

Upon recording, return to:

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Westfield Development Company  
c/o: Richard Mendenhall  
2824 East 4215 South  
Salt Lake City, Utah 84124

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ENT 32706 BK 4256 PG 650  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
1997 Apr 30 8:49 am FEE 125.00 BY JW  
RECORDED FOR DRY CREEK ESTATES L.C.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR**

**DRY CREEK SUBDIVISION PHASE 1 & 2**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereinafter referred to as the "Declaration"), is made as of this 8th day of April, 1997, by DRY CREEK ESTATES, L.C., a Utah Limited Liability Co., Dry Creek Highlands, L.C., a Utah Limited Liability Co., and WBM Trust (the "Declarant"), with reference to the following facts:

WHEREAS, Declarant is the owner of record of that certain parcel of real property known as Dry Creek Subdivision Phase 1 and Phase 2 (the "Subdivision"), whose subdivision Maps were recorded on \_\_\_\_\_, 1997, as Entry No. \_\_\_\_\_ and \_\_\_\_\_, Map No. \_\_\_\_\_ and \_\_\_\_\_, of the official records in the Office of the County Recorder for Utah County, State of Utah. Dry Creek Subdivision Phase 1 and Phase 2 are located in Highland City, Utah County, State of Utah, and is more particularly described as follows:

**PHASE 1**

Beginning at a point of the West right-of-way line of 6000 West Street, said point being located N.00°16'02" W. 500.599 feet along the centerline of 6000 West and S. 89°43'58"W. 32.769 feet from the South quarter corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence S. 85°30'58" W. 451.772 feet; thence S. 86°04'32" W. 277.118 feet; thence N. 01°49'36" W. 40.253 feet; thence S. 85°20'44" W. 325.214 feet; thence N. 00°03'40" W. 449.491 feet; thence N. 81°43'19" W. 273.782 feet; thence N. 00°03'40" E. 581.848 feet; thence S. 72°34'59" E. 157.327 feet; thence S. 77°41'10" E. 152.642 feet; thence N. 00°03'40" W. 284.806 feet; thence N. 58°14'55" E. 92.657 feet; thence N. 00°03'40" W. 168.096 feet; thence N. 89°59'10" E. 120.720 feet; thence N. 78°38'12" E. 215.511 feet; thence N. 23°43'56" E. 122.253 feet; thence N. 89°43'58" E. 160.068 feet; thence N. 00°16'02 W. 188.008 feet; thence N. 89°43'58" E. 394.506 feet to the West right-of-way line of 6000 West Street, and bearing thence S. 00°22'41" E. 1797.368 feet along said West right-of-way line to the point of beginning.

Contains 1,844,598.2 square feet or 42.35 acres more or less

Basis of bearing being from the Southwest Corner of Section 26 to the South Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian, which has a bearing of South 89°59'04" East.

Beginning at a point on the West right-of-way line of 6000 West Street, said point being located N. 00°16'02" W. 2730.281 feet along the centerline of 6000 West and S. 89°43'58" W. 37.083 feet from the South Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence S. 81°08'29" W. 410.122 feet; thence S. 86°59'27" W. 448.963 feet; thence S. 88°32'41" W. 456.751 feet; thence S. 00°03'40" W. 1124.495 feet to a point on the Westerly boundary of Dry Creek Subdivision Phase 1; thence along the Northerly boundary of said Dry Creek Subdivision Phase 1 the following eleven courses; (1) S. 72°34'59" E. 157.327 feet; thence (2) S. 77°41'10" E. 152.642 feet; thence (3) N. 00°03'40" W. 284.806 feet; thence (4) N. 58°14'55" E. 92.657 feet; thence (5) N. 00°03'40" W. 168.096 feet thence (6) N. 89°56'10" E. 120.720 feet; thence (7) N. 78°38'12" E. 215.511 feet; thence (8) N. 23°43'56" E. 122.253 feet; thence (9) N. 89°43'58" E. 160.068 feet; thence (10) N. 00°16'02" W. 188.008 feet; thence (11) N. 89°43'58" E. 394.506 feet to the Northeast Corner of Dry Creek Subdivision Phase 1 and the West right-of-way line of 6000 West Street; thence N. 00°22'41" W. 432.318 feet along said right-of-way line to the point of beginning.

Contains 932,315.10 square feet or 21.40 acres more or less

Basis of bearing being from the Southwest corner of Section 26 to the South Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian, which has a bearing of South 89°59'04" East.

The areas described above are also known as Lots 1-69 of the Dry Creek Subdivision Phase 1 and Phase 2, as platted and recorded in the office of the Utah County Recorder, and

WHEREAS, all lots in the Subdivision are a part of and are governed by this Declaration, and

WHEREAS, the Declarant desires to develop residential subdivisions of distinctive and individual character and for the benefit of all owners within the Subdivision, and intends to provide for the preservation of such character.

WHEREAS, the Declarant, or affiliate of Declarant has previously facilitated, or may facilitate, the development and recordation of additional subdivision Maps, which shall commonly be identified as the various phases of the Dry Creek Subdivision, and which are developed on property which is contiguous to the Subdivision, or to prior or future phases of the Dry Creek Subdivision (the "Subdivisions"), and

WHEREAS, the Declarant intends to sell the individual lots which comprise the Property described above and the Declarant desires to subject each respective lot to a general plan of improvement which will include certain restrictions, conditions, covenants, and agreements, as hereinafter set forth;

NOW, THEREFORE, the Declarant declares that the Property shall be held, sold, conveyed, leased, occupied, resided upon and hypothecated subject to the following covenants, conditions and restrictions; which covenants, conditions and restrictions shall run with the land, are established for the purpose of protecting and preserving the value of each and every part of the Property, and which shall be binding upon each and every party which shall at any time have 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.

**ARTICLE I  
DEFINITIONS**

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**Section 1.1** "**Association**" shall mean the Dry Creek Subdivision Home Owners Association, comprised of each respective Owner of a Lot within the Subdivision. Decisions by the Association shall be made by a vote of a majority of those Owners present at a duly called meeting of the Association. No vote shall be taken, however, without a quorum of the Owners present, comprised of a majority of the Owners of Lots in the Subdivision. One vote shall be allotted to the Owner of each of the Lots in the Subdivision. No dues shall be assessed to individual members of the Association, unless otherwise decided by the members of the Association.

**Section 1.2** "**Committee**" shall mean the Architectural Control Committee, as such Committee is further described in Article IV hereof.

**Section 1.3** "**Declarant**" shall mean Dry Creek Estates L.C., a Utah Limited Liability Company, Dry Creek Highlands, L.C., a Utah Limited Liability Company, and WBM Trust and their successor(s) and/or assign(s).

**Section 1.4** "**Family**" shall mean a group of natural persons related to each other by blood or legally related to each other by marriage or adoption.

**Section 1.5** "**Improvement**" shall mean any structure, Residence, building, barn, storage shed, garage, Landscaping, accessory building, fence, wall, nonliving or living screen, or other structure of Landscaping, or other meaningful addition or alteration constructed or added to a Lot.

**Section 1.6** "**Landscaping**" shall mean lawn, shrubs, flowers, trees and natural foliage located or placed upon a Lot.

**Section 1.7** "**Lot**" shall mean any individual parcel shown upon the Maps of the Subdivision, which may be legally conveyed by reference only to the number of such Lot designated on the Map.

**Section 1.8** "**Maps**" shall mean the official subdivision plat maps recorded as referred to above, and as has become part of the official records in the Office of the Utah County Recorder, State of Utah, as the same may be amended from time to time.

