to this Declaration.
2. Owners' Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Open Space which shall be appurtenant to and shall pass with the title to every Lot; provided, however, that no Owner shall do any act which interferes with the use and enjoyment of the Open Space by all other Owners; and provided further, said easement shall be subject to the following rights, title and interest:
 - a. The right of the Declarant and the Association to grant easements in and to the Open Space for utility services, including water, sewer, drainage and other public uses which benefit the Project and/or the surrounding community as a whole;
 - b. The right of the Association (or the Association through its designee) to dedicate, transfer and convey all or any part of its right, title and interest in the Open Space to any public agency, authority, or utility or, to any other Person.
3. Responsibilities of the Association. Pursuant to an agreement with Pleasant View City, the Association shall not be responsible for the operation, management, care, restoration, insurance, renovation, alteration, reconstruction, repair, maintenance, rebuilding, replacement, improvement of the Open Space. The Association shall, however, be responsible for real property taxes and utility charges associated with the Open Space.

PART E. HOMEOWNERS ASSOCIATION

1. Association. To effectively enforce the conditions, restrictions and stipulations contained in this instrument, Declarant has created, or will create, a Utah nonprofit corporation called the "Alder Creek Homeowners Association" (the "Association").
2. Membership. Every owner (each, an "Owner," and, collectively, the "Owners") upon acquiring title to a Lot shall automatically become a member of the Association (each, a "Member," and, collectively, the "Members") and shall remain a member thereof until such time as his/her ownership of such Lot ceases for any reason, at which time his/her

membership in the Association with respect to such Lot shall automatically cease and the successor Owner shall become a Member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Lot.

3. Voting Rights. The Association shall have the following described two classes of voting membership:
 - a. Class A. Class A Members shall be all Owners, but excluding the Declarant, until the Class B membership ceases. Class A members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held.
 - b. Class B. Declarant shall be the sole Class B Member. The Class B Member shall be entitled to five votes for each Lot which it owns. The Class B membership shall automatically cease and be converted to Class A membership when the total number of votes held by all Class A Members exceeds the total number of votes held by the Class B Member.
4. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves, but in no event shall more than one Class A vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Lot concerned unless an objection is made at the meeting by another Owner of the same Lot, in which event a majority in interest of the co-owners as shown on the record of ownership maintained by the Association shall be entitled to cast the vote.
5. Duties of the Association. Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligations and duties to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Project:
 - a. The Association shall accept all Owners as Members of the Association.
 - b. The Association shall accept title to all Common Elements conveyed to it by Declarant.
 - c. The Association shall maintain, repair, and replace, the Common Elements (including the maintenance of drainage facilities, but excluding those facilities Pleasant View City chooses to maintain), and, at the discretion of the Board of Directors of the Association (the "Board"), any property dedicated to any governmental authority and situated immediately adjacent to the Project if the Board determines that such dedicated property is not being maintained or landscaped in a condition comparable to the Common Elements.
 - d. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments, levied upon any portion of the Common Elements, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
6. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:
 - a. The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement

thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

- b. In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Elements, and Lots (to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct improvements or other work upon any of the Common Elements, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon not less than ninety (90) days' written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Elements on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or otherwise provide for:
- (i) Construction, maintenance, repair and landscaping of the Common Elements, including all surface run-off, drainage and detention facilities (not maintained by Pleasant View City), on such terms and conditions as the Board shall deem appropriate;
 - (ii) Construction, maintenance, repair and replacement of landscaping and improvements (excluding the maintenance, repair and replacement of driveways and sidewalks) upon the Common Elements, on such terms and conditions as the Board shall deem appropriate;
 - (iii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board, the members of the ACC and the Owners;
 - (iv) Such utility services, including (without limitation) culinary water, secondary water, sewer, trash removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;
 - (v) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
 - (vi) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Project; and
 - (vii) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.
7. Association Rules. The Board from time to time and subject to the provisions of this Declaration may adopt, amend, repeal and enforce rules and regulations governing, among other things, (a) the use of the Common Elements; (b) the use of any roadways or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; and (e) other matters concerning the use and enjoyment of the Project and the conduct of residents.

8. Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board or the ACC.
9. Assessments.
- a. Personal Obligation and Lien. Each Owner shall, by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Section, together with late payment fees, interest and costs of collection, if and when applicable. All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in the Common Elements or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all unpaid monthly and special assessments, late payment fees, interest and costs of collection which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.
 - b. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Project. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Elements; maintenance, repair, and improvements of the Common Elements; management and supervision of the Common Elements; establishing and funding of a reserve to cover major repair or replacement of improvements within the Common Elements; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation. The Association shall maintain an adequate reserve fund or funds for maintenance, repairs and replacement of those elements of the Common Elements that must be maintained, repairs or replaced on a periodic basis.
 - c. Monthly Assessments. The Board shall from time to time and in its discretion set the amount of the monthly assessment in an amount reasonably estimated by the Board to be sufficient to meet the obligations imposed by this Declaration.
 - d. Special Assessments. From and after the date set under Section 9.h. of this Part, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Elements. Any such special assessment must be assented to by a majority of the votes of the membership which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.
 - e. Quorum Requirements. The quorum at any meeting required for any action authorized by Section 9.d. above shall be as follows: At the first meeting called, the presence of Owners or of proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in Section 9.d.) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

- f. Special Assessment on Specific Residential Lots. In addition to the monthly assessment and any special assessment authorized pursuant to Section 9.d. above, the Board may levy at any time special assessments (a) on every Lot especially benefited by any improvement to adjacent roadways, sidewalks, planting areas or other portions of the Common Elements made on the written request of the Owner of the Lot to be charged, (b) on every Lot the Owner or occupant of which shall cause any damage to the Common Elements necessitating repairs, and (c) on every Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Lots benefited.
- g. Uniform Rate of Assessment. All monthly and special assessments authorized by Sections 9.c. or 9.d. above shall be fixed at a uniform rate for all Lots. No amendment of this Declaration changing the allocation ratio of such assessments shall be valid without the consent of the Owners of all Lots adversely affected.
- h. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots as of the second month following conveyance to the Association of the Common Elements. At least fifteen (15) days prior to such commencement date and at least fifteen (15) days prior to the effective date of any change in the amount of monthly assessments, the Association shall give each Owner written notice of the amount and first due date of the assessment concerned.
- i. Effect of Nonpayment - Remedies. Any assessment not paid when due shall, together with interest and costs of collection, be, constitute, and remain a continuing lien on the affected Lot. If any assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the due date at the rate of one and one-half percent (1 1/2%) per month; and the Association may bring an action against the Owner who is personally liable or may foreclose its lien against the Lot, or both. Any judgment obtained by the Association in connection with the collection of delinquent assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Association in enforcing its rights.
- j. Subordination of Lien to Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first mortgage or deed of trust ("Mortgage") to a bank, savings and loan association, insurance company or other institutional lender; and the holder of any such first Mortgage or purchaser who comes into possession of a Lot by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment which accrues or becomes due prior to the time such holder or purchaser takes possession of such Lot; provided, that to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer shall relieve any Lot from the lien of any assessment thereafter becoming due.

PART F. GENERAL PROVISIONS

1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of forty years for the date these covenants are recorded, after which time, said covenants shall be automatically extended for successive

periods of ten years unless an instrument signed by a majority of the owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

- 2. Enforcement. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.
- 3. Severability. Invalidation of any one of the covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- 4. Amendment. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them unless an instrument signed by seventy-five percent of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

Ben Lomond Land, LLC, Declarant

By: Discovery Development, LLC, Managing Member

By: *David S. Bailey*
David S. Bailey, Member

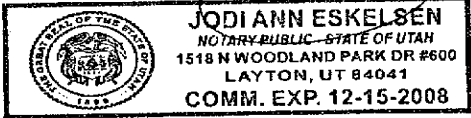
Bradley R. Wilson
Bradley R. Wilson, Member

STATE OF UTAH)
COUNTY OF WEBER) ss

On this 12 day of June, 2007, personally appeared before me David S. Bailey and Bradley R. Wilson.

Jodiann Eskelsen
NOTARY PUBLIC

Residing At: Ogden
Commission Expires: 12/15/08



SUBMISSION

The Declarant, Owner of the Property described in Exhibit "A", which Exhibit is attached hereto and incorporated herein by this reference, located in Weber County, Utah, hereby submits the Property and all improvements hereafter made in or upon the Property to the provisions of this Declaration. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth, herein, each and all of which are declared and agreed to be for the benefit of said Property and in furtherance of a plan of improvement of said property and division thereof into Lots; further, each and all of the provisions hereof shall be deemed to run with the Property and shall be a burden and a benefit on the Property and shall be binding upon the Declarant, their successors and assigns, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising of the Property and to their respective personal representatives, heirs, successors, and assigns.

EXHIBIT "A"
LEGAL DESCRIPTION OF PROJECT

BOUNDARY DESCRIPTION

BEGINNING AT A POINT ON THE WEST LINE OF AN EXISTING 80 FOOT ROAD (500 WEST), SAID POINT BEING LOCATED NORTH 89°43'56" WEST ALONG SECTION LINE (BASIS OF BEARING) 534.19 FEET AND SOUTH 673.29 FEET FROM THE NORTHEAST CORNER OF SECTION 19, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00°54'35" WEST ALONG SAID WEST LINE 646.23 FEET TO THE NORTHEAST CORNER OF LOT 19 OF MOUNTAIN ESTATES SUBDIVISION PHASE 1, AS RECORDED WITH THE OFFICE OF THE WEBER COUNTY RECORDER, NEAR THE PROLONGATION OF AN OLD WIRE FENCE; THENCE NORTH 89°42'00" WEST COINCIDENT WITH THE NORTH LINE OF SAID PHASE 1 AND ADJACENT TO SAID WIRE FENCE 260.13 FEET TO THE NORTHWEST CORNER OF LOT 16 OF SAID PHASE 1; THENCE SOUTH 24°22'51" WEST 1.66 FEET COINCIDENT WITH SAID NORTH LINE TO THE NORTHEAST CORNER OF LOT 46 OF MOUNTAIN ESTATES SUBDIVISION PHASE 2, AS RECORDED WITH THE OFFICE OF THE WEBER COUNTY RECORDER; THENCE NORTH 89°48'46" WEST COINCIDENT WITH THE NORTH LINE OF SAID PHASE 2 AND ADJACENT TO SAID OLD WIRE FENCE AND THE EXTENSION OF 546.02 FEET; THENCE NORTH 89°48'46" WEST 593.34 FEET; THENCE NORTH 07°07'23" EAST 27.76 FEET; THENCE NORTH 09°19'33" EAST 36.13 FEET; THENCE NORTH 11°31'43" EAST 528.71 FEET; THENCE SOUTH 89°36'17" EAST 68.42 FEET; THENCE SOUTH 00°23'12" WEST 17.70 FEET; THENCE SOUTH 89°43'56" EAST 100.00 FEET; THENCE NORTH 18°18'33" EAST 440.18 FEET; THENCE NORTH 89°43'56" WEST 224.93 FEET; THENCE NORTH 11°31'43" EAST 91.75 FEET; THENCE SOUTH 89°43'56" EAST 257.35 FEET; THENCE SOUTH 18°18'33" WEST 535.92 FEET; THENCE SOUTH 19°48'33" WEST 128.74 FEET; THENCE SOUTH 12°17'41" WEST 278.07 FEET; THENCE SOUTH 07°18'55" WEST 100.29 FEET; THENCE SOUTH 38°35'51" EAST 63.88 FEET; THENCE SOUTH 89°48'43" EAST 263.87 FEET; THENCE NORTH 00°45'38" EAST 211.90 FEET; THENCE SOUTH 89°14'22" EAST 133.93 FEET; THENCE NORTH 13°40'48" EAST 79.91 FEET; THENCE NORTH 29°45'27" EAST 179.48 FEET; THENCE NORTH 42°19'48" EAST 145.85 FEET; THENCE NORTH 35°22'10" EAST 89.28 FEET; THENCE EAST 523.76' TO SAID WEST LINE OF 500 WEST AND THE POINT OF BEGINNING.

CONTAINS - 627,215 SQ. FT. 14.40 ACRES 22 LOTS

EXHIBIT "B"
OPEN SPACE DESCRIPTION

BEGINNING AT A POINT WHICH IS LOCATED NORTH 89°43'56" WEST 1472.32 FEET
ALONG SECTION LINE AND SOUTH 250.00 FEET FROM THE NORTHEAST CORNER OF
SECTION 19, TOWNSHIP 7 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN,
AND RUNNING THENCE

SOUTH 18°18'33" WEST 535.92 FEET;
THENCE SOUTH 19°48'33" WEST 128.74 FEET;
THENCE SOUTH 12°17'41" WEST 278.07 FEET;
THENCE SOUTH 07°18'55" WEST 100.29 FEET;
THENCE SOUTH 38°35'51" EAST 63.88 FEET;
THENCE SOUTH 89°48'43" EAST 263.87 FEET;
THENCE SOUTH 89°48'54" EAST 106.54 FEET;
THENCE SOUTH 00°22'01" WEST 20.00 FEET;
THENCE NORTH 89°48'46" WEST 598.47 FEET;
THENCE NORTH 07°07'23" EAST 27.76 FEET;
THENCE NORTH 09°19'33" EAST 36.13 FEET;
THENCE NORTH 11°31'43" EAST 528.71 FEET;
THENCE SOUTH 89°36'17" EAST 68.42 FEET;
THENCE SOUTH 00°23'12" WEST 17.70 FEET;
THENCE SOUTH 89°43'56" EAST 100.00 FEET;
THENCE NORTH 18°18'33" EAST 440.18 FEET;
THENCE NORTH 89°43'56" WEST 224.93 FEET;
THENCE NORTH 11°31'43" EAST 91.75 FEET;
THENCE SOUTH 89°43'56" EAST 257.35 FEET TO THE POINT OF BEGINNING.

CONTAINS 141,264 SQ. FT. – 3.24 ACRES