

## Declaration of Easements, Covenants, Conditions and Restrictions of Spanish Trails Plat C Planned Residential Development

This declaration is made by DJ Elite Development, as Master Developer and SF West Land LLC, as Developer, as Limited Liability Companies, Licensed in the State of Utah, hereinafter referred to as "Declarant" this 7<sup>th</sup> day of August, 2008.

WITNESSETH:

WHEREAS, Declarant is the owner and/or representative of the following described real property located in Spanish Fork, County of Utah, State of Utah:

See Exhibit "A" attached hereto and made a part hereof; and property which is the subject of this declaration; and previously undeveloped land designated and known as Spanish Trails PD (Planned Development) the plat thereof has been presented to the Spanish Fork City Planning commission, City Council and Mayor for approval as a Planned Development.

NOW THEREFORE, Declarant hereby declares that all the lots shown on the subdivision plat of Spanish Trails PRD shall be held, sold and conveyed subject to the following easements, covenants, conditions and restrictions which are for the purpose of protecting conditions and restrictions which are for the purpose of protecting the value and desirability of and which shall run with, the real property described above and shall be binding on all parties having any right, title or interest described properties or any part thereof, their heirs, successors and assigns, and shall inure the benefit of each owner thereof.

### ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the Spanish Trails Homeowners Association, its successors and assigns.

Section 2. "Board" shall mean the Board of Trustees of the Association.

Section 3. "Common Area" shall mean all property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is set forth and designated as such on the recorded subdivision map.

Section 4. "Declarant" shall mean and refer to DJ Elite Development, as Master Developer and/or SF West Land LLC, as Developer, its successors and/or assigns.

Section 5. "Limited Common Area: shall mean and refer to that portion of the common area shown on the subdivision map as "Limited Common Area". Such Limited Common Areas are reserved for the exclusive use of the particular Lot located immediately in front of and/or behind the limited Common Area as designated on the subdivision map.

Section 6. "Lot: shall mean and refer to any plot of land designated by Unit number, Residence, Town home, or Condo and shown as "Private Area" on the subdivision map of the Properties.

Section 7. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, and contract purchaser of any such Lot or Lots, but excluding those having such fee interest merely as security for the performance of an obligation.

Section 8. "Properties" shall mean and refer to that certain property described on Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 9. "Unit" shall mean a structure which is designated and intended for use as a single family residence, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit and designated and designed to serve only that Unit.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

(a) The right of the Association to charge a reasonable admission and other fees for use of any recreational facilities situated upon the Common Area;

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposed and subject to such conditions as may be agreed to by the members. No such agreeing to such dedication or transfers signed by two-thirds of each class of members has been recorded. As found upon the recorded plat map, there are certain areas of the common areas (front, side and back of all lots) that have been designated as easements for public utilities. Certain facilities of these easements by public utilities may not be found on all lots but such facilities may benefit multiple lots. The exact placement of these facilities is determined by the declarant and the public utilities. All owners acknowledge their enjoyment of the common areas is subject to the usage of these easements by the declarant, public utilities, the homeowners association and any public agency. Any existing changes of easements must be approved by the declarant.

(d) Where applicable, the owner of a town home or condo unit shall have an easement over an adjoining town home or condo unit in order to repair and maintain the exterior surface of the structural walls of the residence. Party walls and fences which are located on a property line or which serve as the effective boundary between two or more units other that (residential walls) shall be maintained by the benefitted owner.

(e) Some town home units will include Exclusive Use Common Area. Each exclusive use common area constitutes an exclusive easement appurtenant to its respective town home unit. This easement is located over a portion of an adjoining lot, and is included within the private yard area

of its respective town home unit. Because exclusive use common area is an easement over an adjoining lot (and not fee ownership), certain restrictions will apply to the type of an improvements which may be made.

(f) any grievance between two or more lot owners will be heard by the Associated Board of Directors within sixty (60) days of the written grievance received by the appointed Association Secretary. The Board of Directors will give 20 minutes to each side to voice their grievance and 5 minutes each for a rebuttal. The Board will then vote by majority present with the outcome of the vote binding upon the parties dissenting.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a home on a lot is subject to assessments & HOA fees which Owner becomes an automatic Class A member of the Spanish Trails HOA Association. The Declarant and/or its assigns, which is exempt from HOA fees and assessments on vacant lots, shall still have voting rights in the Spanish Trails HOA further defined as Class B membership rights in Article III, Section 2. Class A Membership in the HOA shall be appurtenant to and may not be separated from Ownership of any Home and Lot which is subject to HOA fees and assessments.

