

200
46

M
②

WHEN RECORDED, RETURN TO:
Mountain Home Development Corporation
1520 West 3600 North
Lehi, UT 84043

ENT 6142:2003 PG 1 of 46
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2003 Jan 14 11:47 am FEE 200.00 BY SS
RECORDED FOR MOUNTAIN HOME DEVELOPMENT

(Space Above For Recorder's Use)

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

**Parcel 4, Pod I-5
HeatherMoor**

IRC/Traverse-Key, Inc.

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

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
1. Definitions.....	1
1.1. Benefited Property.....	1
1.2. Builder’s Improvements.....	2
1.3. Burdened Property.....	2
1.4. City.....	2
1.5. Close of Escrow.....	2
1.6. Community Facilities.....	2
1.7. Condominium Plan.....	2
1.8. County.....	2
1.9. Design Guidelines.....	2
1.10. Development Documents.....	2
1.11. CE&F - Communications Equipment and Facilities.....	3
1.12. Governmental Authorities.....	3
1.13. Hazardous Substance.....	3
1.14. Include.....	3
1.15. Lot.....	3
1.16. Master Association.....	3
1.17. Master Association Properties.....	3
1.18. Master Declaration.....	3
1.19. Other Builders.....	4
1.20. Plat Map.....	4
1.21. Residence.....	4
1.22. Sub-Association.....	4
2. Declarant Approval Restrictions.....	4
2.1. Approval of all Plans and Applications Required.....	4
2.2. Approval Procedure and Exceptions.....	5
3. Development Restrictions.....	6
3.1. Governmental Approvals.....	6
3.2. Improvements.....	6
3.3. Fees.....	6
3.4. Fee Credits And Refunds.....	7
3.5. Damage to Declarant and Other Builders Improvements.....	7
3.6. Product Recommendation.....	8
3.7. Soils.....	8
4. Construction, Marketing and Sales.....	8
4.1. Models.....	8
4.2. Residences.....	9
4.3. Marketing.....	9
4.4. Phasing Restrictions.....	9
4.5. Schedules.....	9

TABLE OF CONTENTS (Cont.)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
4.6. Additional Construction Restrictions.....	9
4.7. HOA Fees.....	11
4.8. Builder’s Maintenance Covenants.....	11
4.9. Hazardous Wastes.....	12
4.10. Builder Delinquencies.....	12
5. Number of Residences.....	12
6. Entitlement Amendments and Other Governmental Actions.....	13
7. Bulk Sale Approval.....	13
8. Preservation of Trees.....	14
9. CE&F.....	14
9.1. Exclusive Servicer.....	14
9.2. Consideration.....	14
9.3. Master Agreement.....	14
9.4. Enforcement by Fiber Company.....	14
10. Master and Additional Declarations.....	14
10.1. Master Declaration.....	14
10.2. Master Association.....	15
10.3. Assessments and Subsidy.....	15
10.4. Transfer of Voting Rights.....	15
10.5. Formation of Sub-Association.....	16
11. Minor Modifications.....	16
12. Insurance.....	16
12.1. Requirements of Declarant.....	16
12.2. Requirements of Builder.....	17
12.3. Additional Insured.....	19
12.4. Insurance Policies.....	20
12.5. Evidence of Insurance.....	20
12.6. Damages.....	21
12.7. Declarant’s Election to Insure.....	21
12.8. Contractors.....	21
12.9. OSHA.....	21
13. Magnuson-Moss and Other Statutes.....	21
13.1. Builder Compliance.....	21
13.2. Warranty Records.....	22
14. Enforcement of Restrictions.....	22
14.1. Inspection.....	22
14.2. Default and General Remedies.....	22
14.3. Damages.....	22
14.4. Equity.....	22

TABLE OF CONTENTS (Cont.)

<u>DESCRIPTION</u>	<u>PAGE NO.</u>
14.5. Additional Lien	22
14.6. Release of Residence/Community Facilities and Public Property	23
14.7. Recording of Release	23
15. Indemnity and Waiver	23
15.1. Indemnity	23
15.2. Builder Release	24
15.3. Construction Entities	24
16. Survival of Covenants	24
17. Miscellaneous	25
17.1. Waiver	25
17.2. Rights of Lenders	25
17.3. Assignment by Declarant	25
17.4. Termination or Amendment	26
17.5. Captions	26
17.6. Invalidity of a Provision	26
17.7. Notices	26
17.8. Binding Effect	27
17.9. Term	27
17.10. Further Assurances	27
17.11. Time of Essence/Unavoidable Delay	27
17.12. Attorneys' Fees	28
17.13. Payments	28
17.14. Confidentiality	28
17.15. Arbitration of Disputes	28
17.16. Governing Law	28
17.17. Consents of Declarant	28
17.18. Counterparts	29
 EXHIBIT "1" - LEGAL DESCRIPTION OF THE BURDENED PROPERTY	
 EXHIBIT "2" - LEGAL DESCRIPTION OF BENEFITED PROPERTY	
 EXHIBIT "3" - PRODUCT RECOMMENDATION	
 EXHIBIT "4" - DESCRIPTION OF ADDITIONAL BUILDER'S IMPROVEMENTS	
 EXHIBIT "5" - DESCRIPTION OF MASTER ASSOCIATION PROPERTIES IN THE BURDENED PROPERTY	

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

This DECLARATION OF DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS ("**Declaration**") is executed, to be effective upon its recordation, by and between **Mountain Home Development Corporation**, a Utah corporation ("**Declarant**") and **IRC/Traverse-Key, Inc.**, a Utah Corporation ("**Builder**"). Declarant and Builder are individually or collectively referred to as a "**Party**" or the "**Parties**."

PREAMBLE

A. Concurrently with recording this Declaration, Builder is acquiring from Declarant certain real property located in the City of Lehi (the "**City**"), in Utah County, Utah, more particularly described in **Exhibit "1"** ("**Burdened Property**"). The Burdened Property is a portion of the larger master planned community known as the Traverse Mountain Planned Community, portions of which are more particularly described in **Exhibit "2"** (the "**Benefited Property**").

B. Builder is acquiring the Burdened Property from Declarant for residential development in accordance with the covenants, conditions, rights, restrictions and limits established in this Declaration and as provided in that certain Agreement of Sale between Declarant and Builder dated as of June ^{24th}, 2002 (the "**Sale Agreement**"), and Declarant is conveying the Burdened Property to Builder on the basis of Builder's continuing compliance with all such restrictions and conditions. Builder will develop the Burdened Property in accordance with the Final Plat Map approved by the Lehi City Council together with all conditions of approval and with the general scheme of development of the Project described in this Declaration and the Sale Agreement. Builder intends to construct Ninety Nine (99) "**Residences**" (as defined below) on the Burdened Property. The resulting density of construction is referred to herein as the "**Maximum Density**." In the event of any conflict between the Sale Agreement and this Declaration, the terms of the Sale Agreement shall govern.

C. Protection of the natural beauty of the immediate natural landscapes is of the utmost importance. It is the desire of the Parties that environmental sensitivity be respected by all those performing any construction or any related business on or near the Property.

THEREFORE, the Parties agree as follows:

1. **Definitions.** Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the following meanings:

1.1. **Benefited Property.** The real property described in **Exhibit "2."** If fee title to any portion of the Benefited Property is conveyed by Declarant to a third party ("**Transferred Parcel**"), this Declaration shall cease to benefit the Transferred Parcel unless the deed conveying the Transferred Parcel or a separate recorded document executed by Declarant expressly assigns to the grantee of the Transferred Parcel the benefits of the Declaration which

run with the Transferred Parcel by specific reference to this Declaration. Any merger of Declarant with or into another entity or the acquisition of all or any portion of the equity in Declarant by a third party is not a conveyance of the Benefited Property.

1.2. **Builder's Improvements.** The Residences, the Community Facilities on the Burdened Property, all public and private streets, walks, trails, irrigation systems, slopes, trees, shrubbery, ground cover and other landscaping to be constructed or installed on the Burdened Property, all improvements necessary to provide for utilities serving the Residences and Community Facilities in the Burdened Property, including water, drainage, sewers, CE&F, gas, electricity, and all other utilities or necessary services for the residential development of the Burdened Property, the Builder's Improvements listed on **Exhibit "4,"** and all other improvements that Builder must make pursuant to the Development Documents, including, but not limited to the improvements set forth on the Final Plat Map and related improvement drawings as approved or conditionally approved by the City (excluding any "**Declarant Improvements**" described in the Sale Agreement).

1.3. **Burdened Property.** The real property described in **Exhibit "1."**

1.4. **City.** Lehi City, Utah and its divisions, agencies and subsidiaries.

1.5. **Close of Escrow.** The date on which a deed or other instrument conveying fee title to or establishing a lease of at least twenty (20) years in length of a Residence to a member of the home-purchasing public is recorded.

1.6. **Community Facilities.** All real property and the improvements constructed thereon (a) owned in fee or easement by the Master Association or any Sub-Association, or (b) which is to be maintained by the Master Association or any Sub-Association pursuant to any map, agreement or governmental condition.

1.7. **Condominium Plan.** A condominium declaration recorded against the Burdened Property or any portion thereof in compliance with Utah Code -- Title 57 -- Chapter 08 -- Condominium Ownership Act, Section 57-8-10 *et. al.*, or any similar statute hereafter enacted.

1.8. **County.** Utah County, Utah.

1.9. **Design Guidelines.** The guidelines adopted by Declarant for design of improvements constructed in the Community.

1.10. **Development Documents.** All written agreements between Declarant and Builder, recorded and not recorded, concerning the acquisition, development, disposition, marketing and sale of the Burdened Property, including all of the following:

(a) **Sale Agreement.** The "Sale Agreement" that is defined in Recital B above, including all exhibits thereto;

(b) **Deed.** The special warranty deed conveying the Burdened Property to Builder; and

(c) **Development Declaration.** This Declaration as currently in effect.

1.11. **CE&F.** Communications equipment and facilities. CE&F describes the telecommunications transmission system to be installed by Builder pursuant to Sections 3 and 9.

1.12. **Governmental Authorities.** The City, County, the local sewer district or other governmental or quasi-governmental agencies or entities.

1.13. **Hazardous Substance.** Any (a) chemical, compound, material, mixture or substance that is now or hereinafter defined or listed in, or otherwise classified as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic waste," "toxic pollutant," or any other formulation intended to define, list or classify substances by reason of deleterious properties or affect pursuant to any present and future federal, state or local laws, permits, orders and any other requirements of Governmental Authorities (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 *et seq.*) and the applicable provisions of the Utah environmental and safety laws) and (b) petroleum, petroleum by-products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel (or mixtures of natural gas in such synthetic gas), ash, municipal solid waste steam, drilling fluids, produced waters and other wastes associated with the exploration, development and production of crude oil, natural gas or geothermal resources.

1.14. **Include.** Whether capitalized or not, include means to include, without limitation.

1.15. **Lot.** A lot or parcel as shown on the Plat Map for the Burdened Property and upon which there may be constructed a Residence. The term "**Lot**" specifically excludes any and all streets, alleys and Community Facilities shown as a separate numbered or lettered parcel on the Plat Map.

1.16. **Master Association.** The "**Master Association**" defined in the Master Declaration.

1.17. **Master Association Guidelines.** The "**Master Association Guidelines**" are the guidelines, policies and procedures adopted by the Master Association from time to time for governance, maintenance and operation of the larger community of which the Burdened Property is a part.

1.18. **Master Association Properties.** The Community Facilities which are designated as "**Master Association Property**" pursuant to the Master Declaration.

1.19. **Master Declaration.** The Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Traverse Mountain A Master Planned Community, recorded or to be recorded in Official Records of the County, as currently in effect.

1.20. **Other Builders.** Other builders engaged in the development of properties in the Project. If Declarant constructs dwelling units, finished lots or other improvements on such adjoining properties, Declarant shall be deemed to be an Other Builder.

1.21. **Plat Map.** The recorded Final Plat for the development of the Burdened Property with Residences.

1.22. **Residence.**

(a) **Condominium.** If records a Condominium Plan(s), which Condominium Plan(s) have been submitted by Declarant to the City for approval, covering the Burdened Property as part of the terms of the Sale Agreement, "**Residence**" means an estate in real property as defined in Utah Code Ann. Section 57-8-3(6), or any similar statute hereafter enacted consisting of an undivided interest in all or a portion of the Burdened Property, together with a separate interest in space intended for occupancy by a single family on the Burdened Property.

(b) **Lot.** If no Condominium Plan is recorded for the Burdened Property, "**Residence**" means a Lot together with the single-family dwelling unit constructed thereon.

1.23. **Sub-Association.** Any "**association**" other than the Master Association, formed for the purpose of administering or maintaining Community Facilities in connection with the Burdened Property.

2. **Declarant Approval Restrictions. Approval of all Plans and Applications Required.** No Builder Improvements or any other installation, construction or alteration of landscaping, any structure or any improvement shall be commenced, erected or maintained on the Burdened Property (or on adjacent or nearby real property), and no documentation shall be submitted to Governmental Authorities in connection therewith, until Builder has first submitted the following documents (collectively, the "**Development Materials**") to Declarant and Declarant has approved them in writing:

(a) **Street Plans.** Street improvement plans ("**Street Improvement Plans**") for the construction and maintenance of street improvements, monumentation and utilities on the Burdened Property as set forth in the Final Plat Map.

(b) **Plotting and Phasing Plans.** Plans that: (i) plot the location of various Residence plans, Residence elevations and other Builder Improvements, (ii) plot all utility and service connections, and (iii) designate each construction phase and sales phase. Residences of the same building type or plan shall not be plotted on adjacent lots.

(c) **Architectural Plans.** Preliminary plans and exterior elevations showing the size of the Builder Improvements ("**Architectural Plans**"). The Architectural Plans shall include any documents necessary to obtain approval from the Governmental Authorities to build the Builder Improvements, consistent with Design Guidelines.

(d) **Colors and Materials.** Plans showing the exterior materials and colors for the Residences and other Builder Improvements to be constructed on the Burdened Property, consistent with Design Guidelines.

(e) **Landscaping Plans and Schedules.** Landscaping plans ("**Landscaping Plans**") for the landscaping and improvement of any portions of the Burdened Property that will be *common areas that are to be conveyed to the Master Association or a subassociation* installed by Builder in yards of Residences. The Landscaping Plans shall be consistent with landscaping plans for other similar landscaped areas within the Project, consistent with Design Guidelines and other landscaping plans that will be provided by Declarant to Builder. For all landscaping improvements that are to be installed by Builder, Builder shall, except as otherwise provided in **Exhibit "4"**, engage the services of the landscape architect selected by Declarant to prepare all landscape improvement plans. All irrigation systems installed by Builder shall be compatible with and shall comply with all design requirements necessary for connection to the irrigation system described on **Exhibit "4,"** including the installation, testing and certification of proper operation of specific equipment and materials necessary for the system, as more specifically described on **Exhibit "4"**. Builder must obtain Declarant's approval for its schedule for the phasing of the annexation and conveyance of landscaped common areas common areas that are to be conveyed to the Master Association or a subassociation to the Master Association, the sub-association or the City.

(f) **Wall and Fence Plans.** Wall and fence plans showing the proposed walls and fences to be constructed on the Burdened Property. All such architectural plans shall be consistent with the Design Guidelines.

(g) **Governmental Applications.** All applications of any type to Governmental Authorities regarding the Builder Improvements. If requested, Builder shall furnish Declarant with copies of all written communications between Builder and Governmental Authorities processing such requests, applications or approvals. Builder shall not dedicate or offer to dedicate any street, trail or other property within the Burdened Property for public access or purposes, without the prior written consent of Declarant.

(h) **Legal Management Documents.** All articles of incorporation, bylaws, deposit receipts, purchase agreements, disclosure statements, escrow instructions, Master and Sub-Association Community Facility deeds and grant deeds to purchasers (collectively "**Legal Management Documents**") proposed to be used by Builder for the Burdened Property. All Legal Management Documents shall be consistent with this Declaration and the Master Declaration and shall include all additional provisions reasonably required by Declarant. Builder shall not record any Legal Management Documents until they are approved by Declarant. Approved Legal Management Documents shall be recorded in accordance with a schedule approved by Declarant.

2.2. **Approval Procedure and Exceptions.**

(a) **General Procedures.** The Development Materials may be submitted to Declarant for approval in appropriate stages consistent with Builder's development and construction schedules as outlined in the Design Guidelines. Submittals of all Development

Materials (and changes thereto) shall be reviewed and approved or disapproved by Declarant in accordance with the procedures set forth in the Design Guidelines. Any approvals issued by Declarant are not approvals for architectural engineering design or representation or warranties as to the adequacy or sufficiency of any Development Materials or proposed Builder Improvements. By approving Development Materials, Declarant assumes no liability or responsibility for any defect in the structure constructed pursuant to the approved Development Materials.

(b) **Additional Procedures for Common Areas to be Conveyed to the Master Association or a subassociation.** Upon completion of the common areas that are to be conveyed to the Master Association or a subassociation, Builder shall submit to Declarant two (2) "as-built" drawing in CAD format or such other reproducible medium acceptable to Declarant and a certificate of compliance executed by Builder's state-licensed consultant (engineer, architect or landscape architect, as applicable). The certificate of compliance shall certify the installation as substantially conforming to the plans and the specifications approved by Declarant. Within fifteen (15) business days after Declarant's receipt of the certificate of compliance, Declarant shall inspect such common areas that are to be conveyed to the Master Association or a subassociation and notify Builder whether such improvements conform with the approved plans and specifications, which approval will not be unreasonably withheld. Declarant shall not be required to furnish any bonds, letters of credit or other security assuring completion of any common areas that are to be conveyed to the Master Association or a subassociation, unless included in the Declarant Improvements.

3. **Development Restrictions. Governmental Approvals.** For all Builder Improvements, Builder shall obtain, at its sole cost and expense, all Governmental Authority approvals and permits (including all precise grading, building and other permits issued by the City) required for development of the Property in accordance with the Plat Map, all governmental regulations and Builder's obligations under the Development Documents. Builder shall prepare all data, reports, studies or submittals as may be required to obtain issuance of such approvals and permits.

3.2. **Improvements.** Builder, at its sole expense, shall be responsible for (1) constructing and installing all Builder Improvements in the manner and within the time required by all applicable public laws, ordinances and regulations and the "**Schedules**" approved by Declarant and (2) constructing trails from the perimeter of the Burdened Property through the Burdened Property in accordance with the Plat Map. The Builder and all of its subcontractors shall exercise extreme care to protect public health, safety and welfare during all stages of construction. This includes posting proper warning signs, fencing any potentially hazardous areas and providing security services. Builder covenants that (i) construction of all Builder Improvements or adoption or recordation of "**Legal Management Documents**" (as defined below), as applicable, will not be commenced or implemented until the "**Declarant Approval Items**" (as defined below) therefor have first been approved by Declarant, and (ii) development of the Burdened Property and construction of the Builder Improvements shall be completed in substantial accordance with the Declarant Approval Items approved by Declarant, and in accordance with the Design Guidelines.

3.3. **Fees.** Builder, at its sole expense, shall be responsible for paying all fees, costs and charges in connection with the Property including the following: all fees, in connection

with providing sewer and water service within the Property, including all connection fees; all fees, charges, deposits, special assessments, levies and costs (including installing meters), for connection of the Property to all gas, electrical, CE&F, and any other such utilities or services; affordable housing fees; park improvement fees; storm drain facilities fees; fees payable in connection with the any increase in fees or special assessments which are levied against the Property by any Governmental Authority; any fees related to the ownership of the Property or the construction of Residences thereon enacted or assessed before or after the Effective Date; all transportation and school fees or acreage assessments and all other fees related to the construction or occupancy of Residences on the Property. The Purchase Price of the Property has been determined based upon the presumption that Builder will pay or otherwise satisfy all of the foregoing costs, fees, assessments, taxes and deposits. If pursuant to any written agreement between Declarant and any Governmental Authorities, Declarant is required to pay school or other fees, then notwithstanding (i) the repeal, invalidation, termination or revocation of any law or ordinance authorizing or imposing such fee, whether such repeal, invalidation, termination or revocation arises by initiative, referendum, court action, legislative action, or any other reason, or (ii) any other legal action or occurrence prohibiting the City, County or school district from levying and/or collecting such fees, to the extent such fees continue to be required by the City, County or such school district, Builder shall, upon request from Declarant, pay such fees and amounts which would have been collected from Builder, but for such repeal, invalidation, termination, revocation, legal action or other occurrence.

3.4. **Fee Credits And Refunds.** Declarant may have available surplus "*credits*" which may be applied in satisfaction of fees related to the development of the Property ("**Development Fees**") which must be paid in cash by Builder. Accordingly, at least fifteen (15) business days prior to paying any Development Fees for the Property, Builder shall give written notice to Declarant stating the amount of the Development Fees to be paid by Builder. Declarant shall have the right to transfer to Builder fee credits with a dollar value up to the amount of the Development Fees to be paid by Builder, and Builder shall pay Declarant concurrently with such transfer, an amount equal to the dollar amount of the fee credits so transferred. Any (i) refunds or repayments of any costs, deposits, fees, assessments, taxes and deposits which were paid or satisfied by Declarant, or (ii) credit, rebate, reimbursement or reduction in the amount of any costs, fees, assessments, taxes and deposits by reason of master systems installed by Declarant, shall be immediately refunded by Builder to Declarant.

3.5. **Damage to Declarant and Other Builders Improvements.** Builder shall be responsible for all damage to the Declarant Improvements or other improvements of Declarant, Other Builders and the Master Association caused by any action of Builder, Builder's employees, agents, contractors, guests and invitees (including potential customers) . If Builder fails to timely repair any damages for which Builder is responsible, Declarant shall have the right, but not the obligation to enter upon the Property if necessary and complete the necessary repairs. The completion of such work by Declarant shall be at competitive rates and prices and one hundred percent (100%) of the costs so incurred by Declarant in performing such work shall be due and payable by Builder to Declarant within fifteen (15) business days of a written request therefore by Declarant. Any amounts due under this Section which Builder fails to pay within such fifteen (15) day period shall not be deemed a loan or forbearance and shall bear interest

from the date Declarant delivers its request for payment to the date such payment is made at the rate of twelve percent (12%) per annum.

3.6. **Product Recommendation.** Builder has represented to Declarant that it has purchased the Burdened Property to construct thereon Residences pursuant to the "**Product Recommendation**" attached as **Exhibit "3."** Builder shall not materially deviate from the Product Recommendation without obtaining Declarant's prior written consent, which consent may be withheld at Declarant's reasonable discretion. Builder acknowledges that adherence to the Product Recommendation is a material consideration which induced Declarant to sell the Burdened Property to Builder. Builder acknowledges and agrees that any Product Recommendation established for any Other Builder ("**Other Builder Product Recommendation**") is not created for the benefit of Builder or the Burdened Property and creates absolutely no rights whatsoever in Builder. Declarant, in its sole and absolute discretion, without regard to Builder or the Burdened Property, and without giving any notice to Builder, shall be entitled to modify, increase or decrease (as applicable) density, lot configuration, product size and/or type, fence design and other portions of any Other Builder Product Recommendation. Builder shall convey fee title to the Residences and shall not sell the Burdened Property or any portion thereof which has not been improved with a Residence or Community Facilities. The sale of home sites for the construction of custom residences is prohibited. But for the agreements in this Section, Declarant would have established a higher "**Basic Price**" (as defined in the Sale Agreement) for the Burdened Property, and if Builder fails to diligently and in good faith conform with such representations, Declarant will be deprived of the benefits of continued ownership of the Burdened Property, including appreciation.