**Section 1.9** "**Mortgage**" shall mean any instrument creating a lien with respect to a Lot including a mortgage, deed of trust or any similar security agreement.

**Section 1.10** "**Mortgagee**" shall mean the holder of the obligation secured by a Mortgage.

**Section 1.11** "**Owner**" shall mean the recorded owner of a fee simple title to any Lot which is a part of the Subdivision. In the event that more than one party shall be established as the record Owners of a Lot, then for all purposes under this Declaration, all such parties shall be required to act jointly as the Owner of such Lot.

**Section 1.12** "**Property**" shall mean all the real property described above, consisting of all Lots of the Subdivision.

**Section 1.13** "**Residence**" shall mean a single building designed and constructed for residential occupancy to be occupied by a Family.

**Section 1.14** "**Street**" shall mean all streets dedicated to Highland City.

**Section 1.15.** "**Private Conservation Area**" shall mean those portions of Lots 1, 2, 3, 4, 5, 6, 7, 8, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 of Dry Creek Subdivision Phase 1 ("**Phase 1**"), and of Lots 50 and 51 of Dry Creek Subdivision Phase 2 ("**Phase 2**"), that are shown on those two Maps as being part of the Subdivision's Private Conservation Areas. The Private Conservation Areas are more fully discussed in section 3.21 of this Declaration, and the legal descriptions of the Private Conservation Areas are shown on Exhibit A attached hereto.

**Section 1.16.** "**Public Conservation Area**" shall mean those portions of Lots 5, 6, 7, 8, 11, and 12, of Dry Creek Subdivision Phase 1 that are shown on that Maps as being part of the Subdivision's Public Conservation Area. The Public Conservation Area is more fully discussed in section 3.21 of this Declaration, and the legal description of the Public Conservation Area is shown on Exhibit A attached hereto.

**Section 1.17.** "**Category A Lots**" shall mean that portion of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, of Dry Creek Subdivision Phase 1, and Lots 50, and 51 of Dry Creek Subdivision Phase 2. All of which are located south of Bull River Road.

**Section 1.18.** "**Category B Lots**" shall mean that portion of Lots 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69 of Dry Creek Subdivision Phase 2. All of which are located north of Bull River Road.

## ARTICLE II PURPOSE

**Section 2.1 Purpose of Declaration.** The purpose of this Declaration is to insure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone of the Subdivision, and thereby to secure to each Owner the full benefit, enjoyment and value of their home, with no greater restriction on the free and undisturbed use of their lot than is necessary to insure the same advantages to other Owners.

## ARTICLE III GENERAL RESTRICTIONS AND REQUIREMENTS

**Section 3.1 Land Use and Building Type.** Each Lot shall be used exclusively for the construction and occupancy of a Residence, to be occupied by a Family, related Landscaping and other incidental and related Improvements. Except as may be specifically provided in Article III hereof, no building shall be erected, altered, placed or permitted to remain on any Lot other than: (a) one single Family dwelling with enclosed, attached garage for either two or three cars as specified in Section 3.3 of this Declaration. (b) One other detached building which is architecturally compatible with the

residence and has been approved by the Committee in writing. Any additional detached buildings must be approved in writing by the Committee, and will only be approved after the Owner has demonstrated the reasonable need for any additional buildings and that the Committees approval of any additional building will not create a problem for any other Owners in the Subdivision.

**Section 3.2 Subdivision of Lot.** No Lot may be divided, subdivided or separated into smaller parcels unless approved in writing by (a) the Committee, which approval shall be granted, if at all, in accordance with this Declaration, and (b) by Highland City.

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**Section 3.3 Residence Size and Materials.** No structure shall be constructed upon any Lot unless and until the final plans and specifications for such structure have been submitted to and approved by the Committee. On Category A Lots: (a) no single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 2,500 square feet or greater, (b) no multi-story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is 1,800 square feet or greater. Garages for all Residences on Category A Lots shall be enclosed, large enough for at least three cars, and situated so as to utilize a side or rear facing entrance. On Category B Lots: (a) No single story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor area, exclusive of basement, open porches and garages, is 1850 square feet or greater, (b) no multi-story Residence shall be constructed, altered, placed or permitted to remain on any Lot unless the main floor, exclusive of basements, open porches and garages, is a total of 1,500 square feet or greater. Garages for all Residences on Category B Lots shall be enclosed, large enough for at least two cars, and situated so as to utilize a side or rear facing entrance when feasible.

The Architectural Control Committee may approve: (a) a home of a smaller size, (b) an attached garage for two cars, or (c) a front entry access to the attached garage, or other deviations from the design standards established in this Declaration only after considering all relevant factors and it is determined to be clearly unreasonable, under the given circumstances, to require compliance with the established design standards.

The exterior of all Residences must be constructed of brick, stone, and/or a high quality synthetic stucco system, with wood being used for trim purposes only. Other materials such as wood shingles, other wood finishes, or any other materials or combination of materials may be considered for approval by the committee, provided that in their sole opinion, the committee determines the proposed materials to be architecturally compatible with the nature and character of the homes already constructed or anticipated to be constructed in the Subdivision. Aluminum soffits and fascia trim will be allowed. No thin brick may be used in the exterior construction of a Residence, artificial stone may only be used provided the Committee has given specific approval. No aluminum or vinyl siding materials shall be allowed on the exterior of any Residence. Roof surfaces shall be wood or architectural asphalt shingles, concrete or bar tile, unless specific written approval of the Committee is received for the use of other roofing materials. Asphalt shingles shall not be allowed or used for a roofing material for a Residence in the Subdivision. Colors of exterior materials shall be approved by the Committee. Care should be given that each Residence compliment those around it, and not detract in design, quality or appearance. All final decisions with respect to these enumerated standards and their application to a particular proposed structure in the Subdivision shall be made by the Committee, in their sole discretion, the Committee shall have the right to make exception for materials and designs which are in keeping with the objectives and intentions of this Declaration, but are not specifically identified in Article III.

**Section 3.4 Building Location.** No walls or foundation of a Residence or other structure shall be located on any Lot nearer to the front Lot line or nearer to the side Lot lines than the minimum building set-back described in this Declaration. Notwithstanding any zoning requirements to the contrary, except where special, written approval is first given by the Committee, each Residence on Category A Lots shall be located (a) at least 40 feet from the boundary line of such Lot along the Street, and (b) at least 20 feet from any other boundary line, side or rear, of any Lot. Each Residence on Category B Lots shall be located (a) at least 35 feet from the boundary line of such Lot along the Street, and (b) at least 15 feet from any other boundary line, side or rear, of any Lot. Each Owner will be responsible for developing a design of their proposed Residence which will present to the street fronting their Lot an elevation designed in such a way that it will be commonly perceived as the "front elevation" of the Residence, and which in the sole opinion of the Committee is complementary with the other homes in the Subdivision. The site plan showing the proposed location of all Improvements to be constructed upon a Lot shall be submitted to and approved by the Committee prior to the commencement of any construction. No Lot shall be accessed, whether on a temporary or permanent basis, whether for vehicles or pedestrians, from 6000 West.

**Section 3.5 Construction and Landscaping Time Restrictions.** It is understood that the Lot owner shall not be required to build any Improvements on their Lot. However Lot Owners will be obligated to maintain their Property in a reasonable state of appearance, which shall be deemed to include the elimination or control of weed growth on the Lot and any other factor which may be considered to be noxious or to create a nuisance.

The exterior constructions of all Residences or other structures shall be completed within a period of one (1) year following commencement of construction. The front and side yards of each Lot shall be landscaped with at least a sprinkling system and grass lawn, as appropriate, within a period of nine (9) months following completion of construction or occupancy of each Residence, whichever shall first occur. All front yard landscaping shall include all lot boundaries fronting on any dedicated roads. The completion of the front and side yard landscaping, which must include trees, shrubs, and garden areas, and the rear yard landscaping, which shall require a sprinkling system and grass lawn, as appropriate, must be completed within a period of eighteen (18) months following completion of construction or occupancy of each Residence, whichever shall first occur. The requirement to landscape front of rear yards shall take into consideration the transitions between improved landscape areas and either Public or Private Conservation Areas. Each Lot Owner shall be responsible for landscaping their Lot in manner that will complement the natural environment and landscaping of the other Residence in the Subdivision and not detract from the quality or appearance of the community. The Committee shall have the responsibility to review the landscaping of each Lot and advise any Owner of deficiencies which detract from the objectives and intentions of this Declaration, and to initiate actions to require further landscaping improvements to be made.

The time periods set forth in this paragraph may be extended by that period of time during which access to the Lot is restricted by reason of weather, seasonal conditions and/or soil conditions which would prohibit such performance.

**Section 3.6 Utility Lines.** All utility lines shall be installed underground. Connection fees shall be paid by each individual Owner. In the event that the Declarant has paid for any utility connection fees associated with any Lot, the Owner will be obligated to reimburse the Declarant for fees paid.

**Section 3.7 Governmental Regulations.** All applicable governmental rules, regulations, and ordinances of Highland City, Utah County or other local or federal Governmental Agency, must be complied with regarding activities within the Subdivision. Specifically Owners are required to comply with all regulations related to wetlands, or environmental hazards and any others which may be applicable. When a subject is covered both by this Declaration and a governmental rule, restriction or ordinance, the more restrictive requirements shall be met.

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**Section 3.8 Fire Protection.** Each Residence shall have installed surrounding it a sprinkler system for fire protection covering the total area of the lot, excluding either Public or Private Conservation Areas, but including the area of the Residence, which sprinkler system may also be used for irrigation. All residents shall strictly comply with all state and city ordinances pertaining to fire hazard control. All stacks and chimneys from fireplaces in which combustibles, other than natural gas, are burned shall be fitted with spark arresters. Exterior fires must be contained within appropriate receptacles and in compliance with the applicable government agency.

**Section 3.9 Nuisances, Unreasonable Annoyance and Noxious Activities.** No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done thereon which may be or may become an unreasonable annoyance, nuisance or danger to the Subdivision, or any Lot or Owner. Except for legitimate construction and maintenance purposes, no excessively loud noises shall be permitted in the Subdivision.

**Section 3.10 Signs.** No signs, posters, displays or other advertising devices of any character shall be erected or maintained on, or shown or displayed to the public view on any Lot without express written approval having been first obtained from the Association; provided, however, that the restrictions of this paragraph shall not apply to any sign or notice seven square feet or smaller in size which states that the premises are for rent or sale. The Association may cause all unauthorized signs to be removed. This section shall not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Lots.

**Section 3.11 Antennas.** All television and radio antennas shall be completely erected, constructed and placed within the enclosed area of the Residence or garage on the Lot. Satellite dishes or other electronic reception devices shall be located and screened so as to not be visible from the Street or an adjacent Lot. Exceptions must first be expressly approved in writing by the Committee.

**Section 3.12 Animals.** Domestic animals may be maintained by the Category A and B Lot owners, provided, that all animals must be contained in a containment area on the owners' Property with the proper fencing and that such contained areas must be cleaned on a regular basis to minimize odors and maintain a clean appearance. The species and number of each species must be approved by the Committee, and furthermore, no animals shall be maintained in areas closer than fifty (50) feet to any Residence built on an adjoining Lot. Commercial raising of animals or pets will not be permitted, except with the specific permission of the Committee in writing.

Owners shall be responsible for all damage or loss incurred by other Lot Owners or their invitee caused by animals they own. Owners will be responsible for maintaining control over animals they own at all times if such animals are taken out of the containment area. The enclosure constituting the containment area must be maintained such that the animal cannot escape therefrom. In no case may any household pet or other animal kept at or around the Residence be allowed to create a nuisance for neighboring Lot owners due to noise, or otherwise.

Livestock which is approved by the Committee, which approval shall specify species and number of each species may be allowed on Category A Lots. No livestock, (i.e. horses, cattle, sheep, or other farm animals) shall be permitted on Category B Lots.

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**Section 3.13 Storage of Vehicles and Materials.** No truck larger than one ton, trailer, construction equipment, or recreational vehicle, including but not limited to campers, boats, motor homes, off-road vehicles, motorcycles and similar equipment, or passenger trucks or cars not used on a regular basis and which are not reasonably operational and in a reasonable state of repair, (hereinafter collectively referred to as the "Equipment or Vehicles") shall be permitted to be parked overnight or for any period of time longer than twenty-four (24) hours, upon any portion of the Streets, or on any Lot, driveway or off-street parking area of a Lot in front of the front set-back line of the Residence. The Equipment or Vehicles including recreational vehicles shall be allowed to remain overnight on the Property only if housed in a garage, or other detached building, or parking area located behind the front set-back line of the Residence. Appropriate and reasonable screening for any such parking area behind the front set-back line of the Residence shall be required by the Committee at the Committee's sole discretion and at the sole expense of the Owner. Failure to comply with the provisions hereof shall constitute a nuisance. No storage of articles, materials, Equipment or Vehicles of any nature is permitted in the front portion of any Lot (in front of the front set-back line of the Residence), except that a reasonable number of regularly used passenger cars, in proper working order, may be parked on driveway or off-street parking areas.

**Section 3.14 Rubbish and Unsightly Debris, Garbage, Etc.** Notwithstanding any other provision in this Declaration, no Owner shall allow his or her Lot to become so physically encumbered with rubbish, unsightly debris, garbage, equipment, weed growth, or other things or materials so as to constitute an eyesore as reasonably determined by the Association. Within ten (10) days of receipt of written notification by the Association of such failure, the Owner shall be responsible to make the appropriate corrections.

**Section 3.15 Temporary Structures, Etc.** No structure of a temporary character, or trailer, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence either temporarily or permanently, unless first expressly approved in writing by the Committee.

**Section 3.16 Non-Residential Uses Prohibited.** No part of the Property shall be used for any commercial, manufacturing, mercantile, vending or other such non-residential purposes, provided however, that professional and administrative occupations may be carried on within the Residence so long as there exists no meaningful external evidence thereof. The Declarant, its successors or assigns may use the Property for a model home site, display and sales office during the construction and sales period.

**Section 3.17 Hazardous Materials and Drilling Operations.** No Lot Owner shall be allowed to use, generate, place, store, release, or otherwise dispose of any Hazardous Materials on any Lot or within any Improvements on the Lot, except in strict accordance with all Environmental Laws. In the event of a breach of the foregoing, the Owner will undertake remediation or removal in accordance with all Environmental Laws. In addition the Owner will indemnify, defend and hold the Declarant, Declarant's affiliates and all other Owners harmless against and reimburse any damaged party for all Hazardous Materials Liabilities asserted against or incurred by them as a result of a breach of an Owner's obligations under this Section. The term "Hazardous Materials as used herein means any substance (a) the presence of which requires special handling, storage, investigation, notification, monitoring, or



remediation under any Environmental law, (b) Which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, © which is or becomes regulated by any Governmental Authority, or (d) the presence of which causes or threatens to cause a nuisance to the any Owner in the Subdivision. The term "Environmental Laws" refers to all laws relating to (a) emissions, discharges, spills, releases or threatened releases of Hazardous Materials onto land or into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, or septic systems, (b) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Materials, or © the protection of human health or the environment. The term "Hazardous Materials liabilities" as used herein means all claims, damages, losses, forfeitures, expenses, or liabilities arising from or caused in whole or in part, directly or indirectly, by a breach by an Owner of the provision of this section, including, without limitation, all costs of defense (including reasonable attorneys' fees and other costs of litigation), all consultants' fees, and all costs of investigation, repair, remediation, restoration, cleanup, detoxification or decontamination, and /or preparation and implementation of closure of any remediation action or other required plan.

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot nor shall oil wells, tunnels, mineral excavations or shafts be permitted. No derrick or other structure designed for use in drilling for oil or natural gas or water shall be erected, maintained or permitted upon any Lot.

**Section 3.18 Fences and Walls, Hedges and Screens.** No fences, walls, or non-living screens shall be constructed on any Lot without prior written approval having been obtained from the Committee. Front yard fences, walls and/or non-living screens are prohibited entirely. No hedges, shrubs or other living Landscaping or screen of any kind shall be erected so as to constitute a hazard for vehicular traffic, pedestrians, children, etc., particularly near the entrances to (a) driveway(s) onto a Lot. Any solid hedge within twenty (20) feet of the front Lot line shall be trimmed to a maximum height of three (3) feet.

Back yard fences are required in the Subdivision, and shall only be constructed after approval by the committee of the materials and design of the fence to be build. No back yard fence shall extend further along the Lot line, or otherwise, toward the front of the Lot than even with the front setback of the Residence.

The Declarant may elect to install uniform fencing along that portion of Lots 1, 2, 11, 12, 27, 28, 39, 40, 41, and 69 which abut 6000 West. If such fencing is installed, each Owner of a Lot on which the uniform fencing is installed shall take title and possession to their Lot with the understanding that; (a) the uniform fencing must remain in place, and be unaltered or modified by the Lot Owner, (b) the Lot Owner shall be required to maintain the uniform fencing in a reasonable condition, and, © the Lot Owner shall be required to install landscaping in compliance with an approved plan which must include berms, hedges, trees, shrubs, or other plants or landscape features which will create a visual barrier for the entire length of the uniform fencing, which is at least five (5) feet high, and located within eight (8) feet of the west side of the uniform fencing.

**Section 3.19. Natural Landscaping.** By this Declaration, Declarant intends to preserve the natural rural atmosphere and beauty of the landscape of the entire Subdivision in order to enhance the country residential environment of the Subdivision. To that end, (a) absolutely no removal of trees or shrubs or other alteration of the natural environment shall be allowed in the Public Conservation Area

or the Private Conservation Areas, and (b) in the balance of the Lots in the Subdivision (outside of the Public Conservation Area and the Private Conservation Areas), any currently-existing, healthy trees and shrubs may be removed from each Lot only to the extent absolutely necessary for clearing driveways, excavation for Residence foundations, construction of other permitted structures, and for lawn, gardens, patios or other approved amenities. Although the foregoing restriction shall not prohibit any Owner from removing any dead, dying or diseased trees, shrubs, or plants from the Owner's Lot, promptly upon any such removal the Owner shall replant the area affected with substitute, native trees, shrubs and plants characteristic of the region. Each Owner of a Lot including a Public Conservation Area or a Private Conservation Area shall maintain in its current state, the general topography of the landscape currently existing on such conservation area.

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Following the construction of a Residence on a Lot, the Lot shall be landscaped as provided in section 3.5 above. The landscape plan for each Lot shall incorporate a minimum of twelve (12) trees for each one-half acre of area. Existing natural foliage may be considered by the Committee in meeting this requirement as landscaping plans are submitted for review.

Owners must use reasonable care and the Committee shall have the authority to require that all orchards, gardens, livestock or animal areas, etc. within the Subdivision are maintained in such a manner as to not constitute a nuisance or create a problem for other Owners as addressed elsewhere in this Declaration.

Approved landscaping shall cover the entire Lot, excluding any Private or Public Conservation Areas which may exist on the Lot. The use of sodded landscaping berms and trees is encouraged in front yard landscaping. However, those portions of rear or side yards which are located on or within natural, wooded hillsides or areas may be maintained with the natural vegetation and trees, consistent with the stated spirit and intent of this Declaration. Each Lot shall be landscaped and maintained in such a manner so as to prevent any erosion or excess drainage thereof on to adjacent streets or adjoining property.

**Section 3.20 Environmental Concerns.** If required by Highland City or the Association, all site plans submitted in accordance with Section 3.3 hereof shall address soils, seismic conditions, revegetation of natural areas (indicating areas where natural vegetation is to be removed and plans for the replanting of those areas), and grading of the site, including cuts and fills.

**Section 3.21. Private and Public Conservation Areas.** The Private and Public Conservation Areas (collectively, the "Conservation Areas") within the Subdivision include land features which Declarant considers to be either environmentally or historically important, and which if modified would alter the nature and character of the Subdivision community in an adverse manner. The Conservation Areas include natural water courses, old growth wooded areas, and topographically unique land features, which Declarant believes should be preserved for their inherent beauty and aesthetic value.

All of the Conservation Areas in the Subdivision shall remain in their natural state and shall not be landscaped, improved or otherwise modified in any way. Without limiting the generality of the foregoing, vegetation in the Conservation Areas shall not be removed or changed in any way except as absolutely necessary to remove deadfall trees or diseased or dying plants. Additional planting of indigenous plants which will enhance the Conservation Areas shall be permitted upon prior approval by the Committee. No structures or other improvements (other than fencing or bridges across watercourses, both as approved by the Committee) may be constructed in the Conservation Areas.

Private Conservation Areas shall not be subject to public access and shall be owned in fee simple by the Owner of each Lot containing a Private Conservation Area. Each Owner of a Lot containing a Private Conservation Area shall take title to that Lot subject to the foregoing Private Conservation Area restrictions. In addition, at the time of conveyance of fee title to a Lot containing a Private Conservation Area (or at any time(s) specified by Declarant, the Association and/or the Committee thereafter), each Owner of a Lot containing a Private Conservation Area shall execute, deliver and cause to be recorded an additional declaration of restrictive covenants (in such form as Declarant, the Association and/or the Committee, as applicable, may require) running with the land confirming the perpetual existence of the Private Conservation Areas on that Owner's Lot and reaffirming the resulting restrictions on that Lot, among other things.

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Public Conservation Areas shall be subject to public access, but shall be owned in fee simple by the Owner of each Lot containing a Public Conservation Area. Owners of Lots containing Public Conservation Areas shall not in any way inhibit or impair public access to the Public Conservation Areas. Each Owner of a Lot containing a Public Conservation Area shall take title to that Lot subject to the foregoing Public Conservation Area restrictions. In addition, at the time of conveyance of fee title to a Lot containing a Private Conservation Area (or at any time(s) specified by Declarant, the Association and/or the Committee thereafter), each Owner of a Lot containing a Public Conservation Area shall execute, deliver and cause to be recorded an additional declaration of restrictive covenants (in such form as Declarant, the Association and/or the Committee, as applicable, may require) running with the land confirming the perpetual existence of the Public Conservation Areas on that Owner's Lot and reaffirming the resulting restrictions on that Lot, among other things.

**Section 3.22. Release of Liability; Insurance; Indemnification.** In consideration of (a) the agreement by Declarant to not require the piping, fencing, covering or other obstruction of the "Dry Creek" drainage ("Dry Creek") crossing the Subdivision, and (b) the agreement by North Bench Irrigation Company ("North Bench") to not require the piping, fencing or other obstruction of North Bench's "Bull Ditch" (the "Ditch") crossing the Subdivision, all Owners of Lots in the Subdivision, for themselves and their successors, assigns, invitees, licensees, and all other parties under their influence or control, hereby completely and irrevocably release North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all liability in connection with any injury or death to any person(s), or any flooding or other damage to real or personal property, arising from, attributable to, or in any way associated with Dry Creek, the Ditch and the Conservation Areas. Further, each Lot Owner irrevocably shall indemnify and hold harmless North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all damages, claims, actions or proceedings (in law or equity), of whatsoever kind or nature (including attorneys fees) arising from, attributable to, or in any way associated with Dry Creek, the Ditch and the Conservation Areas. The foregoing release and indemnification shall be irrevocable, shall constitute a covenant running with each of the Lots, and shall survive any termination (for any reason whatsoever) of this Declaration.

In addition to the release and indemnification obligations incumbent on each and every Lot Owner pursuant to the first paragraph of this section 3.22, promptly upon Declarant's conveyance to him of fee title, each and every Owner of the Subdivision Lots specified below agrees to execute, deliver and cause to be recorded a written agreement in such form as Declarant may specify to accomplish the following purposes:

(a) Release. The owners of all Lots in the Subdivision, for themselves and all other residents of their respective Lots, shall confirm that each such Owner completely and irrevocably releases and agrees to indemnify and hold harmless North Bench, Highland City and the Declarant, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all liability in connection with any injury or death to any person(s), or any damage to property, arising from, attributable to, or in any way associated with Dry Creek, the Ditch, or the Conservation Areas.

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(b) Insurance. The Owners of Lots 20-33, inclusive of Phase 1 and the Owners of Lots 50 and 51 of Phase 2 shall irrevocably covenant and agree to purchase and maintain in continuous, uninterrupted effect a liability insurance policy (the "Policy") in the amount of at least \$1,000,000 combined single limit (or such greater amount of coverage as Declarant and/or the Association reasonably may designate from time to time) covering each Lot including any part of a Conservation Area and naming North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., as additional insureds.

The Owners of Lots 5, 6, 7, 8, 11 and 12 of Phase 1, shall irrevocably covenant and agree to purchase and maintain in continuous, uninterrupted effect a liability insurance policy (the "Policy") in the amount of at least \$1,000,000 combined single limit (or such greater amount of coverage as Declarant and/or the Association reasonably may designate from time to time) covering each Lot including any part of a Conservation Area and naming Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., as additional insureds.

The Policy shall be issued by an insurer duly qualified in the state of Utah; shall not have a deductible greater than \$1,000.00 per occurrence; shall provide broad-form coverage for death, injuries and damages of all types (including, without limitation, flooding) to persons or property arising from, attributable to, or in any way associated with Dry Creek, the Ditch or the Conservation Areas on those Lots; and shall not be decreased or terminated without at least ten (10) days prior written notice to North Bench, Highland City, Declarant and the Association. Each such Lot Owner shall provide certificates evidencing the existence of such insurance to North Bench, Highland City, Declarant and/or the Association upon written request from time to time.

(c) Indemnification. The Owners of Lots 20-33, inclusive, of Phase 1 and the Owners of Lots 50 and 51 of Phase 2 shall irrevocably agree to indemnify and hold harmless North Bench, Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all damages, claims, actions or proceedings (in law or equity), of whatsoever kind or nature (including attorneys fees) arising from, attributable to, or in any way associated with any uncovered waterway and any other aspect of any Conservation Area(s) located on each such Owner's Lot.

The Owners of Lots 5, 6, 7, 8, 11, 12 of Phase 1 shall irrevocably agree to indemnify and hold harmless Highland City, Declarant, the Association, and their respective owners, members, officers, managers, directors, shareholders, employees, agents, etc., of and from any and all damages, claims, actions or proceedings (in law or equity), of whatsoever kind or nature (including attorneys fees) arising from, attributable to, or in any way associated with any uncovered waterway and any other aspect of any Conservation Area(s) located on each such Owner's Lot.

**Section 3.23 Deviations.** Deviations from the standards set forth in this Declaration will be allowed only upon written approval by the Committee for good cause shown.

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## ARTICLE IV ARCHITECTURAL CONTROL COMMITTEE

**Section 4.1 Committee Appointment and Composition.** The Committee shall originally consist of five members, one of whom need not be a Lot Owner within the Subdivision. The Committee shall act by a majority consent of the members of the Committee. The original members of the Committee shall be Robert L. Mendenhall, Richard L.K. Mendenhall, Paul W. Mendenhall, James C. Yates and a fifth member not yet appointed at the time this Declaration was recorded. Notwithstanding anything to the contrary which may appear elsewhere herein, the number of Committee members shall be determined by the Declarant. The Committee members shall be appointed only by the Declarant or its successor, which, at its option, may temporarily delegate or forever assign such powers and responsibilities or other powers and responsibilities given to it by this Declaration, to an assignee. Such assignment shall be in writing and until such assignment, the assignee shall not possess any powers or responsibilities with respect to such Committee. No Committee member shall be entitled to any compensation for services performed pursuant to this Declaration. However, the Committee may, at its discretion, employ a professional architect, engineer, attorney, or other consultant or professional, which professional may be a member of the Committee, to assist it in its functions, and a reasonable fee (to be established by the Committee) may be charged to the Lot Owner(s), as applicable, for such services, in which event the provisions of Article VI shall be applicable. No member of the Committee shall be liable to any person for decisions made or failure to act in making decisions as a member of said Committee.

**Section 4.2 Scope of Committee Responsibility.** Any plans and specifications for the construction or addition of an Improvement upon a Lot within the Subdivision by the Owner thereof must be submitted to the Committee for approval at least thirty (30) days prior to commencing construction. No Improvement shall be commenced, erected, placed or meaningfully altered on any Lot until the plans, specifications and plot plans showing (a) the location on the Lot and nature of such proposed Improvement, (b) all drives, walkways, patios, barbecues, outbuildings, swimming pools, tennis or other sport courts and similar Improvements, the dimensions of all such Improvements and distances between the proposed Improvement and the Lot boundaries and other Improvements on the Lot, (c) elevation of sewer as it relates to Residence elevation; (d) finish grading plans; (e) complete set of architectural documents, and (f) complete set of all exterior colors in the form of samples or color chips, with detailed information as to the location of the color and types of all exterior building materials have been submitted to and specifically approved in writing by the Committee. In making its determination, the Committee will use the specific standards stated herein as guidelines, but final approval of the plan or any design element thereof, shall be at the sole discretion of the Committee. They may consider such factors as (but not limited to) the quality of workmanship and materials, design, harmony of external design with existing project structures in the Subdivision, location with respect to topography and finish grade elevation, preservation and enhancement of the natural beauty of the area and safety. Any subsequent changes, Improvements, or alterations in such plans must be submitted to the Committee for written approval. Some or all of the requirements of this Section may be waived by the Committee, in the Committee's sole discretion, upon request of the Owner, with respect to the Committee's consideration of the approval of a particular Improvement.