Section 2. The Association shall have two classes of voting memberships:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to six votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the first to happen of any of the following events.

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) Upon surrender of Declarant's Class B membership in writing to the Association.

Upon the first to occur of the foregoing events, Declarant shall become a Class A member entitled to one vote for each lot owned.

### ARTICLE IV COVENANT FOR MAINTENANCE AND ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) mandatory monthly assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Spanish Trail PD and for the improvement and maintenance to the Common Area.

Section 3. Maximum Monthly Assessment. The maximum monthly assessment shall be \$50.00 per Lot. Each lot owner is obligated to pay all assessments and/or dues which may be levied by the Association against them and or/residence unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum monthly assessment may be increased each year not more than 5% above the maximum assessment for the previous year without the vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to Owner, the maximum monthly assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board may fix monthly assessment at an amount not in excess of the minimum.

(d) The monthly assessment will be paid by the 10<sup>th</sup> of each calendar month to the appointed secretary of the Association.

Section 4. Special Assessments for the Capital Improvements. In addition to the monthly assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of reconstruction, repair or replacement of a capital improvement upon the common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all members not less than 30 days and not more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be on half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. The Association will hold one annual meeting each calendar year to elect a Board of Directors, pass out financial statements, and conduct an open forum to discuss issues of resident owners.

Section 6. Uniform Rate of Assessment. Both monthly and special assessments must be fixed at a uniform rate for all Lots and May be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The monthly assessments provided for herein shall commence conveyance of the Common Area. The Board shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of each calendar year. Written notice of the monthly assessment shall be send every Owner subject thereto. The due dates shall be established by the Board. The Association shall upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 18 percent per annum. The Association may bring an action at law against the Owner personally obligated to the pay the same, or foreclose the lien against the property. Not Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinated to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment line. However, the sale or transfer any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Maintenance Responsibilities.

(a) All front yards, open side yards and rear yard green belt that is out side of the limited common area associated with each lot will be maintained by the Association.

(b) All limited common areas around each home as indicated on the recorded plats and remaining years (those not mentioned in subparagraph (a) above), must be maintained at least weekly by the Owner. The Owner may contract with a third part to maintain his yard, but any such contract will not relieve any such Owner from his responsibilities hereunder.

(c) All home, town home and condo exteriors must be will maintained and kept in good repair by the Owners.

(d) Landscaping, including trees, grass, shrubs, and sprinkler systems will be installed by the builder of the Units in the common areas in the front yards of all lots and units. Each individual owner will be responsible to landscape and install sprinkling systems in their rear and or limited common areas. Said landscaping will be competed within three hundred sixty (360) days after closing and taking occupancy of homes or units.

(e) The Declarant will decide location of mailboxes and will meet the standard of the United States Postal Service.

(f) All roofs will be a minimum of 25 year architectural grade asphalt shingle roofing. Maintenance, repairs and replacements will be the responsibility of each Owner. Declarant may not change the composition of roof material without the written approval of the architectural committee or HOA.

(g) R.V. storage is not planned for the development but additional guest parking is provided for as indicated on the recorded subdivision plat.

(h) The Spanish Trails Homeowners Association will carry the necessary insurance to cover the common area improvements and liability associated therewith. Each home, town home and condo owner will be responsible for providing homeowners insurance on their own home in the Planned Development, including but not limited to property, fire, casualty, earthquake, flood, and personal liability.

ARTICLE V  
ARCHITECTURAL CONTROL

Section 1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and

location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant.

Section 2. The initial architectural control committee shall consist of DJ Elite Development and Ken Harris, Architect, with DJ Elite Development having a 75 percent voting right and Ken Harris a 25 percent voting right.

Section 3. All homes constructed in the project will be of similar design and built by DJ Elite Development or as appointed by the Declarant, using the floor plans that are approved by the architectural control committee as exhibited in the development agreement between DJ Elite and Spanish Fork City. Each Unit will contain approximately 1000 to 2600 square feet, exclusive of open porches, garages and decks. