

Record and Return to:
Law Office of Steven W. Farnsworth, PLLC
Canyon River Center, Ste. 400
727 North 1550 East
Orem, Utah 84097

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
WHEELER PARK PHASE ONE**

This Declaration of Covenants, Conditions, Restrictions and Easements for Wheeler Park Subdivision Phase One (hereafter this "**Declaration**") is made as of this 24th day of May, 2007, by WHEELER PARK DEVELOPMENT, INC., a Utah corporation (hereafter the "**Declarant**").

RECITALS

WHEREAS, Declarant is the owner of certain land situated in Wasatch County, Utah, more particularly described on the attached **Exhibit A** (hereafter the "Property" or "Subdivision"); in Heber, Utah.

WHEREAS, Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes set forth in this Declaration to: (i) ensure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by Declarant and all other persons or entities who may subsequently acquire an interest in the Property, and (iii) create a residential development of high quality.

ARTICLE I

DECLARATION

Declarant hereby incorporates the recitals set forth above and submits the Property to the provisions of this Declaration and declares that the Property and each lot, tract or parcel thereof is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes (hereafter collectively called "Covenants and Restrictions"), all of which are declared and agreed to be in furtherance of the protection, maintenance, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The Covenants and Restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property and any Lot therein, and may be enforced by Declarant or by any Owner.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit Declarant's right to complete development of the Property in

accordance with the plan therefore as the same exists or may be modified from time to time by Declarant nor prevent normal construction activities during the construction of Improvements within the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by Declarant, provided that such waiver shall be for a reasonable period of time and shall terminate upon completion of the construction activities. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

In the event of any conflict between the provisions of this Declaration and the requirements of the applicable ordinances of the City (as defined below) or any municipality which may annex any portion of the Property (as to that portion or portions), the more restrictive provisions shall control.

ARTICLE II

DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

Annexation: The process by which additional tracts or parcels of land, including platted Lots improved with single family dwellings thereon, not initially a part of the Property are made subject to this Declaration.

Basement: Any living area which is more than 5 feet below the average adjacent grade.

Builder: Richmond American Homes of Utah, Inc., a Colorado corporation, and its successors and assigns.

Building: A structure constructed on a Lot on a temporary or permanent basis and unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith.

City: Heber City, State of Utah.

County: Wasatch, County, State of Utah.

Declaration: This instrument as it may be amended from time to time.

Development: The project to be undertaken by Declarant resulting in the improvement of the Subdivision or any additional property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other Improvements.

Improvements: All structures and appurtenances thereto of all kinds and types, including but not limited to, Buildings, roads, driveways, storm drains, water systems, sprinkler pipes, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, recreational equipment, poles, signs and lighting. Improvements shall not include those items which are located totally on the interior of a Building and cannot be readily observed when outside thereof.

Initial Construction: The first construction of permanent Improvements on a Lot.

Lot: A legally described tract or parcel of land within the Subdivision.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including Declarant, holding fee simple title to a Lot in the Subdivision, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including any mortgagee (of any priority) or other security holder provided said mortgagee or other security holder is in actual possession of a Lot as a result of foreclosure or otherwise, and any person taking title through such mortgagee or other security holder by purchase at foreclosure sale or otherwise.

Plat: A final subdivision plat covering any real property in the Subdivision, as recorded in the office of the County Recorder of the County, as the same may be amended by duly recorded amendments thereto.

Subdivision: The whole of the Property and any additional land annexed thereto as provided herein, including any such additional land as may be platted and annexed hereunder under a different name (also sometimes referred to herein as "Property").

Supplemental Declaration: The additional or different conditions, covenants, conditions, restrictions and easements relating to a particular tract or parcel of real property within the Subdivision promulgated by Declarant and recorded in the official records of the County. Unless specifically provided to the contrary, or unless the context otherwise requires, a reference to "Declaration" shall include "Supplemental Declaration."

ARTICLE III

PURPOSE

The Property is hereby made subject to the Covenants, Conditions, Restrictions and Easements contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors-in-interest and assigns, to insure the

proper design, development, improvement, use and maintenance of the Property for the purpose of protecting and enhancing the investment and use of all Lots and Improvements.

ARTICLE IV

PERMITTED USES AND PERFORMANCE STANDARDS

4.01. Use. Lots shall be used only for single family residential purposes and such uses as are customarily incidental thereto. Nothing herein is intended to prohibit Declarant or Builder from conducting development, sales, and marketing activities on the Lots.

4.02. Buildings. No Lot shall be improved except with one (1) dwelling unit. Each detached dwelling unit shall have an attached or fully enclosed garage.

4.03. Prohibited Buildings/Uses. No trailer or other vehicle (including recreational vehicles), tent, shack, garage, accessory building or out-building shall be used as a temporary or permanent residence. No noxious or offensive activities shall be conducted on any Lot nor shall anything be done or any use made thereon or thereof which may be or become an unreasonable annoyance, nuisance or unreasonably dangerous or hazardous to the Occupant(s) of the other Lots within the Property by reason of unsightliness or the emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise. Nothing herein is intended to prohibit Declarant or Builder from placing a sales/construction trailer on a Lot or making reasonable use of construction equipment or otherwise undertaking efforts to develop the Subdivision and the Lots.

4.04. Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish larger than 24 inches, shall be erected or maintained on a Lot without first obtaining written approval from Declarant or at least 51% of the Owners of the Lots within the Property.

4.05. Lighting. All exterior lighting and interior lights reflecting outside shall not be placed in any manner which shall cause glare or excessive light spillage on any neighboring Lot(s). Reasonable holiday lighting and decorations may only be displayed during the period starting November 15 of each year to January 15 of the next year.

4.06. Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except that not more than three (3) domesticated, small household pets (e.g. dogs or cats) shall be allowed so long as said animals do not unreasonably bother or constitute a nuisance to others, and provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot.

4.07. Commercial Use Prohibited. No Lot shall be used for commercial or business activity; provided, however, that Declarant or persons authorized by Declarant and Builder may use Lots for development and sales activities relating to the Subdivision, model homes

and/or real estate sales. This Section specifically prohibits the use of a Lot for the commercial repair or sale of any vehicle, equipment, boat or other fuel operated equipment.

4.08. Maintenance. The following provisions shall govern the maintenance of Lots and all Improvements thereon:

- (a) Each Owner of a Lot shall maintain all Improvements and landscaping located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, windows unbroken, rubbish and debris removed and otherwise maintain the same in a neat and aesthetically pleasing condition.
- (b) All damage to any Improvements shall be repaired as promptly as is reasonably possible.
- (c) A Building which is vacant for any reason shall be kept locked in order to prevent entrance by vandals.
- (d) All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view.
- (e) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along public or private rights-of-way or otherwise kept in the open or exposed to public view.
- (f) Any event or condition on a Lot which creates an unsightly or blighting influence, shall be corrected, removed or screened from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration.

The foregoing provisions shall not apply to subdivided land owned by Declarant, or Builder, which is used for open space or is otherwise in a predevelopment status.

4.09. Boats, Campers and Other Vehicles. Trailers, mobile homes, trucks larger than standard pickups, boats, tractors, campers, garden or maintenance equipment and vehicles other than automobiles, when not in actual use, shall be kept at all times in an enclosed structure or screened from public view; and at no time shall any of said vehicles or equipment be parked or stored on a public or private right-of-way within the Subdivision. The parking or storage of commercial equipment, including, but not limited to, truck trailers or cabs, construction or excavation equipment, etc., is prohibited. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles and other vehicles. No other use of a garage or conversion of a garage, which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which is it designed, shall be permitted except for use as a sales office within Builder's model home. Parking on the lawn or unpaved portion of the Lot or in a public or private right-of-way within the Subdivision, other than for temporary purposes not to

exceed 48 hours, is prohibited. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed structure. No repairs of any vehicle shall be undertaken within the Subdivision, except wholly within the Owner's garage and with the garage closed.

4.10. Garage Doors. Garage doors shall be kept closed except when open for a temporary purpose.

4.11. External Energy Devices. No energy producing devices including, but not limited to, solar panels and generators of any kind, shall be constructed, installed or maintained on any Lot, except as follows:

(a) Heat pumps, air conditioning compressors, evaporative coolers, or similar appliances. Owners making use of such equipment shall take reasonable efforts to mitigate the sound of such equipment and to screen it from public view from the front of a Lot.

(b) The use of generators and other external energy producing devices shall be authorized on a temporary basis in the event and during the period of an emergency.

(c) Solar panels used to supplement or replace electricity usage within an Improvement, but such panels shall be reasonably screened or hidden from view from the front of a Lot.

4.12 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for sale by displaying a single, neat, reasonably sized "For Sale" sign thereon. Owners may not display a "For Rent" sign. Signs advertising the name of the builder and the name of the institution providing financing may be displayed on a Lot during construction of the Improvements. Lighted, moving or flashing signs for any purposes are prohibited. Declarant shall regulate project and builder signage during the development phases of construction and marketing of homes within the Subdivision. Builder's signage package has been submitted to and approved by Declarant.

4.13 Subdividing. No Lot which has been platted and approved as a final building or residential lot (whether for single-family buildings or otherwise) may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, or tenants by the entirety. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

4.14 Landscaping. Each Owner shall install yard landscaping the Owner's respective Lot within a reasonable time.

(a) Front Yard. Front yard landscaping shall be substantially completed within twelve (12) months after issuance of the certificate of occupancy for the Improvements. Front yard landscaping shall include the park strips in front of each Lot and shall extend to 5 feet past the front corner of each residence. Vegetable gardens are prohibited in any front yard landscaping.

(b) Park Strips. Each Owner shall install a minimum of two trees in the front park strip between the back of the curb and the sidewalk in front of each Lot. Only sod and trees shall be permitted in the park strip unless said Owner first obtains written approval for a different landscaping plan from Declarant or at least 51% of the Owners of Lots within the Subdivision. In no event shall the Owner install only hard surface paving (bricks, concrete, etc.) in the park strip in front of the Lot.

(c) Corner Lot Side Yards. Each Owner of a corner lot shall install landscaping in the side yards that front on a street within the same period mentioned above for the front yard. The side yards shall terminate at the back corner of the residential structure on the side which fronts the secondary street. Corner lot side yards shall not include vegetable gardens.

(d) Back Yard. Each Owner shall install back yard landscaping (which shall mean a minimum of sod) within three years of the date of the issuance of the certificate of occupancy for the Improvements.

4.15 Fencing. Fencing shall be permitted on any Lot in accordance with applicable City ordinances and must be decorative and private in nature. Fencing shall be limited to enclosing the back yard. At no time shall fencing enclose the front or corner lot side yards. Fencing material shall be limited to brick, stone, vinyl or other composite low maintenance material and shall be neutral or white in color. Wood, chain-link, barb wire, and field fencing on a post are expressly prohibited. No kennel or dog run may be maintained closer than 25 feet to any dwelling on the Lot where the kennel or dog run is maintained, and any such kennel or dog run shall be fully enclosed within a larger back yard fencing. Nothing herein is intended to prevent temporary fencing around Builder's model home(s).

4.16 Architectural Requirements. Owners will maintain their Lots and Improvements in substantially the same condition and appearance at the time of initial occupancy by the initial purchaser of said Lot.

(a) Exterior Requirement. No structure shall be built with less than 100% of all the faces of the structure of brick, stone, or stucco or Hardiplank. All structures shall be built with at least one of the four permitted exterior materials. All exterior colors must be Earth Tone. Minimum of 2x6 Fascia.

(b) Roof Design. Roof pitches must be within a range of 6/12 to a 12/12 slope. All roofs shall be pitched. All roofing material must be of architectural grade

asphalt shingles or better, i.e. tile. Mansard, fake mansard, "A frame", gambrel, flat, curve-linear, and domed roof designs are prohibited. All roof metal such as flashing, vent stacks, gutters, and chimney caps shall be made of anodized aluminum, copper or galvanized metal painted to match the adjoining roof color.

(c) Windows. No mirrored or reflective glass shall be used. Following occupancy, window coverings shall be installed on the interior of each front or side yard facing windows, with the exterior color showing being white or light beige. No sheets or other temporary window coverings shall be permitted. Reflective window coverings are prohibited.

(d) No Used or Temporary Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot. No metal storage building or metal storage shed shall be permitted on a Lot unless approved in writing by Declarant or at least 51% of the Owners within the Subdivision.

(e) House Size Requirements:

- 1) All ramblers must have a minimum on 1400 Sq. Ft on the main floor;
- 2) All 2 story homes must have a minimum on 1000 Sq. Ft. on the main with a combined sq footage on the main and upper floors of 2000 Sq. Ft.
- 3) Split level homes must have a minimum of 1500 Sq. Ft on the upper two levels.
- 4) No split entry homes will be allowed.

4.18 Other. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Lot. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Project. The discharge of firearms, including without limitation, "B-B" guns and pellet guns, is prohibited. On-site storage of gasoline or other fuels is prohibited on any Lot, with the exception of up to five (5) gallons of fuel stored for emergency purposes and operation of lawn mowers or similar tools or equipment. All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers, and similar items shall be stored so as not to be visible from the streets or adjacent property. No such items shall be allowed to remain on Lots so as to be visible from adjacent property when not in use.

4.19 Exemption of Declarant. Nothing herein contained shall limit the right of Declarant to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of the Property owned or controlled by Declarant, or to alter the foregoing and its development plans and designs, or construct additional Improvements as Declarant deems advisable in the course of Development of the Subdivision. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Lot by a homebuilder or an

Owner to establish on that Lot additional licenses, restrictions, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary.

ARTICLE V

ANNEXATION

5.01 Annexation: Additional property may be annexed into the Subdivision and brought within the provisions of this Declaration by Declarant, at any time, without the approval of any Owner. To annex additional property to the Subdivision, Declarant shall record an amendment to this Declaration which shall describe the additional property to be annexed to the Subdivision, and Declarant may supplement this Declaration with additional or different Covenants and Restrictions applicable to the annexed property, as Declarant may deem appropriate, and Declarant may delete or modify such covenants as are contained herein which Declarant deems inappropriate for the annexed property. Upon such annexation, the Owners of the Lots within the annexed property shall become subject to this Declaration with the same rights, privileges and obligations as all other Owners. The amendment of this Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section. Notwithstanding the foregoing, it is anticipated that each annexed parcel shall be developed and platted as a separate and distinct subdivision and the annexation thereof shall not, by virtue of such annexation, be considered an alteration, amendment or change to the plat for any prior subdivision comprising the Property governed by the provisions of this Declaration.

5.02 De-Annexation. Declarant shall have the right to delete all or a portion of the property from the coverage of this Declaration, so long as Declarant is the owner of the property to be de-annexed and provided further, that an appropriate amendment to this Declaration is recorded in the recorder's office if the County.

ARTICLE VI

MISCELLANEOUS

6.01 Term. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2050, unless amended as hereafter provided. After December 31, 2050, said covenants, conditions, restriction and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the County Recorder.

6.02 Amendment. This Declaration may be amended as follows:

- (a) By Declarant. Until title to all Lots within the Subdivision are conveyed by Declarant to an Owner other than Declarant, this Declaration may be amended or terminated by Declarant by recordation of a written instrument signed by

Declarant and acknowledged setting forth such amendment or termination.

(b) By Owner(s). After Declarant has conveyed title to all Lots within the Subdivision, the provisions of this Declaration, may be amended by an instrument in writing, signed and acknowledged 67% of Owners and such amendment shall be effective upon its recordation with the County Recorder.

6.03 Non-Waiver. The failure of Declarant or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or, other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

6.04 Acceptance. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale, and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restriction, easements and other provisions set forth in this Declaration and agrees to be bound by the same.

6.05 Limitation on Liability. Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no representations or warranties whatsoever that the plan presently envisioned for the complete Development and use of the Property can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be committed to or developed for a particular use, or that if land is once used for a particular use, that such use will continue in effect. Declarant shall not be liable to any Owner for any action taken or omitted to be taken so long as the conduct of Declarant was in good faith, except such as may arise from the willful misconduct or gross negligence of Declarant.

6.06 Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by overnight courier, or by U.S. mail, postage prepaid to the last known address. If delivery is made by overnight courier service, it shall be deemed to have been delivered on the next business day after the same has been deposited with the overnight courier service, postage prepaid, properly addressed. If delivery is made by U.S. mail it shall be deemed delivered three (3) business days after the same has been deposited with the U.S. postal service, postage prepaid, properly addressed.

6.07 Interpretation. The provisions of this Declaration and any Supplemental Declaration shall be liberally construed to effectuate the purposes stated herein and shall be construed and governed by the laws of the State of Utah. 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 include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

6.08 Breach; Enforcement. Each Owner shall have the right to enforce, by any

proceeding at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by the provisions of this Declaration. Failure of any Owner to enforce any covenant or restriction herein or therein contained shall in no event be deemed a waiver of the right to do so thereafter. If a person or party is found in the proceedings to be in violation of or attempting to violate the provisions of this Declaration, he or she shall bear all expenses of the litigation, including court costs and reasonable attorneys' fees, including those on appeal, incurred by the party enforcing them. Declarant shall not be obligated to enforce this Declaration or such deed restrictions and shall not in any way or manner be held liable or responsible for any violation of this Declaration or such deed restrictions by any person.

6.09 Attorney's Fees. In the event of any action for a breach of or to enforce any provision or right hereunder, the non-prevailing party in such action shall pay to the prevailing party all costs and expenses, expressly including, but not limited to, reasonable attorneys' fees and costs incurred by the successful party in connection with such action, including without limitation all fees and costs incurred on any appeal from such action or proceeding.

6.10 Severability; Invalidity. Notwithstanding anything herein to the contrary, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision. Invalidation of any one of these covenants or restrictions by law, judgment or court order shall in no way effect any other provisions of this Declaration and such other provisions shall remain in full force and effect.

6.11 FHA and VA Compliant. To the extent any provision of this Declaration violates the requirements of Federal Housing Administration and/or the Veterans Administration regulations, such provisions shall be deemed automatically modified to comply with such regulations.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first hereinabove set forth.

DECLARANT:

WHEELER PARK DEVELOPMENT, INC., a Utah corporation

BY: Michael C Bingham
NAME: Michael C Bingham
TITLE: CFO / Vice President

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

On the 25th day of May, 2007, personally appeared before me Michael Bingham, who being by me duly sworn did acknowledge that he is the CFO / Vice President of WHEELER PARK DEVELOPMENT INC., a Utah corporation, and acknowledged to me that he executed the same.

Tammy Walker
Notary Public

[Notary Seal]

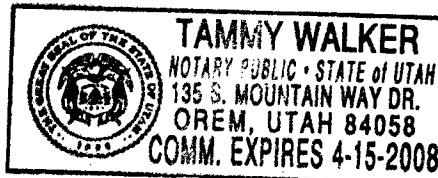


EXHIBIT "A"

ALL OF LOTS 1 THRU 91, WHEELER PARK SUBDIVISION PHASE 1,
according to the official plat thereof on file and of record in the office of the
Wasatch County Recorder.