The Committee may condition such approval on the Lot Owner depositing cash in the sum of Five Hundred Dollars (\$500.00) with the Committee (the "Deposit"), the purpose of which Deposit shall be to further insure that the Lot Owner (a) fulfill his responsibility to keep his Lot in a condition so as to prevent the rubbish and debris which accumulates during the construction and/or landscaping process from blowing or collecting on neighboring Lots, and (b) reasonably cleans up his or her Lot at or near the completion of the construction and/or landscaping process. The Deposit may be required by the Committee prior to the commencement of construction by an Owner, or at any time during the construction period. If the Lot Owner fails in either of these two responsibilities, the \$500.00 Deposit may be retained by the Committee as a fine upon such Lot Owner or as liquidated damages. Additionally, if any such failure is not remedied by the Owner within fourteen (14) days after written notice thereof, the Committee may remedy such condition itself and in connection therewith, it may have reasonable access to the Lot and shall charge the Lot Owner for the cost of the remedy, in which event the provisions of Article VI shall be applicable. Upon the completion of the construction of the Residence, and the landscaping of the Lot, in a satisfactory manner, the \$500.00 deposit shall be returned to the Lot Owner by the Committee.

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**Section 4.3 Process of Approval.** Plans and resubmittals thereof shall be approved, disapproved or otherwise acted upon in writing by the Committee within thirty (30) days after their submission to the Committee. All plans and specifications and other materials shall be submitted in duplicate. One (1) set shall be returned to the Lot Owner. Any plans and specification shall be approved or disapproved in writing, signed by at least two (2) members of the Committee. Failure of the Committee to respond to a submittal or re-submittal of plans or materials within thirty (30) days of their submission or re-submission shall be deemed to be an approval of plans as submitted or re-submitted by the Owner.

If, after such plans and specifications have been approved, the Improvements are altered, erected, or maintained upon the Lot otherwise than as approved by the Committee, such alteration, erection and maintenance shall be deemed to have been undertaken without the approval of the Committee having been obtained as required by this Declaration. After the expiration of one (1) year from the date of completion of any Improvement, said Improvement shall, in favor of purchaser and encumbrances in good faith and for value, be deemed to comply with all of the provisions hereof unless a notice of such non-compliance or non-completion, executed by two or more member(s) of the Committee shall appear of record in the office of the County Recorder, or legal proceeding shall have been instituted to enforce compliance with these provisions. The approval of the Committee of any plans or specifications submitted for approval as herein specified for use on any Lot and/or Residence shall not be deemed to be a waiver by the Committee of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications submitted for approval as herein provided for use on other Lots or Residences. Upon approval of the Committee acting in accordance with the provision of this Declaration, it shall be conclusively presumed that the location and size of any Improvement does not violate the provisions of this Declaration. Until later published, the address of the Committee may be obtained by contacting Robert L. Mendenhall, 827 W. Meadow Lane, Alpine, Utah, Telephone (801) 756-3983.

**Section 4.4 Termination of Committee.** Upon the first to occur of either (a) the completion of the construction of a Residence and the Landscaping upon each Lot, or (b) the date which shall be ten (10) years from the date hereof, the Committee shall automatically cease to exist. Any and all rights, duties and/or responsibilities of the Committee shall at that time automatically become the rights, duties

and/or responsibilities of the Association without the necessity of the filing of any amendment to this Declaration or any other action.

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## ARTICLE V EASEMENTS, HILLSIDE DISTURBANCE AND FLOOD CONTROL, IRRIGATION SYSTEM

**Section 5.1 Utility Easements.** Easements for installations and maintenance of drainage facilities and public utilities are generally reserved over ten (10) feet of the front, rear and one side of each Lot, and as otherwise identified on the Maps of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. However, the Committee may approve a structure within the easements such as a fence, wall, landscaping, driveway or off street parking area. It is expressly understood, however, that any such Improvement shall be constructed at the Owner's or the easement holder's sole risk, as the case may be, and as provided in the easement document(s), of having the Improvement partially or wholly removed, dismantled, taken out, or destroyed where necessary because of drainage or public utility servicing, installation, alteration or maintenance. The easement areas within each Lot and all Improvements in such areas shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible to maintain.

**Section 5.2 Subdivision Entry Monuments.** As part of the construction of Dry Creek Subdivision Phase, Phase 1 and Phase 2, the developer may elect to erect subdivision entry monuments on (a) Lots 2 and/or 11, (b) Lots 28 and/or 40, and/or © Lots 41 and/or 69. Any such entry monuments shall be erected for the benefit of all the Lot Owners in all the Subdivision. Each of the Lot Owners in the Subdivision shall be responsible for 1/69th of the maintenance or other related costs of the monuments. The monuments shall be located on Lots 2 and/or 11, Lots 28 and/or 40, and/or Lots 41 and/or 69, near the corners of Dry Creek Rd.. and 6000 West, Bull River Rd.. and 6000 West, and Ridge Rd.. And 6000 West as close to the Subdivision access as is practical. Lots 2 and/or 11, Lots 28 and/or 40, and/or Lots 41 and/or 69 shall be conveyed subject to easements allowing for the monuments to remain in place so long as a majority of Lot owners are in favor of the monuments, and allowing for reasonable access to and around the monuments for maintenance or modification as may be required from time to time.

**Section 5.3 Grading Approval.** All persons erecting or constructing Improvements on any Lot shall comply with the Highland City Ordinances as may require, among other things, that grading and vegetation plans be approved by the Highland City Engineer before building permits are issued.

**Section 5.4. Responsibility for Flood Control.** Construction of appropriate berms, channels, ditches or other flood control facilities on each Lot is the sole responsibility of each Lot Owner and shall be done in accordance with the flood control district plans approved by Highland City and/or Utah County Flood Control if any such plans exist. Such construction shall commence at the time such Lot is graded or otherwise altered from its natural state.

## ARTICLE VI VIOLATIONS AND POWERS OF ENFORCEMENT

**Section 6.1 The Association's Powers of Enforcement.** Enforcement shall be accomplished by any lawful means, including proceeding at law or in equity against any person or persons violating or attempting to violate any provision herein, either to restrain violation or recover damages. In the event a legal action is instituted by the Association to enforce compliance with or due to a breach of any of the provisions of this Declaration, the party found to have violated any provision(s) of this Declaration shall be liable to the prevailing party for the prevailing party's legal costs and expenses, including a reasonable attorney's fee. Notwithstanding the foregoing, no liability of any nature at all shall attach to the Association, or any member thereof, in acting in good faith pursuant to the provisions of this Declaration. If after fourteen (14) day's written notice, an Owner fails to remedy a violation (the "Defaulting Lot Owner"), another Owner and/or the Association may (in addition to other lawful remedies available to it) cause such violation or condition to be remedied and the cost thereof shall be charged to the Defaulting Lot Owner in which event such costs shall be deemed a special assessment to such Defaulting Lot Owner and shall attach as a lien to the Defaulting Lot Owner's Lot, and shall be subject to levy, enforcement and collection by the other Owner, and/or the Association, in accordance with the assessment lien procedure provided for in this Declaration in this Article VI. Failure to comply with any of the provisions of this Declaration or regulations adopted pursuant thereto shall be grounds for relief which may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought and liberally construed to effectuate its purpose. Any violation of this Declaration shall be deemed to be a nuisance or unreasonable annoyance. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provision or any other provisions hereof.

**Section 6.2 Lien For Assessments.** All sums assessed to an Owner pursuant to this Declaration, together with interest thereon at the legal rate of interest from the date of assessment until paid, before or after judgement, shall be secured by a lien on such Lot and the Improvements thereon, in favor of the Association. To evidence a lien for sums assessed pursuant to this Declaration, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by a duly authorized representative of the Association and shall be recorded in the Office of the County Recorder for Utah County, State of Utah. Such lien may be enforced by sale or foreclosure of the Lot encumbered by the lien at a foreclosure sale conducted by the Association and generally in accordance with the provisions of Utah law applicable to the exercise of powers of sale or foreclosure under deed of trust or mortgages or in any manner permitted by Utah law. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including but not limited to a reasonable attorneys fee and court costs, and such costs and expenses shall be secured by the lien herein provided whether or not same shall be specifically set forth therein.