3.7. **Soils.** Prior to the construction of any Residences, Community Facilities or other improvements on the Burdened Property, Builder will familiarize itself with any soils, fill and compaction and other geologic reports for the Burdened Property, and Builder will comply in all respects with the recommendations (consistent with industry standards) of the soils and other engineers who have certified completion of the grading which is a part of the Declarant Improvements. With the exception of the Declarant Improvement warranties set forth in the Sale Agreement, Declarant shall not be responsible for nor assume any liability in connection with or resulting from any fill, subsurface or soil condition on the Burdened Property, including subsurface geologic or groundwater conditions. Builder shall not use any soils engineer or consultant to study soil conditions at the Burdened Property except those approved by Declarant. All soils testing done by Buyer must be done by Applied Geotechnical Engineering Consultants, Inc. ("AGEC").

4. **Construction, Marketing and Sales.** Construction of any Builder Improvement shall be deemed completed when Builder delivers to Declarant a notice of completion for such Builder Improvement. Builder shall comply with the following:

4.1. **Models.** Following the conveyance of the Burdened Property to Builder and within thirty (30) days following as the first date on which a building permit may be obtained, Builder shall commence constructing on the Burdened Property of a model complex representative of the Residences and shall thereafter proceed diligently and continuously to complete such construction, and furnish and open the model complex to the public.

4.2. **Residences.** Following the conveyance of the Burdened Property to Builder and within sixty (60) days following as the first date on which a building permit may be obtained, Builder shall commence construction of two (2) production Residences and, thereafter, shall proceed diligently and continuously to complete such construction, obtain valid certificates of occupancy for and offer for sale the Residences in construction phases and sales phases approved by Declarant and agrees to have under construction or for sale two (2) production Residences at all times.

4.3. **Marketing.** Builder shall conduct commercially reasonable marketing efforts to sell all of the Residences to members of the home buying public. Such marketing efforts must be approved by Declarant and shall be in addition to any marketing efforts by Declarant funded with fees collected from Builder. In order to ensure that Builder's offering of Residences is consistent with the overall Project offering, and to enable Declarant to monitor Builder's progress and compliance with Builder's obligations under the Development Documents, Builder agrees to follow marketing guidelines established by Declarant. Declarant shall pay both "Marketing Fees" required to be paid under Sections 3.4 of the Sale Agreement.

4.4. **Phasing Restrictions.** (i) Commencement of construction of each successive construction phase must begin before sale of the last Residence in the prior construction phase.

4.5. **Schedules.** In order to (i) monitor Builder's progress in meeting Builder's improvements and construction schedules, and (ii) enable Declarant to coordinate improvements in the Benefited Property with Builder's construction schedule for the Burdened Property, Builder shall, within seven (7) days after written request by Declarant, submit to Declarant for Declarant's approval, the following schedules ("**Schedules**"), in a form provided or approved by Declarant, as follows:

(a) **Purchase Price Schedule.** A "**Purchase Price Schedule**" showing the contemplated purchase prices for all Residences.

(b) **Sale and Closing Forecast.** A "**Sale and Closing Forecast Schedule,**" showing the estimated timetables for the sale of Residences and Closes of Escrow.

(c) **Construction Schedules.** "**Improvements and Construction Schedule**" setting forth the improvements to be constructed on the Burdened Property (or on adjacent or nearby property if required pursuant to the Development Documents), and timetables and progress of such construction shall be submitted monthly.

4.6. **Additional Construction Restrictions.**

(a) **Declarant Improvements.** Declarant is obligated to design, construct and install, at its sole expense, the Declarant Improvements specified in the Property Document **Seller & Buyer Obligations**. If any of the Declarant Improvements located on the Burdened Property are damaged by an Other Builder, Builder shall be responsible for completing any restorations or repairs to such damaged Declarant Improvements and Builder shall be entitled to pursue all legal remedies against the responsible Other Builder for reimbursement of Builder's

costs of such restoration and repair. If Declarant fails to complete the Declarant Improvements in a timely manner in accordance with **Seller & Buyer Obligations**, Builder's sole remedy, after giving Declarant thirty (30) days' advance written notice to complete such Declarant Improvements, shall be the right to complete the applicable Declarant Improvements. Monies will be reimbursed to pay Builder to include loans, interest, extension fees, etc within 15 days of completion until delay is cured. Such completion shall be performed at competitive rates and prices.

(b) **Easement Reservation.** Declarant reserves to itself, its successors and assigns, together with the right to grant and transfer the same to Other Builders, a nonexclusive easement over the Burdened Property for the purpose of constructing the Declarant Improvements and improvements necessary for the development of property owned by Other Builders, provided that the construction and installation of such improvements shall not unreasonably interfere with Builder's development, use or sale of the Burdened Property.

(c) **Failure to Construct.** If either Builder or Declarant fails to timely complete any of such party's respective improvements, or if Builder fails to develop the Burdened Property in accordance with the Schedules, or to develop streets, utilities and other facilities necessary to allow any Other Builder to develop such Other Builder's property, after providing the delinquent party with fifteen (15) business days' prior written notice to complete same, the nondelinquent party, or at Declarant's option, any Other Builder, shall have the right, but not the obligation, to enter upon the Burdened Property and complete such improvements and/or scheduled work. The completion of such work by the nondelinquent party shall be performed at competitive rates and prices. An amount equal to one hundred percent (100%) of the actual costs incurred by the nondelinquent party in completing such unfinished delinquent party's Improvements or work shall be due and payable by the delinquent party within thirty (30) days following a written request therefor by the nondelinquent party which amount shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid.

(d) **Warranty and Indemnity.** If Declarant or any Other Builder undertakes construction of Builder's Improvements, the indemnity, warranty and other provisions of the Development Documents relating to Builder's Improvements shall apply to such improvement as if it had been constructed by Builder, except that the foregoing shall not require Builder to indemnify against the negligence or willful misconduct of Declarant or any Other Builder.

(e) **Correction of Defects.** If any portion of the Burdened Property proves to be defective or require repair so as to prevent the deterioration of the Burdened Property and the Improvements, slopes or landscaping constructed or installed thereon by erosion or otherwise, Builder shall, within ten (10) days of written request by Declarant, commence to correct such defect or effect such repair and diligently and continuously prosecute such correction or repair to completion at Builder's sole cost and expense. Builder shall be obligated under this Section regardless of the reason requiring such action, unless such repair or replacement is caused by Declarant's negligence, another builders negligence, or willful misconduct. If Builder fails to commence correction of such defect or to effect such repair within said ten (10) day period, or if Builder timely commences but fails to diligently and continuously

prosecute such correction or repair to completion, Declarant shall have the right, but not the obligation, to enter upon the Burdened Property to take such actions as are necessary to correct such defect. An amount equal to one hundred percent (100%) of the actual costs incurred by Declarant in performing such corrective work shall be due and payable by Builder within ten (10) days following demand by Declarant and amounts unpaid shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid. It is expressly acknowledged that work undertaken by either Declarant or Builder under this Section shall not be an admission that the Party performing such work is responsible for the defects so corrected.

(f) **Remedies Not Exclusive.** Builder's obligations under this Section are in addition to and not in limitation of any other obligations of Builder to correct defects in the Residences, the Community Facilities or other portions of the Burdened Property, whether pursuant to the Development Documents or otherwise. This Section is not intended to apply to Builder's obligations under law to purchasers of Residences under warranty or other theories.

(g) **Repair of Damage.** Any damage to the Declarant Improvements or to property of Declarant or Other Builders caused by Builder or any of its agents, employees, licensees, invitees or contractors, shall be repaired and restored by Builder at its sole cost and expense. If such repair is not commenced within ten (10) days of written request by Declarant and diligently completed in a timely manner, Declarant shall have the right, but not the obligation, to complete the repair of such damage and shall be reimbursed for the cost thereof pursuant to the Failure to Construct Section above.

4.7. **Master Association Fees.** Until such time as a Residence is transferred from Builder to a bona fide third party purchaser, Builder shall be responsible for any Master Association Fees assessed or imposed by the Master Association and the Sub-Association, if any, governing such Residence; provided, however, that Builder shall only be responsible for actual costs allocable to the Residence by such Master Association or Sub-Association and not for funding of any reserves or other deferred costs comprising such Residence's homeowners' association fees.

4.8. **Builder's Maintenance Covenants.** Builder shall, at its sole expense (a) maintain the Burdened Property in a clean, sanitary, orderly and attractive condition free of weeds and debris and pests, (b) upon completion of any Improvements on the Burdened Property, including grading by Builder, Declarant or any other entity, shall maintain such improvements in the same conditions as they existed upon completion or as otherwise directed by Declarant, (c) perform all dust, erosion and settlement control in the Burdened Property as necessary or as directed by Declarant., (d) if requested by Declarant and if reasonably necessary for the protection of persons or property, install a chain link security fence six (6) feet high with ninety percent (90%) green fabric mesh around all or any portion of the Burdened Property, and (e) after installation of any landscaping on the Burdened Property by Builder, Declarant or any other entity, continually plant and maintain all such landscaped areas in good condition and appearance until such areas are accepted by the Master Association or any Governmental Authority. Declarant shall, at its option, be entitled to maintain all or any portion of the common areas that are to be conveyed to the Master Association or a subassociation common areas that are to be conveyed to the Master Association or a subassociation located within the Burdened Property and Builder shall be obligated to reimburse Declarant for the cost of such maintenance until

conveyance of such common areas that are to be conveyed to the Master Association or a subassociation common areas that are to be conveyed to the Master Association or a subassociation to the Master Association. Declarant shall be entitled to require Builder to reimburse Declarant for a proportionate share of the cost reasonably determined by Declarant of maintaining common areas that are to be conveyed to the Master Association or a subassociation not located within the Burdened Property until such common areas that are to be conveyed to the Master Association or a subassociation are conveyed to the Master Association.

Any landscaping that must be replaced shall be replaced with landscaping of same or equal quality as originally installed. Builder shall provide, maintain and repair all sprinklers and other maintenance equipment as necessary so as to continually maintain all landscaping on the Burdened Property. Except in the case of an emergency (when no notice shall be required), if Builder fails to so maintain the Burdened Property and fails to cure any such breach within fifteen (15) business days after notice from Declarant, Declarant reserves the right, without the obligation, to enter upon any portion of the Burdened Property to so maintain the Burdened Property where necessary. Builder shall reimburse Declarant within ten (10) days' of request by Declarant for one hundred ten percent (110%) of the amount expended in correcting the failure to maintain the Burdened Property, which amount shall bear interest at the rate of twelve percent (12%) from the date due until paid. Builder and its representatives and subcontractors shall not enter or leave the Burdened Property except by routes designated by Declarant from time to time. Builder and its representatives and subcontractors shall respect all safety and traffic restrictions imposed by Declarant.

4.9. **Hazardous Wastes.** Builder, Builder's Representatives and any other parties directly or indirectly employed by Builder and anyone reasonably under their control shall not shall not engage in any actual, proposed or threatened storage, use, holdings, existence, release, emission, discharge, generation, processing, abatement, removal, disposition, handling or transportation of any Hazardous Substance from, under, onto or on the Burdened Property or surrounding property; provided, that the use, installation, storage and maintenance by Builder in compliance with all applicable laws, ordinances, orders and regulations of materials reasonably necessary or normally used in the development of real property as contemplated in the Development Documents, shall not be considered a Hazardous Substance Activity.

4.10. **Builder Delinquencies.** Should Builder fail to pay or discharge or cause to be paid or discharged when due and payable any tax, assessment, Master Association or Sub-Association assessment or other charge upon or in connection with the Burdened Property, after ten (10) days' written notice from Declarant, Declarant may pay and discharge the same, at its option, but without obligation. All costs, expenses and other sums incurred by Declarant in connection therewith, including attorneys' fees and costs of court, shall be paid to Declarant by Builder within ten (10) days after a request therefore by Declarant, which request shall be accompanied by an invoice for such fee or charge. Such amount shall bear interest the rate of twelve percent (12%) per annum from the date due until paid. Any such reimbursement shall not relieve Builder of its obligation to reimburse Declarant for any subsequent billing.

5. **Number of Residences.** The Burdened Property must not be developed with more Residences than the Maximum Density without Declarant's prior written approval.

6. **Entitlement Amendments and Other Governmental Actions.** Declarant may seek amendments to any specific or area plan, general plan, zoning, or other existing entitlements for the Project. Builder agrees that it will not oppose any such amendments and will support and cooperate with Declarant in obtaining approval of such amendments. Any Governmental Authority may elect to form additional Community facilities or assessment districts with jurisdiction over the Burdened Property to fund construction of fire protection facilities, street and traffic signal improvements, school facilities, parks, recreation facilities and other improvements. Any such assessment district and any future Community facilities districts or assessment districts (collectively, "**Districts**") will require the assessment of liens, taxes and assessments against the Burdened Property. Builder agrees not to oppose the formation of the Districts or the levying of assessments and taxes through the Districts. Builder shall consent to, or if an election is called, cast its votes in favor of all Districts in the levying of assessments and taxes through such Districts. Builder shall grant or approve such easements over the Burdened Property as are necessary or desirable to permit the construction, installation and/or maintenance of improvements to be funded thereby. Builder shall not take any action which would in any way interfere with the operation of the Districts, or decisions made, or actions taken by any Governmental Authority or Declarant, with respect to the Districts, or the bond financing related thereto, including the timing of commencement of assessments or special taxes, the amount of assessments or special taxes, the spreading of assessments or special taxes and the use of the assessments or special taxes so collected by the Districts.

7. **Bulk Sale Approval.** If Builder proposes to sell, exchange or otherwise transfer any portion of the Burdened Property (except pursuant to "**Exempt Sales**" (as defined below) made in the ordinary course of its business), Builder shall immediately give Declarant written notice of such proposed transfer ("**Sale Notice**"). The Sale Notice shall identify the portion of the Burdened Property proposed to be transferred ("**Designated Parcel**") and the identity of the purchaser thereof ("**Bulk Sale Purchaser**"). For a period of thirty (30) business days from receipt of the Sale Notice, Declarant shall be entitled to approve the Bulk Sale Purchaser. If Declarant wishes to disapprove the Bulk Sale Purchaser, it shall deliver written notice to Builder of such disapproval within such thirty (30) business day period, which written notice shall specify the reasons for its disapproval. If Declarant timely disapproves the Bulk Sale Purchaser and Builder nevertheless conveys title to the Designated Parcel (or any other portion of the Burdened Property) to such Bulk Sale Purchaser, a default shall be deemed to have occurred under this Declaration. If Declarant fails to timely deliver written notice of disapproval of such Bulk Sale Purchaser, Declarant shall be deemed to have approved such Bulk Sale Purchaser, and Builder may convey the Designated Parcel to such Bulk Sale Purchaser. Notwithstanding the foregoing, a condition to the effectiveness of any approval of a Bulk Sale Purchaser shall be the execution of an assumption agreement by the Bulk Sale Purchaser, in a form acceptable to Declarant, whereby the Bulk Sale Purchaser assumes the then executory obligations of Builder under the Development Documents. "**Exempt Sale**" shall mean the sale of a Residence and the Close of Escrow for such Residence to a member of the home-purchasing public when a \$500 "Marketing Fee" is paid by Builder to Declarant as required by Section 3.4 of the Sale Agreement prior to or concurrently with the Close of Escrow. Exempt Sale also includes an "**Authorized Transfer**" under the Sale Agreement. Notwithstanding any Bulk Sale Transfer, the Burdened Property shall remain subject to all recorded and other provisions of the Development Documents.

8. **Preservation of Trees.** No tree presently located on the Burdened Property including oak brush or other indigenous trees, shall be removed, cut down, trimmed or in any way damaged, destroyed or modified, without the prior written consent of Declarant. Builder shall comply with all applicable provisions of the guidelines formulated by Declarant pertaining to the preservation and maintenance of existing trees. If Builder fails to obtain any necessary consent for removal or alteration of a tree located on the Project, or if Builder removes a tree after Declarant has withheld such consent, or if Builder damages or destroys any such tree on the Project, Builder shall be responsible for replacing such tree with a replacement of the same species and approximate maturity, at Builder's sole cost and expense.

9. **CE&F.** Builder, at its sole cost and expense, shall prewire and install a complete communications equipment and facilities ("**CE&F**") system for each Residence in accordance with specifications furnished to Builder by a fiber company designated by Declarant ("**Fiber Company**"). Such CE&F system shall include plaster rings, wall plates, sweeps, line splitters and junction boxes in each Residence for at least two (2) service outlets in each Residence, together with such other CE&F necessary to prewire the Residences on the Burdened Property for CE&F service. Builder agrees to enter into a fiber wiring agreement with the Fiber Company which provides for the following:

9.1. **Exclusive Servicer.** The Fiber Company shall have the exclusive right (to the extent allowable by law and to the extent not in conflict with any public dedication of streets or easements) to install, in the appropriate utility easement areas, and maintain, repair and replace facilities necessary to transmit television and other information and communication signals to the Burdened Property. Such facilities will be owned by the Fiber Company and installed at the Fiber Company's sole expense.

9.2. **Consideration.** Absolutely no payment or consideration is to be paid or given by Declarant or the Fiber Company to Builder in connection with such exclusive right to install, maintain, repair, replace and operate such CE&F and other telecommunication equipment within the Burdened Property.

9.3. **Master Agreement.** Declarant may enter into a master CE&F wiring agreement with the Fiber Company which may require a CE&F wiring agreement between Builder and the Fiber Company and which will provide for the payment of certain consideration to Declarant by the Fiber Company for master systems installed by Declarant. Builder shall have absolutely no right to any such consideration paid to Declarant by the Fiber Company.

9.4. **Enforcement by Fiber Company.** It is intended that this Section 9 shall be enforceable both by Declarant and, as third party beneficiary, by the Fiber Company with whom Declarant executes a master CE&F agreement.

10. **Master and Additional Declarations.**

10.1. **Master Declaration.** The Master Declaration has been recorded and is an encumbrance against the Burdened Property. Declarant designates Builder as a "**Neighborhood Builder**" pursuant to the Master Declaration and nonexclusively assigns Builder all rights of a Neighborhood Builder thereunder. Declarant shall be entitled to require that all Supplemental

Declarations; Deeds conveying Master Association Properties to the Master Association; and other documentation related thereto be prepared by Declarant or its legal counsel and that Builder shall reimburse Declarant for the reasonable cost of preparation of same.

10.2. **Master Association.** The Burdened Property is subject to the jurisdiction of the Master Association formed pursuant to the Master Declaration. The Master Association is responsible for the maintenance of various "**Common Area**" described in the Master Declaration (the "**Master Association Property**"), which may include slopes, recreational facilities, landscaping, parks and open spaces within the Community. The Master Association Properties to be located in the Burdened Property are generally described on **Exhibit "5"**. The Master Association Properties in the Burdened Property shall be subject to minor adjustment in Declarant's reasonable discretion in order to accommodate finished grade elevations and other minor developmental adjustments. Builder shall furnish appropriate legal descriptions of Master Association Properties on the Burdened Property and shall convey fee title to or an easement for maintenance over the Master Association Properties on a schedule approved by Declarant. All drawings or descriptions of Master Association Properties to be attached to documentation annexing or conveying the Master Association Properties to the Master Declaration shall be prepared by an engineer or consultant selected by Declarant.

10.3. **Assessments and Subsidy.** Master Association assessments on Residences as provided in the Master Declaration. Upon the commencement of Master Association assessments, Builder shall pay Master Association assessments on Builder's unclosed inventory Residences at the unsubsidized rate specified in the Master Association budgets in effect from time to time. Declarant may, but is not obligated to, enter into a written subsidy agreement with the Master Association ("**Subsidy Agreement**"), pursuant to which Declarant subsidizes Master Association operating deficits. If Declarant, in its sole and absolute discretion, enters into a Subsidy Agreement, Declarant may amend or delete the Subsidy Agreement at Declarant's sole discretion. Declarant shall have no obligation to extend any Subsidy Agreement or otherwise subsidize Master Association assessments attributable to Residences in the Burdened Property that are owned by Builder.

10.4. **Transfer of Voting Rights.** Builder irrevocably transfers to Declarant with full power of substitution, as the true and lawful attorney, agent and proxy of Builder, all of the voting rights to which Builder is or will be entitled, coupled with an interest, for and in the name, place and stead of Builder, to vote upon any and all matters which may lawfully come before the members of the Master Association, which matters arise under the Master Declaration. Builder acknowledges that Declarant has significant interests and rights to protect under the Master Declaration and that this proxy is given to protect such interests and to further secure Builder's duties under the Master Declaration and the Development Documents. Therefore, the proxy granted herein shall be irrevocable and shall terminate with respect to voting rights under the Master Declaration attributable to each individual Residence in the Burdened Property only upon the Close of Escrow for the sale of such Residence. The proxy granted to Declarant pursuant to this Section shall not be construed as an assumption by Declarant of any liability whatsoever resulting from or arising out of Builder's ownership or development of, construction upon or resale of the Burdened Property and Builder shall indemnify Declarant from and against

any and all losses, claims or other liabilities in connection therewith, as further provided in Section 15 below and in the Sale Agreement.

10.5. **Formation of Sub-Association.** If Community Facilities other than authorized Master Association Properties will be located in the Burdened Property, Builder shall, at its sole cost and expense, form any Sub-Association required to maintain such Community Facilities; provided, however, that Declarant shall be entitled to require the creation of a “*Special Benefit Area*” under the Master Declaration in lieu of a Sub-Association. Builder shall bear all costs and expenses incurred in organizing and establishing any Sub-Association or Cost Center, including all attorneys’ or other consultants’ fees, incorporation costs and fees or other charges arising from the preparation, filing or Application for required governmental approvals, reports or permits relating to such documents. Declarant shall also be entitled to require that any Sub-Association be created without an Aesthetic Review Committee and that all architectural approvals for construction within the Sub-Association be provided by an aesthetic review committee created under the Master Declaration.

11. **Minor Modifications.** Upon twenty (20) days’ written request of Declarant or any person to whom Declarant shall have transferred title to any of the Benefited Property adjacent to the Burdened Property (collectively, the “*Requesting Party*”), Builder shall permit such Requesting Party to enter upon portions of the Burdened Property located within ten (10) feet of such adjacent property for purposes of making minor slope modifications and minor daylight fills to such portions of the Burdened Property as may be required in order to complete the grading and development of the adjacent property owned by such Requesting Party. In no event, however, shall the Requesting Party make major modifications to any slope or other portion of the Burdened Property or otherwise perform any work which materially affects the developability, marketability or value of the Burdened Property or any portion thereof. The Requesting Party shall indemnify and hold Builder and the Burdened Property free and harmless from all costs, liabilities, losses, damages and expenses, including reasonable attorneys’ fees and costs arising from the activities on the Burdened Property of such Requesting Party, its agents and employees, and from all mechanic’s, materialmen’s and other liens resulting from such conduct.

12. **Insurance.** This Section establishes the minimum insurance requirements for the various parties.

12.1. **Requirements of Declarant.** Declarant shall purchase insurance from and maintain in a company or companies lawfully authorized to do business in Utah, with an A.M. Best Rating of A- VI or better. Such insurance will protect Declarant from claims set forth below which may arise out of or result from operations for which the Declarant may be legally liable. Declarant shall have insurance covering the following claims:

(i) Claims under Workers Compensation, disability benefit and other similar employee benefit acts, which are applicable to work performed on behalf of Declarant.

(ii) Claims for damage because of bodily injury, occupational sickness or disease, or death of Declarant's employees and any person other than Declarant's employees for which Declarant would otherwise be liable.

(iii) Claims for damages insured by the standard personal injury liability coverage policy for which Declarant would otherwise be liable.

(iv) Claims for damages, other than to Declarant's own property, because of injury to or destruction of tangible property, including loss of use therefrom for which Declarant would otherwise be liable.

(v) Claims for bodily injury or property damage arising out of completed operations therefrom for which Declarant would otherwise be liable.

(vi) Claims involving contractual liability for written indemnity agreements for which Declarant would otherwise be liable.

(vii) Claims involving dishonesty of Declarant's employees resulting in loss to Declarant.

(b) **Amount of Insurance.** The insurance required shall be written for not less than:

(i) in the case of Workers Compensation insurance, the amount required by Utah law;

(ii) in the case of Employers Liability insurance, no less than the amount required by Utah law;

(iii) in the case of Commercial General Liability insurance, on an occurrence basis (claims made not acceptable), not less than \$5,000,000 each occurrence and \$5,000,000 in the aggregate; and

(iv) in the case of employee dishonesty insurance, a Blanket Employee Dishonesty bond with limits not less than one-fourth (1/4) of the annual common assessments on all property within the Project.

12.2. **Requirements of Builder.** Builder shall purchase insurance from and maintain in a company or companies lawfully authorized to do business in Utah, with an A.M. Best Rating of A- VI or better. Such insurance will protect Builder from claims set forth below which may arise out of or result from operations for which Builder may be legally liable whether such operations be by Builder or by a contractor or by a subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for those acts any of them may be liable.

(a) **Types of Insurance.** Builder shall have insurance covering the following claims:

(i) Builder shall purchase and maintain, in a company of companies lawfully authorized to do business in the jurisdiction in which the project is located, property insurance written on a builder's risk "all-risk type" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the contract documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Builder has an insurable interest in the property, whichever is later. The insurance shall include interests of Builder, and its contractors and subcontractors. Property insurance shall be on an "all-risk type" or equivalent policy form and shall include insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architect's and contractor's services and expenses required as a result of such insured loss. If the property insurance requires deductibles, the Builder shall pay and such deductible charges. This property insurance shall cover portions of the work stored off site, and also portions of the work in transit. Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. Builder shall purchase and maintain boiler and machinery insurance required by any contract documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner. Such insurance shall include interests of Builder, and its contractors and subcontractors and name the same as insureds. Builder and its contractors waive all rights against each other and any of their subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by the property insurance obtained pursuant to this paragraph or other property insurance applicable thereto except such rights as they have to proceeds of such insurance held by Builder as fiduciary. Builder or its contractors, as appropriate, shall require written waivers of the architect, the architect's consultants the subcontractors, and their respective agents and employees, by appropriate written agreements. Each such waiver shall be in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damage. A loss under Builder's property insurance shall be adjusted by Builder as fiduciary and made payable to Builder as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Builder shall pay its subcontractors their just shares of insurance proceeds received by the contractor, and by appropriate agreements shall require subcontractors to make payments to their respective subcontractors in a similar manner.

(ii) Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed.

(iii) Claims for damage because of bodily injury, occupational sickness or disease, or death of Builder's employees and any person other than Builder's employees for which Builder would otherwise be liable.

(iv) Claims for damages insured by the standard personal injury liability coverage policy for which Builder would otherwise be liable.

(v) Claims for damages, other than to Builder's own property, because of injury to or destruction of tangible property, including loss of use therefrom for which Builder would otherwise be liable.

(vi) Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

(vii) Claims involving contractual liability for written indemnity agreements for which Declarant would otherwise be liable.

(viii) Claims for bodily injury or property damage arising out of completed operations.

(ix) Claims involving contractual liability insurance applicable to Builder's obligations.

(b) **Amount of Insurance.** The insurance required shall be written for not less than:

(i) in the case of Workers Compensation insurance, the amount required by Utah law;

(ii) in the case of Employers Liability insurance, not less than \$1,000,000 for each occurrence of bodily injury caused by accident or disease;

(iii) in the case of Commercial General Liability insurance, on an occurrence basis (claims made not acceptable) with limits not less than \$5,000,000 each occurrence and \$5,000,000 general aggregate. Builder shall require all contractors and subcontractors to provide limits of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. All such policies shall provide that Declarant and Master Association will be named as additional insureds; and

(iv) in the case of Commercial automobile liability insurance, not less than \$5,000,000 for any one accident and shall include owned, hired, and non-owned automobiles. The limits required for contractors and subcontractors shall be \$1,000,000 for any one accident.

12.3. **Additional Insured.** Declarant shall be included as an additional insured under the coverage specified in Section 12.2 and with the following provisions included within each applicable policy: "It is understood and agreed that coverage afforded by this Policy shall

also apply to Mountain Home Development Corporation, and its divisions, subsidiaries, constituent partners and their constituent members, shareholders of partners and their constituent members, and affiliated companies and all of their respective officers, directors, shareholders, agents, representatives, employees and professional consultants, and all of their respective successors and assigns, as additional insureds, but only with respect to legal liability or claims caused by, arising out of or resulting from the acts or omissions of the named insured or others performing acts on behalf of the named insured in connection with their ownership and development of the project in the County of Utah, referred to as Traverse Mountain. This insurance is primary and any other insurance by such additional insureds is non-contributing with this insurance as respects claims or liability arising out of or resulting from the acts or omissions of the named insured, or of others performed on behalf of the named insured.”

12.4. **Insurance Policies.** Each insurance policy required under this Section shall:

(a) Contain a provision that the policy shall not be subject to material alteration to the detriment of Declarant or Builder or cancellation without at least thirty (30) days' prior written notice be given to Declarant by registered mail;

(b) Provide that such policy or policies and the coverage evidenced thereby are primary and Declarant's insurance is noncontributing with such primary coverage; and

(c) Contain severability of interest and cross liability clauses.

Builder may provide the insurance described in Section 12.2 in whole or in part through a policy or policies covering other liabilities and projects of Builder; provided, however, that any such policy or policies shall (i) allocate to this Declarant and the Development Documents the full amount of insurance required hereunder and (ii) contain, permit or otherwise unconditionally authorize the waiver above, and provided further that any such policy or policies shall not otherwise impair the rights of Declarant or negate the requirements of this Declaration and the Development Documents.

12.5. **Evidence of Insurance.** As evidence of specified insurance coverage, Declarant will accept certificates issued by Builder's insurance carrier acceptable to Declarant showing such policies in force for the specified period. Declarant has the right to review certified policies as reasonably necessary. Except for the Builders Risk Insurance, such evidence shall be delivered to Declarant promptly upon execution of the Sale Agreement. The evidence of the Builders Risk Insurance shall be provided prior to commencement of any construction on the Burdened Property. Evidence of any renewal insurance shall be delivered to Declarant not less than thirty (30) days prior to the expiration date on the term of the policy. Each policy and certificate shall be subject to reasonable approval by Declarant. Should any policy expire or be canceled before the full release of this Declaration, or such later period as Builder is required to carry such insurance as set forth herein, and Builder fails immediately to procure other insurance as specified, Declarant, upon ten (10) days' written notice to Builder, shall have the right, but shall have no obligation, to procure such insurance and to charge Builder with one hundred ten percent (110%) of the cost to Declarant of procuring such insurance. Builder shall pay Declarant

any such amount within ten (10) days of written demand therefor and any amount not so paid shall bear interest at the rate of twelve percent (12%) per annum until paid.

12.6. **Damages.** Nothing contained in these insurance requirements is to be construed as limiting the type, quality or quantity of insurance Builder should maintain or the extent of Builder's responsibility for payment of damages resulting from its operations.

12.7. **Declarant's Election to Insure.** Declarant reserves the right, but shall have no obligation, to procure the insurance, or any portion thereof, for which Builder is herein responsible and which is described in this Section. As provided above, Declarant shall notify Builder if Declarant exercises its rights, whereupon Builder's responsibility to carry such duplicative insurance shall cease. Declarant further reserves the right at any time, with thirty (30) days' notice to Builder, to require that Builder resume the maintenance of any insurance for which Declarant has elected to become responsible pursuant to this Section.

12.8. **Contractors.** Builder shall not permit any architect, engineer or contractor to commence work on or relating to the Burdened Property until such parties have complied with Builder's customary insurance requirements and Section 12.2. Builder shall cause each such party to name Declarant as an additional insured to such party's General Liability Insurance policies. Builder shall also include Declarant in any indemnity provision with such parties for defense and indemnification to the same extent Builder is defended and indemnified.

12.9. **OSHA.** Builder shall at all times comply with the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 *et. seq.* and analogous legislation in Utah (collectively the "**Act**"), to the extent that the Act applies to the Burdened Property and any activities thereon. Without limiting the generality of the foregoing, Builder shall maintain all working areas, machinery, structures, electrical facilities and the like on the Burdened Property in a condition that fully complies with the requirements of the Act including such requirements as would be applicable with respect to agents, employees or contractors of Builder who may from time to time be present upon the Burdened Property. Builder shall indemnify and hold harmless Declarant from any liability, claims or damages arising as a result of a breach of the foregoing covenant, as further provided in Section 15 below.

13. **Magnuson-Moss and Other Statutes.**

13.1. **Builder Compliance.** Without limiting the application of any other provision of this Declaration or the Development Documents, it is understood that it is Builder's responsibility, at its sole cost and expense, to comply with all of the requirements of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (the "**Magnuson-Moss Act**") and any rules promulgated thereunder by the Federal Trade Commission, as such statutes and rules apply to the sale or other conveyance of Residences and consumer goods sold in conjunction therewith, including any provisions of such statutes and rules relating to the pre-sale availability of warranty terms. Also without limitation, it is further understood that it is the responsibility of Builder at its sole cost and expense to comply with any other federal, state or local statute, ordinance, rule or regulation enacted or promulgated for the protection of consumers or persons purchasing or leasing real or personal property, as such legislation or rules apply to the sale or other conveyance of Residences and consumer goods sold in conjunction

therewith. The provisions of indemnity given by Builder under Section 15 hereof shall apply to any loss, claim, demand, action, injury or other charge, including reasonable attorneys' fees and court costs, arising under any of the statutes and regulations described herein.

13.2. **Warranty Records.** Builder shall maintain records reasonably satisfactory to Declarant documenting Builder's compliance with its responsibilities under this Section 13. Said records shall be available for inspection by Declarant, its partners, agents or representatives, at any reasonable time during normal business hours.

14. **Enforcement of Restrictions.** The covenants, restrictions and limitations of this Declaration shall be subject to the following additional provisions:

14.1. **Inspection.** Declarant or its authorized representative may, at any reasonable hours, enter upon and inspect the Burdened Property and any improvements thereon to ascertain compliance with this Declaration.

14.2. **Default and General Remedies.** If Builder breaches, violates or fails to perform or satisfy any of the terms of this Declaration or the Development Documents (all of which are individually and collectively referred to as "**Default**"), which Default has not been cured within ten (10) days after written notice to Builder and to Builder's lender of record from Declarant to do so, Declarant, at its sole option and discretion, may enforce any one or more of the following remedies or any other rights or remedies to which Declarant may be entitled by law or equity, whether or not set forth herein. If, however, the Default is of a type which cannot reasonably be cured within ten (10) days, Declarant shall withhold action against Builder so long as Declarant continues to receive evidence that Builder (i) has commenced the curative process immediately upon notice, and (ii) continues to diligently pursue the curing of the Default. The foregoing ten (10) day grace period shall not apply to payment under any of the other Development Documents or for obligations specified in this Declaration that include separate grace periods. All remedies provided herein or by law or equity shall be cumulative and not exclusive.

14.3. **Damages.** Declarant may bring a suit for damages for any compensable breach of or noncompliance with any of the terms of this Declaration, or a suit for declaratory relief to determine the enforceability of any of the terms of this Declaration.

14.4. **Equity.** Builder acknowledges that Builder's Default under this Declaration or the other Development Documents may cause Declarant to suffer material injury or damage not compensable in money and that Declarant shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the terms of this Declaration, or bring an action for an injunction to enjoin the continuance of any such breach or Default.

14.5. **Additional Lien.** Declarant shall have the right to impose an additional lien or liens upon the Burdened Property remaining subject to the Declaration in a comparable form containing similar rights, obligations and benefits to Declarant as the secured party and to foreclose such lien or liens in accordance with the provisions of the Utah law applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by

law. Declarant's rights to impose liens upon the Burdened Property pursuant to this Section, are subordinate to any loan to which Declarant has or is obligated to subordinate.

14.6. Release of Residence/Community Facilities and Public Property.

Declarant may release any portion of the Burdened Property from this Declaration at any time and for any reason without the approval of Builder. A Residence shall be automatically released from the encumbrance of this Declaration upon the Close of Escrow for such Residence by Builder (but not upon the sale of one or more Residences to any person or entity for resale to the public). Subject to the foregoing, Declarant shall also, upon written request from Builder, so release any Community Facilities concurrently with the conveyance of fee title thereof to the Master Association or any Sub-Association.

14.7. Recording of Release. Any non-automatic release of a Residence or any other portion of the Burdened Property from the lien of this Declaration must be executed by Declarant and upon recordation in the County's official records, the Residence or other property described in such release shall no longer be deemed a part of the Burdened Property and shall be free of all of the terms and provisions of this Declaration.

15. Indemnity and Waiver.

15.1. Indemnity. To the maximum extent permitted by law, Builder shall indemnify and defend and hold Declarant and its partners, directors, officers, employees, members, agents, assignees, shareholders, affiliates and representatives (collectively, "**Indemnitees**") harmless from any loss, damage (including consequential and punitive damages), cost (including clean up costs), penalty, fine, expenses, injury or claim of any kind or character to any person or property arising from, caused by or relating to, with or without fault, (i) the ownership, use, development or sale of the Burdened Property or any portion thereof, including the construction and sale of Residences thereon; (ii) any defect in grading or defect in the design or construction of or material in any structure or other improvement constructed on the Burdened Property; (iii) the condition of the Burdened Property including a defect in soil or finished lots, or in the preparation of soils or in the design and accomplishment of grading on the Burdened Property (including any grading performed on the Burdened Property prior to the "**Effective Date**" under the Sale Agreement); (iv) the presence, release, use, discharge, storage and disposal of any Hazardous Substance on or near the soil or groundwater in the Burdened Property, whether known or unknown, and whether resulting from occurrence prior to the close of escrow for Builder acquisition of the Burdened Property; (v) any act or omission of Builder, its partners, members, officers, directors, shareholder members, partners, employees, agents, representatives and affiliates ("**Builder Representatives**"); (vi) an accident or casualty on the Burdened Property after Builder's first entry thereon; (vii) any representation by Builder or any of Builder's Representatives; (viii) a violation or alleged violation of any law, regulation, permit, judgment or license; (ix) slope erosion, sloughing or failure or subsurface geological groundwater condition on, adjacent or near the Burdened Property, including the effect of such conditions on the Burdened Property and Residences constructed on the Burdened Property as well as the affect of such conditions on Builder's development, use and sale of the Burdened Property; (x) the application of principles of strict liability with respect to any act or omission of Builder, Builder's Representatives or Declarant or the Indemnitees in connection with the Burdened Property; (xi) the presence of any meal catering truck and/or personnel on or near the

Burdened Property; (xii) any other cause whatsoever in connection with the Burdened Property, Builder's use of the Burdened Property or any other property or Builder's performance under this Declaration and the Development Documents; or (xiii) the negligence or willfulness conduct (including the breach of any representations or warranties hereunder) of Builder or any of Builder's Representatives in the development, construction, grading or other work performed off the Burdened Property by Builder or Builder's Representatives or otherwise in connection with the development of the Burdened Property or any defect in such work.

15.2. **Builder Release.** As a material consideration to Declarant in selling the Burdened Property to Builder, Builder releases Declarant and the Indemnitees from and waives on its behalf, and on behalf of its successors and assigns, all claims, demands and causes of action against Declarant and the Indemnitees for any loss, liability, damage, cost, expense, injury or claim including attorneys' fees and costs of court related to the Burdened Property including the items described in Section 15.1 above (collectively, "**Losses**"). The foregoing release and waiver and the indemnity and obligation to defend and hold harmless under Section 15.1, (i) shall apply to any claim or action brought by a private party or by a Governmental Authority, or any law, statute, ordinance or regulation now or hereinafter in effect, (ii) is intended to apply with respect to all Losses before or after the conveyance of all Residences on the Burdened Property; and (iii) is intended to apply to Losses incurred by Declarant or any Indemnitee or their property as well as by Builder or any third parties and their property. With respect to design, construction methods, materials, locations and other matters for which Declarant has given or will give its approval, recommendation or other direction, the foregoing release and waiver and the indemnity and obligation to defend and hold harmless under Section 15.1 shall apply irrespective of Declarant's approval, recommendation or other direction.

15.3. **Construction Entities.** Notwithstanding the above, Builder may, in its reasonable discretion maintain a lawsuit or other action against consultants, experts, contractors or design professionals hired by Declarant in connection with work to be performed on the Burdened Property pursuant to a written contract ("**Construction Entities**") to obtain damages for Losses suffered as a result of Builder's indemnification and release of Declarant herein, to the extent caused by such Construction Entities. In that regard, to the extent it possesses and may assign same, Declarant hereby nonexclusively assigns its rights and interests in and to any relevant contracts or subcontracts, for the limited purposes stated herein, without any obligation by Declarant to participate in such lawsuit or action, as a party or otherwise, and without any responsibility, warranty, representation or liability for any outcome thereof or damages awarded therein.

16. **Survival of Covenants.** All of Builder's indemnification, defense and hold harmless covenants in any of the Development Documents, including the covenants in Section 15 and Section 12.2 hereof, shall survive the conveyance of all or any of the Residences built on the Burdened Property and shall be binding on Builder until the last to occur of (i) such date as action against Declarant is absolutely barred by the applicable statute of limitations or (ii) such date as any claim or action for which indemnification may be claimed under said Section is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Builder and Declarant is reimbursed by Builder for any amounts paid by Declarant in compromise thereof or upon a judgment or award thereon and in defense of such action or

claim, including attorneys' fees. Neither payment nor a finding of liability or of any obligation to defend shall be a condition precedent to the enforcement of any indemnity or duty to defend provision herein or elsewhere in any Development Document, and if any action or proceeding shall be brought against any Indemnitee alleging any fact or circumstance for which Builder is to provide indemnification, Builder, upon notice from Declarant, shall defend the same at Builder's expense by counsel approved in writing by Declarant. Builder waives as defenses to its obligations hereunder the pleading or defense of any statute of limitations.

17. **Miscellaneous.**

17.1. **Waiver.** No waiver by Declarant of a Default of any of the terms of this Declaration by Builder and no delay or failure to enforce any of the terms of this Declaration shall be a waiver of or shall affect a Default other than as specified in such waiver. The consent or approval by Declarant to or of any act by Builder requiring Declarant's consent or approval shall not be deemed to waive or render unnecessary Declarant's consent or approval to or of any subsequent similar acts by Builder. The accrual of interest on amounts due Declarant hereunder shall not waive any default by Builder which resulted in the expenditure of any amount by Declarant.

17.2. **Rights of Lenders.** The breach of any of the covenants, conditions or restrictions contained herein ("**Restrictions**") shall not defeat, invalidate or impair the obligation or priority of any mortgage or deed of trust now or hereinafter executed in constituting a lien on the Burdened Property or any portion thereof, which is made in good faith and for value; provided, however, that any party, including the holder of the mortgage or deed of trust, who acquires title to the Burdened Property or any portion thereof, to private or judicial foreclosure, trustee sale or deed in lieu of foreclosure ("**Foreclosure Purchaser**"), and all successors and assigns of the Foreclosure Purchaser, take title subject to all the Restrictions. Such Foreclosure Purchaser shall not be liable for damages arising from the breach of any of the Restrictions performed or which were to have been performed prior to the time Foreclosure Purchaser acquires title to all or any portion of the Burdened Property, and Foreclosure Purchaser shall have until the later of (i) six (6) months after acquisition of title to or any portion of the Burdened Property, or (ii) the times reasonably required under the Schedules described in Section 4.5 and elsewhere in the Development Documents to commence or to continue construction of Improvements required under the Development Documents, and/or to repair or replace any Improvements which were constructed in violation of any of the requirements under the Development Documents. The Schedules and time limitations contained herein and in the Development Documents for construction or Improvements, shall be extended as reasonably necessary to be consistent with the foregoing sentence. Any Improvements commenced or continued by Foreclosure Purchaser after acquisition of title to all or any portion of the Burdened Property, shall be diligently pursued once commenced.

17.3. **Assignment by Declarant.** Declarant may assign its rights and duties hereunder at any time without the consent of Builder to any person or entity to whom Declarant may transfer all or any part of the Benefited Property and who, as a part of such transfer, succeeds to Declarant's rights as the "**Declarant**" under the Master Declaration.

17.4. **Termination or Amendment.** Except as provided in Section 14.5 regarding additions or deletions of Benefited Property and Section 14.6 regarding Releases of the Burdened Property, the terms of this Declaration may be validly terminated, amended, modified or extended only by recordation of a proper instrument to that effect duly executed and acknowledged by Declarant and, in the case of amendments, modifications or extensions, Builder.

17.5. **Captions.** The captions used herein are for convenience only, are not part of this Declaration, and do not in any way limit or amplify the scope or intent of the terms and provisions hereof.

17.6. **Invalidity of a Provision.** If any provision of this Declaration shall be adjudged by a court of competent jurisdiction to be void, invalid, illegal or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Declaration, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Declaration as a whole, but only to the extent that the application or enforcement of such remaining provisions would not be inconsistent with the intent and purposes of this Declaration.

17.7. **Notices.** All notices, consents, waivers, demands, requests or other instruments or communications provided for under this Declaration or by law to be served on or to be given to either Declarant or Builder shall be in writing, signed by the party giving the same, and shall be given either by personal delivery or by depositing such notice in the United States mail, certified, with return receipt requested, postage prepaid and addressed as follows:

DECLARANT:

Mountain Home Development Corporation
1520 West 3600 North
Lehi, Utah, UT 84043
Attention: Mr. Stephen L. Christensen
Tel: (801) 766-3699
Fax: (801) 766-3698

With a Copy to:

Mark E. Rinehart, Esq.
Wingo & Rinehart
150 North Main Street, Suite 202
Bountiful, UT 84010
Tel: (801) 294-2800
Fax: (801) 295-6600

BUILDER:

Innovative Communities, Inc.

200 East Washington Ave., Suite 100 Escondido, CA 92025 Tel: 760-839-8238

Either Party may, by written notice to the other, designate a different address which shall be substituted for the one specified above. If any notice or other document shall be sent by certified mail as set forth above, it shall be deemed to have been effectively served or delivered seventy-two (72) hours following the deposit of such notice in the United States mail in the manner set forth above. If any notice or other document shall be sent by facsimile, it shall be marked "***Rush - please deliver immediately***" and shall be deemed to have been served or delivered upon electronic confirmation of transmission; provided that it is confirmed by a follow-up notice using approved methods hereunder within seventy-two (72) hours and provided further that subject to the foregoing if such transmission occurs on a weekend or holiday or after 5:00 p.m. on a weekday, it shall be deemed to have been received at 8:00 a.m. on the immediately following business day.

17.8. **Binding Effect.** It is the intent of the Parties that the covenants, conditions, restrictions and agreements imposed by this Declaration shall encumber and burden only the Burdened Property and shall not in any manner burden or be binding upon the Benefited Property, but shall inure to the benefit of and be enforceable by Declarant (or its successor) as the owner of the Benefited Property. The terms and conditions of this Declaration shall run and pass with each and every portion of the Burdened Property and shall be binding upon Builder, its successive owners and assigns, and shall benefit the Benefited Property. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Burdened Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, condition, right and limitation contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in the Burdened Property.

17.9. **Term.** The provisions of this Declaration are covenants running with the Burdened Property and equitable servitudes, as the case may be, and shall be binding upon all persons acquiring an interest in the Burdened Property. Notwithstanding the foregoing, unless so amended by the Declarant this Declaration shall terminate and be of no further force and effect fifteen (15) years after the date of recordation of this Declaration.

17.10. **Further Assurances.** Each of the Parties shall execute and deliver all additional papers, documents and other assurances, and shall do all acts and things reasonably necessary in connection with the performance of its obligations hereunder and to carry out the intent of the Parties.

17.11. **Time of Essence/Unavoidable Delay.** Time is of the essence of each provision of this Declaration of which time is an element. Any reference in this Declaration to time for performance of obligations or to elapsed time shall mean consecutive calendar days, months or years, as applicable, unless otherwise explicitly indicated herein. An "***Unavoidable Delay***" is a delay or stoppage in the performance of obligations of Builder established in this Development Declaration, which is caused by any of the following: (i) acts of God, war, inclement weather, inability to obtain labor or materials or reasonable substitutes therefor,

strikes, lockouts, or (ii) moratoria, regulations or controls imposed by Governmental Authorities. When Builder gives written notice to Declarant within fifteen (15) business days after an event defined as an Unavoidable Delay occurs, the time periods established in this Development Declaration for performance by Builder shall be extended for a period equal to the period of the Unavoidable Delay, up to an aggregate of two (2) months. Unavoidable Delay does not extend any time period set for Builder to make payments to Declarant or any time period set for Builder to perform any act rendered difficult solely because of the financial condition of Builder. Builder's inability to obtain construction or permanent financing for development of the Burdened Property is not an Unavoidable Delay.

17.12. **Attorneys' Fees.** In the event any action or proceeding is instituted to enforce any provision of this Declaration, the prevailing Party shall be entitled to recover such amounts as the court may judge to be reasonable as costs incurred in such action, including court costs and attorneys' fees.

17.13. **Payments.** The amounts which are due and owing to Declarant or Builder pursuant to the various terms of this Declaration or any other Development Documents shall be paid as specified. If any of these amounts are not paid when due, such amounts shall bear interest as specified in the particular section of the Development Document requiring such payment or, if not so specified, then at the maximum rate then permitted by law.

17.14. **Confidentiality.** Except as necessary to effect the transactions ("*Transactions*") contemplated by this Agreement, Declarant will hold in strictest confidence, and will at no time, either during the pendency of the Transactions or after the Closing Date or termination of this Agreement, use for itself or others, or disclose to others, directly or indirectly, any feasibility studies or other information or matters however obtained from or through the other (collectively, "*Information*") in any way relating to the Transactions, Development Documents or feasibility studies all of which Information shall be deemed to be proprietary and confidential. Necessary disclosures and communications of Information shall include those (i) with prospective investors, partners, and other types of co-venturers, attorneys, accountants, lenders, the title company, escrow holder, architects, engineers, contractors and other consultants in connection with the acquisition, development and sale of the Property and (ii) required by law. Upon request by Seller, Declarant will immediately return to Seller all Information and all copies of documents and computer files or any other materials relating to or constituting the Information.

17.15. **Disputes.** If any dispute arises between the Parties under this Agreement, the Parties shall first attempt to settle the dispute by mediation.

17.16. **Governing Law.** This Declaration shall be governed by and construed under the laws of the State of Utah.

17.17. **Consents of Declarant.** Except as otherwise provided herein, any consent or approval of Declarant required herein shall be provided in writing and shall be at Declarant's sole and exclusive discretion.

17.18. **Counterparts.** This Declaration may be executed in counterparts, each of which shall be deemed an original, but all of which, together shall be construed as one instrument.

Date: 10/7/02

DECLARANT:

MOUNTAIN HOME DEVELOPMENT CORPORATION, a Utah corporation

By: [Signature]

Name: Stephen L. Christensen

Title: President

Date: 10/1/02

BUILDER:

INNOVATIVE COMMUNITIES, INC.

By: [Signature]

Name: Thomas F. Dobson

Title: CEO

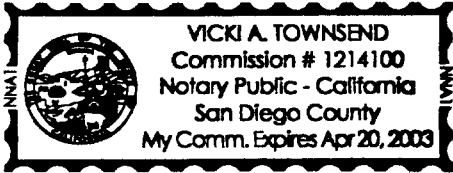
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of San Diego } ss.

On October 1, 2002, before me, Vicki A. Townsend, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Thomas P. Dobron
Name(s) of Signer(s)

personally known to me
 ~~proved to me on the basis of satisfactory evidence~~

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place Notary Seal Above

WITNESS my hand and official seal.

Vicki A. Townsend
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration of Development Covenants, Conditions and Restrictions Traverse Mountain Pcd I-5
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

STATE OF UTAH)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__ by _____.

WITNESS my hand and official seal.

Notary Public

(SEAL)

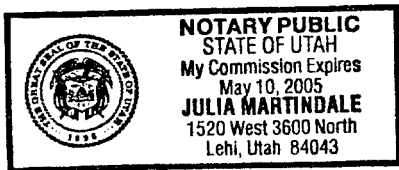
STATE OF UTAH)
) ss.
COUNTY OF Wasatch)

The foregoing instrument was acknowledged before me this 7th day of October, 2002 by STEPHEN L. CHRISTENSEN, as President of Mountain Home Development Corporation.

WITNESS my hand and official seal.

Julia Martindale
Notary Public

(SEAL)



DEVELOPMENT DECLARATION
EXHIBIT "1"
LEGAL DESCRIPTION OF THE BURDENED PROPERTY

All that certain real property located in the City of Lehi, Utah County, Utah, described as follows:

ENT 6142:2003 PG 37 of 46

Plat A - Parcel 4

BEGINNING at a point NORTH 704.36 feet and WEST 2736.24 feet from the Southeast corner of Section 30, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence North $57^{\circ}14'11''$ West, 479.34 feet; thence South $35^{\circ}20'42''$ West, 564.21 feet to a point on a non-tangent curve to the right having a radius of 953.24 feet; thence westerly along said curve 495.53 feet (chord bears North $41^{\circ}11'28''$ West, 489.97 feet) through a central angle of $29^{\circ}47'04''$; thence North $26^{\circ}17'56''$ West, 668.78 feet; thence North $49^{\circ}48'11''$ East, 711.98 feet; thence North $49^{\circ}41'31''$ East, 35.31 feet; thence South $50^{\circ}23'45''$ East, 109.31 feet; thence South $41^{\circ}27'45''$ East, 236.78 feet; ; thence South $44^{\circ}49'12''$ East, 236.66 feet; ; thence South $46^{\circ}00'25''$ East, 139.50feet; ; thence South $52^{\circ}05'32''$ East, 653.47 feet; ; thence South $36^{\circ}10'44''$ West, 416.83 feet to the POINT OF BEGINNING.

PARCEL CONTAINS 25.99 ACRES.

DEVELOPMENT DECLARATION
EXHIBIT "2"
LEGAL DESCRIPTION OF BENEFITED PROPERTY

All that certain real property located in the City of Lehi, Utah County, Utah, described as follows:

Plat - A

A Subdivision lying and situate in Section 25, Township 4 South, Range 1 West, and Sections 30 & 31, Township 4 South, Range 1 East, Salt Lake Base and Meridian, Lehi City, Utah County, Utah. Basis of Bearing for subject parcel being North $00^{\circ}17'58''$ West 2648.83 feet (measured) between the Utah County brass cap monuments monumentalizing the East line of the Southeast Quarter of said Section 30. Subject parcel being more particularly described as follows:

Beginning at a point on the Southerly right of way line of the Provo Reservoir Canal, (A.K.A. the "Murdock Canal"), as shown on that certain record of survey certified by John B. Stahl, Cornerstone Professional Land Surveys, project number PRW9601, filed as survey number 98-186 in the office of the Utah County Surveyor, and a point on the Northerly right of way line of State Road 92, said point being located SOUTH 1034.33 feet and WEST 1502.13 feet from said Southeast corner of Section 30; thence the following 3 (three) courses coincident with said road right of way (1) South $79^{\circ}43'26''$ West, 73.23 feet to a point of curvature; (2) Westerly 777.29 feet along the arc of a 5646.95 foot radius curve to the right (center bears North $10^{\circ}16'34''$ West) thru a central angle of $07^{\circ}53'12''$ to a point of tangency; (3) South $87^{\circ}36'38''$ West, 2052.76 feet to a point on the Easterly line of a 200.00 foot Rail Road right of way; Thence North $41^{\circ}37'36''$ West, 100.00 feet coincident with said right of way; Thence North $33^{\circ}07'41''$ East, 1563.97 feet to a point on the Southerly right of way line of said Provo Reservoir Canal; Thence North $06^{\circ}05'10''$ East, 90.07 feet to a point on the Northerly right of way of said canal and a point on the arc of a non-tangent curve; Thence the following 45 (forty five) courses coincident with said canal right of way (1) Northwesterly 76.77 feet along the arc of a 165.00 foot radius curve to the right (center bears North $08^{\circ}24'42''$ East) thru a central angle of $26^{\circ}39'30''$ to a point of tangency; (2) North $54^{\circ}55'48''$ West 104.50 feet to a point of curvature; (3) Northwesterly 104.08 feet along the arc of a 435.00 foot radius curve to the left (center bears South $35^{\circ}04'12''$ West) thru a central angle of $13^{\circ}42'30''$ to a point of tangency; (4) North $68^{\circ}38'18''$ West 126.90 feet to a point of curvature; (5) Northwesterly 98.48 feet along the arc of a 365.00 foot radius curve to the right (center bears North $21^{\circ}21'42''$ East) thru a central angle of $15^{\circ}27'30''$ to a point of tangency; (6) North $53^{\circ}10'48''$ West 63.40 feet to a point of curvature; (7) Northwesterly 101.48 feet along the arc of a 965.00 foot radius curve to the right (center bears North $36^{\circ}49'12''$ East) thru a central angle of $06^{\circ}01'30''$ to a point of tangency; (8) North $47^{\circ}09'18''$ West 150.80 feet to a point of curvature; (9) Westerly 109.78 feet along the arc of a 135.00 foot radius curve to the left (center bears South $42^{\circ}50'42''$ West) thru a central angle of $46^{\circ}35'30''$ to a point of tangency; (10) South $86^{\circ}15'12''$ West 5.30 feet to a point of curvature; (11) Northwesterly 82.36 feet along the arc of a 165.00 foot radius curve to the right (center bears North $03^{\circ}44'48''$ West) thru a central angle of $25^{\circ}36'00''$ to a point of tangency; (12) North $65^{\circ}08'48''$ West 345.80 feet to a point of curvature; (13) Northwesterly 52.87 feet along the arc of a 115.00 foot radius curve to the right (center bears North $24^{\circ}51'12''$ East) thru a central angle of $26^{\circ}20'30''$ to a point of tangency; (14) North $38^{\circ}48'18''$ West 234.02 feet; (15) North $51^{\circ}11'42''$ East 15.00 feet; (16) North $38^{\circ}48'18''$ West 541.98 feet to a point of curvature; (17) Southwesterly 168.75 feet along the arc of a 150.00 foot radius curve to the left (center bears South $51^{\circ}11'42''$ West) thru a central angle of $64^{\circ}27'30''$ to a point of

tangency; (18) South 76°44'12" West 185.80 feet; (19) South 13°15'48" East 10.00 feet along a radial line to a point on the arc of a 110.00 foot radius curve; (20) Northwesterly 69.00 feet along the arc of said 110.00 foot radius curve to the right (center bears North 13°15'48" West) thru a central angle of 35°56'30" to a point of tangency; (21) North 67°19'18" West 275.90 feet to a point of curvature; (22) Northwesterly 79.19 feet along the arc of a 185.00 foot radius curve to the right (center bears North 22°40'42" East) thru a central angle of 24°31'30" to a point of tangency; (23) North 42°47'48" West 6.40 feet to a point of curvature; (24) Northwesterly 85.56 feet along the arc of a 185.00 foot radius curve to the right (center bears North 47°12'12" East) thru a central angle of 26°30'00" to a point of tangency; (25) North 16°17'48" West 4.60 feet to a point on the arc of a 360.00 foot radius curve; (26) Northwesterly 95.35 feet along the arc of said 360.00 foot radius curve to the right (center bears North 73°42'12" East) thru a central angle of 15°10'30" to a point; (27) North 01°07'18" West 84.40 feet to a point on the arc of a 200.00 foot radius curve; (28) Northwesterly 152.05 feet along the arc of said 200.00 foot radius curve to the left (center bears South 88°52'42" West) thru a central angle of 43°33'30" to a point; (29) North 44°40'48" West 136.10 feet to a point of curvature; (30) Southwesterly 171.64 feet along the arc of a 120.00 foot radius curve to the left (center bears South 45°19'12" West) thru a central angle of 81°57'00" to a point; (31) South 53°22'12" West 205.02 feet; (32) South 36°37'48" East 5.00 feet; (33) South 53°22'12" West 104.68 feet to a point of curvature; (34) Northwesterly 54.47 feet along the arc of a 65.00 foot radius curve to the right (center bears North 36°37'48" West) thru a central angle of 48°01'00" to a point of tangency; (35) North 78°36'48" West 45.80 feet to a point of curvature; (36) Northwesterly 253.93 feet along the arc of a 490.00 foot radius curve to the right (center bears North 11°23'12" East) thru a central angle of 29°41'30" to a point of tangency; (37) North 48°55'18" West 323.80 feet to a point on the arc of a 65.00 foot radius curve; (38) Northeasterly 137.52 feet along the arc of said 65.00 foot radius curve to the right (center bears North 41°04'42" East) thru a central angle of 121°13'00" to a point of tangency; (39) North 72°17'42" East 5.00 feet to a point of curvature; (40) Northeasterly 82.78 feet along the arc of said 335.00 foot radius curve to the left (center bears North 17°42'18" West) thru a central angle of 14°09'30" to a point; (41) North 58°08'12" East 45.30 feet to a point of curvature; (42) Northeasterly 116.75 feet along the arc of a 135.00 foot radius curve to the left (center bears North 31°51'48" West) thru a central angle of 49°33'01" to a point on a radial line; (43) South 81°24'48" East 20.00 feet (44) North 08°35'12" East 340.36 feet; (45) North 89°46'48" West 325.57 feet; Thence North 58°14'01" East 1157.87 feet; Thence North 32°03'41" West, 75.45 feet; Thence North 56°59'58" East, 80.01 feet to a point on the arc of a 10.00 foot radius curve; Thence Southeasterly 15.71 feet along the arc of said 10.00 foot radius curve to the Left (center bears North 57°56'19" East) thru a central angle of 90°00'00" to a point; Thence South 44°30'03" East 69.63 feet; Thence North 57°56'19" East 344.03 feet to a point of curvature; Thence Southeasterly 221.35 feet along the arc of a 1171.00 foot radius curve to the right (center bears South 32°03'41" East) thru a central angle of 10°49'49" to a point; Thence Southeasterly 511.63 feet along the arc of a 636.53 foot radius curve to the left (center bears North 73°06'26" East) thru a central angle of 46°03'11"; Thence South 62°51'52" East 695.15 feet; Thence South 27°08'08" West 63.34 feet; Thence South 57°06'41" East 145.56 feet; Thence North 37°07'11" East 504.20 feet; Thence South 41°58'06" East 963.04 feet; Thence

South 88°22'28" West 129.07 feet; Thence South 82°36'40" West 82.57 feet; Thence South 35°00'51" West 51.69 feet; Thence South 12°46'27" East 144.88 feet; Thence South 25°35'38" East 374.51 feet; Thence South 40°24'50" East 342.59 feet; Thence North 49°41'31" East 35.31 feet; Thence South 50°23'45" East 109.31 feet; Thence South 41°27'45" East 236.78 feet; Thence South 44°49'12" East 236.66 feet; Thence South 46°00'25" East 139.50 feet; Thence South 52°05'32" East 653.47 feet; Thence South 36°10'44" West 416.83 feet; Thence South 57°14'11" East 326.56 feet; Thence South 33°30'07" West 446.38 feet; Thence South 33°30'07" West 81.21 feet; Thence South 66°23'12" East 1149.18 feet; Thence South 18°47'01" West 439.11 feet; Thence South 53°44'18" East 360.75 feet to a point on the arc of a 755.87 foot radius curve; Thence Southeasterly 58.25 feet along the arc of said 755.87 foot radius curve to the left (center bears North 36°15'37" East) thru a central angle of 04°24'56" to the point of beginning.

Less and Excepting that portion lying within the bounds of the Provo Reservoir Canal Right of Way, as physically located by that certain record of survey certified by John B. Stahl and filed as survey number 98-186 in the office of the Utah County Surveyor, and as deeded to the United States of America and Provo Reservoir Company by the following documents: Warranty Deed, recorded June 07, 1939, as Entry Number 5657, in Book 348, at Page 245 of Official Records; and Land Purchase Contract, recorded September 15, 1945, as entry Number 7688, in Book 484, at Page 266 of Official Records, and Warranty Deed recorded July 23, 1947, as Entry Number 8697, in Book 481, at Page 545 of Official Records.

PARCEL CONTAINS 250.96 ACRES

DEVELOPMENT DECLARATION
EXHIBIT "3"
PRODUCT RECOMMENDATION
Plat Planning Area

- A. Generic Concept/Density:
- B. Market Segments Served:
- C. Recreation or Community
Amenity Required:

Plan No.	1	2	3
----------	---	---	---

- Average Price
(Incl. lot premiums)
- Square Footage
- Price Value Ratio
- Elevations
- Bedrooms
- Baths
- Parking
- Special Rooms
- Design Emphasis
- Market Segments
- Direct Construction

Cost: \$ _____/square foot.

I-5
DEVELOPMENT DECLARATION
EXHIBIT "3"
PRODUCT RECOMMENDATION
Plat Planning Area

- A. Generic Concept/Density:
- B. Market Segments Served:
- C. Recreation or Community
Amenity Required:

Plan No.	1	2	3
Average Price (Incl. lot premiums)	197,000	217,000	237,000
Square Footage	1600	1900	2200
Price Value Ratio	123.13	114.21	107.73
Elevations	3	3	3
Bedrooms	3	4	4
Baths	2	2 1/2	3
Parking	2	2	2
Special Rooms			
Design Emphasis			
Market Segments			
Direct Construction			

*In Compliance with TRAVERSE guidelines
MOVE-UP FAMILY*

Cost: \$52.50 square foot.

DEVELOPMENT DECLARATION
EXHIBIT "4"
DESCRIPTION OF ADDITIONAL BUILDER'S IMPROVEMENTS

Landscaping. The landscaping, irrigation and other improvements to be installed pursuant to this Section 1 shall (i) be installed in accordance with the Landscape Plans furnished by Declarant, at Declarant's cost for all improvements that are required as part of the approved Final Plat Map, and at Builder's cost for any improvements not required as part of the approved Final Plat Map, including, but not limited to, Parks, Common areas, Perimeter graded slopes, individual Residence landscaping, Condominium complex landscaping and other such improvements, and (ii) in the case of improvements not performed by Declarant as set forth in subsection (i) above, be inspected and approved in writing by Declarant prior to installation.

The areas to be encompassed by such Landscape Plans shall be determined in Declarant's reasonable discretion. Notwithstanding the fact that Declarant is furnishing said Landscape Plans, Builder shall be solely responsible for installing the landscape improvements shown on such plans (including the cost of installation supervision by the Landscape Architect, either as a part of Builder's Improvements or as a part of Builder's in-Plat improvements).

The Builder's improvements specified in this paragraph 1 shall be completed prior to or concurrently with the earlier to occur of (1) completion of the first phase 1 residence, or (2) completion of model construction on the burdened property.

Irrigation System. The irrigation system to be installed by Builder within the common areas that are to be conveyed to the Master Association or a subassociation shall be connected to the central system for the Project ("*Central System*"). Connection to the Central System will require installation, testing and certification of proper operation of the Central System specific components and requirements. Builder shall perform all testing and certification of system as reasonably required by Declarant for Master Association, subassociation or governmental acceptance. Central System compatibility is in addition to any and all other equipment requirements, installation procedures and operational characteristics necessary for the basic irrigation system for the common areas that are to be conveyed to the Master Association or a subassociation, as specified in the plans furnished or approved by Declarant.

Builder Utilities. Builder must ensure that Builder's utility plans, including dry utility plans, and installation do not conflict or interfere with Declarant's landscape or other plans or installation.

Slope Stabilization. All slopes visible from streets and public areas shall be landscaped after grading for erosion control in accordance with landscape plans approved by Traverse Mountain.

Paving or soil cementing of any slope is prohibited except for drainage crossings.

Interior Slope Planting. All interior slopes that will not be maintained by the Master Association and are required by the county to be planted, are to be designed and planted by the Guest Builder. The landscape palette chosen should reinforce the village character and architectural theme of the adjacent home while remaining within the scale of the yard. Each slope is to be planted and irrigated based upon the criteria set forth in the Design Guidelines for Landscaping.

DEVELOPMENT DECLARATION
EXHIBIT "5"
DESCRIPTION OR DEPICTION OF MASTER ASSOCIATION PROPERTIES IN THE
BURDENED PROPERTY

Not Applicable