**Section 6.3 Enforcement by Others.** Additionally and after reasonable notice in writing, an Owner not at the time in default hereunder, the Association, or the Declarant, shall have the option of bringing an action for damages, specific performance, or injunctive relief against any defaulting Owner, and in addition may sue to have enjoined any violation of this Declaration. Any judgment shall include an award of the legal costs and expenses, including a reasonable attorney's fee, entered against the losing party and in favor of the prevailing party. Each remedy provided in this Declaration shall be cumulative and not exclusive or exhaustive. Suit to recover a money judgment may be maintained without foreclosure or waiving the lien securing the same.



**Section 6.4 Rights of Entry.** The Association shall have a limited right of entry in and upon all Lots and the exterior of all Residences for the purpose of taking whatever corrective action it deems necessary or proper. Nothing in this Section or Article shall in any manner limit the right of the Owner to exclusive control over the interior of his or her Residence.

**Section 6.5 Committee Authority.** The Committee shall have the right to enforce any applicable provision hereof in the same manner provided to the Association.

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## ARTICLE VII DURATION AND AMENDMENT

**Section 7.1 Duration.** This Declaration shall continue in full force and effect for a period of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a declaration of termination is recorded with the County Recorder of Utah County, meeting the requirements of an amendment to this Declaration as set forth in Section 7.2 of this Article. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from membership in the Association as long as this Declaration shall continue in full force and effect.

**Section 7.2 Amendment.** Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association either in writing or at a duly called meeting for such purpose.

No amendment to this Declaration shall be effective unless approved in writing by the Owners of not less than two thirds (2/3) of the Lots in the Subdivision at the time of such amendment, including Lots which may be owned by the Declarant.

Notwithstanding the foregoing, however, Declarant may at any time amend this Declaration to qualify the Subdivision with lending institutions and until the close of the escrow established for the sale by Declarant of its last Lot in the Subdivision, Declarant shall have the sole right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. The "close of escrow" shall be deemed to be the date upon which a deed conveying the Lot is recorded.

## ARTICLE VIII MISCELLANEOUS

**Section 8.1 Severability.** Invalidation of any one of these covenants, or any portion thereof by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

**Section 8.2 Singular Includes Plural.** Whenever the context of the Declaration requires the same, the singular shall include the plural, and the masculine shall include the feminine.

**Section 8.3 Covenants, Etc. Shall Run With the Land.** All of the limitations, restriction, easements, conditions and covenants herein shall run with the land and shall be binding on and for the benefit of all the Property and all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each owner and are imposed upon the Property as a servitude in favor of each parcel thereof as the dominant tenement or tenements.

**Section 8.4 Limitation on Liability.** Neither the Declarant, its assignee, delegatee, the Committee or the Association shall be liable to any other person for any action or failure to act hereunder where such action or failure was in good faith.

**Section 8.5 Wildlife Area.** The Property encompasses wildlife areas. Owners should expect that wildlife will be in the area and possibly on their own Lot.

**Section 8.6 Paragraph Headings.** The headings which precede the paragraphs and sub-paragraphs of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed.

**Section 8.7 Foreclosure.** Should any Mortgage be foreclosed on the Property, then the title acquired by such foreclosure and the person or persons who thereupon and thereafter become the owner or owners of such Property, shall be subject to and bound by all the restrictions enumerated herein.

**Section 8.8 Effective Date.** This Declaration and any amendment(s) or supplement(s) thereto shall take effect upon its (their) being filed for record in the Office of the County Recorder of Utah County, Utah.

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IN WITNESS WHEREOF, the Declarant has executed this instrument the day and year first hereinabove written.

This declaration dated and executed this 22<sup>nd</sup> day of April, <sup>1997</sup>1996.

**DRY CREEK ESTATES, L.C.**, a Utah Limited Liability Company

By: Robert L. Mendenhall  
**ROBERT L. MENDENHALL,**  
Manager

By: Richard L.K. Mendenhall  
**RICHARD L.K. MENDENHALL,**  
Manager

By: James C. Yates  
**JAMES C. YATES,**  
Manager

**DRY CREEK HIGHLANDS, L.C.**, a Utah Limited Liability Company

By: Robert L. Mendenhall  
**ROBERT L. MENDENHALL,**  
Manager

By: Paul W. Mendenhall  
**PAUL W. MENDENHALL,**  
Manager

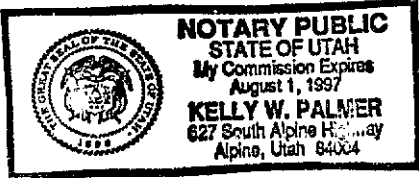
**WBM TRUST**, a Utah Trust

By: Robert L. Mendenhall  
**ROBERT L. MENDENHALL,**  
Trustee

By: Paul W. Mendenhall  
**PAUL W. MENDENHALL,**  
Trustee

State of Utah  
County of Utah

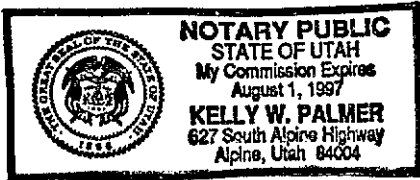
On this ~~18~~ <sup>22nd</sup> ~~day of November, 1996,~~ <sup>April 1997</sup> before me a Notary Public for the State of Utah, **ROBERT L. MENDENHALL**, on behalf of **DRY CREEK ESTATES L.C.**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palm  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97 State of Utah

State of Utah  
County of ~~Salt Lake~~ Utah

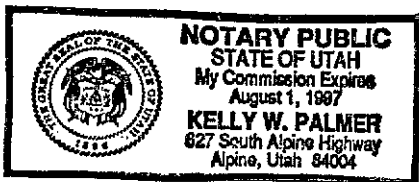
On this ~~18~~ <sup>22nd</sup> ~~day of November, 1996,~~ <sup>April 1997</sup> before me a Notary Public for the State of Utah, **RICHARD L.K. MENDENHALL**, on behalf of **DRY CREEK ESTATES L.C.**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palm  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97

State of Utah  
County of Utah

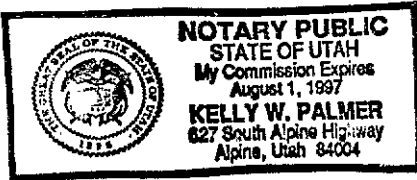
On this ~~18~~ <sup>2nd</sup> ~~day of November, 1996,~~ <sup>April 1997</sup> before me a Notary Public for the State of Utah, **JAMES C. YATES**, on behalf of **DRY CREEK ESTATES, L.C.**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palm  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97

State of Utah  
County of Utah

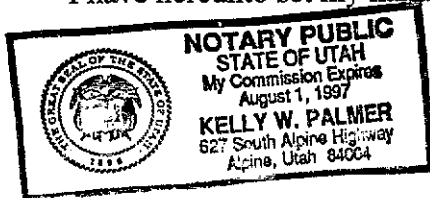
On this 22 April 1997 day of ~~November, 1996~~, before me a Notary Public for the State of Utah, **ROBERT L. MENDENHALL**, on behalf of **DRY CREEK HIGHLANDS, L.C.**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palmer  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97 State of Utah

State of Utah  
County of Utah

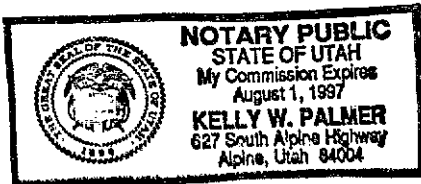
On this 22 April 1997 day of ~~November, 1996~~, before me a Notary Public for the State of Utah, **PAUL W. MENDENHALL**, on behalf of **DRY CREEK HIGHLANDS, L.C.**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palmer  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97 State of Utah

State of Utah  
County of Utah

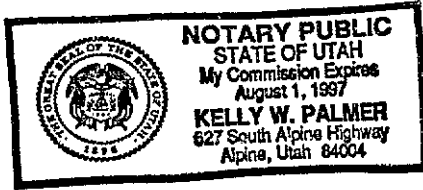
On this 22 April 1997 day of ~~November, 1996~~, before me a Notary Public for the State of Utah, **ROBERT L. MENDENHALL**, on behalf of **WBM TRUST**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palmer  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97 State of Utah

State of Utah  
County of Utah

On this 22nd April 1997  
~~18~~ day of ~~November~~, ~~1996~~, before me a Notary Public for the State of Utah, **PAUL W. MENDENHALL**, on behalf of **WBM TRUST**, personally appeared who executed the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.



Kelly W Palmer  
Notary Public for the State of Utah  
Residing at: Utah County  
My Commission expires 8-1-97 State of Utah

**Dry Creek Subdivision Private Conservation Area 1 Legal Description**

Beginning at a point located North 00°16'02" West 941.428 feet along the centerline of 6000 West and South 89°43'58" West 33,000 feet from the South Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence South 00°13'01" East 145.948 feet, thence South 61°08'27" West 164.329 feet, thence South 18°00'40" West 73.020 feet, thence South 39°53'10" West 71.737 feet, thence South 25°24'58" West 82.196 feet, thence South 58°53'42" West 80.956 feet, thence South 85°53'39" West 409.207 feet, thence North 01°49'36" West 40.253 feet, thence South 85°20'44" West 325.214 feet, thence North 00°03'40" West 139.935 feet, thence South 55°08'06" East 75.388 feet, thence North 83°05'26" East 88.625 feet, thence North 46°14'56" East 70.030 feet, thence North 79°06'37" East 100.590 feet, thence South 74°11'50" East 148.590 feet, thence North 75°36'22" East 150.037 feet, thence South 87°42'20" East 67.435 feet, thence South 54°43'52" East 34.221 feet, thence South 74°38'07" East 26.634 feet, thence North 73°32'12" East 25.897 feet, thence North 49°06'22" East 61.229 feet, thence North 31°54'46" East 177.247 feet, thence North 61°54'49" East 109.723 feet, thence North 41°51'03" East 120.131 feet to the Point of Beginning. With a total area of 144,892 sq. ft. 3.33 acres.

**Dry Creek Subdivision Public Conservation Area (Dry Creek) Legal Description**

Beginning at a point located North 0°16'02" West, 1435.211 feet along the centerline of 6000 West Street and South 89°43'58" West 33,000 feet from the South Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence South 00°22'41" East, 267.66 feet to the point of a 15.00 foot radius curve to the right (center bears South 89°37'19" West, 15.00 feet), thence along the arc of said curve 23.69 feet, through a central angle of 90°29'52" to the point of a 186.94 foot radius curve to the left (center bears South 00°07'11" West, 186.94 feet), thence along the arc of said curve 168.80 feet, through a central angle of 51°44'06", thence South 38°23'05" West, 70.29 feet to the point of a 268.00 foot radius curve to the right (center bears North 51°36'55" West, 268.00 feet), thence along the arc of said curve 303.83 feet, through a central angle of 64°57'23", thence South 47°03'51" West, 69.41 feet, thence South 33°59'51" West, 66.80 feet to the point of a 50.00 foot radius curve to the right (center bears North 56°00'09" West, 50.00 feet), thence along the arc of said curve 59.36 feet, through a central angle of 68°01'27", thence North 77°58'42" West, 9.82 feet to the point of a 161.00 foot radius curve to the left (center bears South 12°01'18" West, 161.00 feet), thence along the arc of said curve 64.38 feet, through a central angle of 22°54'41", thence South 78°46'38" West, 255.78 feet, thence South 79°17'04" West, 72.80 feet, thence South 13°47'22" East, 20.00 feet, thence South 57°16'04" West 34.70 feet, thence North 84°27'54" West, 82.15 feet, thence North 00°03'40" West, 118.08 feet, thence North 83°15'01" East, 15.68 feet to the point of a 50.00 foot radius curve to the left (center bears North 43°27'31" East, 50.00 feet), thence along the arc of said curve 81.94 feet, through a central angle of 93°53'57" to the point of

a 15.00 foot radius curve to the right (center bears South 50°26'26" East 15.00 feet), thence along the arc of said curve 11.44 feet, through a central angle of 43°41'27", thence North 83°15'01" East, 201.39 feet to the point of a 152.00 foot radius curve to the left (center bears North 06°44'59" West, 152.00 feet), thence along the arc of said curve 112.48 feet, through a central angle of 42°23'50" to the point of a 15.00 foot radius curve to the right (center bears South 49°08'49" East, 15.00 feet), thence along the arc of said curve 21.63 feet, through a central angle of 82°37'36", thence South 56°31'13" East, 41.30 feet, thence North 54°16'08" East, 110.44 feet, thence North 71°53'15" East, 119.81 feet, thence North 55°31'19" East, 51.56 feet, thence South 84°33'31" East, 40.14 feet, thence North 57°05'21" East 128.45 feet, thence North 32°01'53" East, 121.99 feet, thence North 10°31'07" West, 31.68 feet, thence North 31°10'46" East, 52.36 feet, thence North 63°37'22" East, 67.53 feet, thence North 47°17'04" East, 33.67 feet, thence North 20°27'48" East, 96.16 feet, to the point of Beginning. Area contains 115,393 sq. ft., 2.65 acres.

### **Dry Creek Subdivision Private Conservation Area 2 (Bull Ditch) Legal Description**

Beginning at a point located North 00°16'02" West, 1580.635 feet along the centerline of 6000 West Street and South 89°43'58" West, 33.000 feet from the South Quarter Corner of Section 26, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence South 71°01'46" West 76.258 feet, thence North 54°45'26" West 114.810 feet, thence North 71°47'32" West 62.586 feet, thence South 85°50'52" West 49.608 feet, thence South 40°26'54" 67.654 feet, thence South 75°27'45" West 44.518 feet, thence North 71°14'15" West 111.672 feet, thence South 68°21'53" West 49.793 feet, thence South 56°54'24" West 210.511 feet, thence South 71°46'17" West 195.500 feet, thence South 88°34'31" 105.379 feet, thence North 74°14'50" West 322.771 feet, thence South 52°15'01" West 34.097 feet, thence North 00°48' 29" West 83.160 feet, thence South 77°30'23" East 279.630 feet, thence South 69°59'46" East 88.521 feet, thence North 78°21'31" East 19.051 feet, thence North 49°40'47" East 34.540 feet, thence North 38°28'53" East 62.199 feet, thence South 89°45'37" East 95.364 feet, thence South 77°47'09" East 54.706 feet, thence North 55°17'56" East 239.756 feet, thence North 82°01'43" East 80.581 feet, thence South 79°10'53" East 99.933 feet, thence North 51°55'31" East 72.482 feet, thence North 75°12'21" East 73.459 feet, thence North 89°44'55" East 90.975 feet, thence South 63°04'02" East 84.587 feet, thence South 81°07'03" East 25.847 feet, thence North 68°57'30" East 16.673 feet, thence North 34°46'19" East 34.982 feet, thence South 00°16'55" East 140.837 feet to the Point of Beginning. With a total area of 116,788 sq. ft. 2.68 acres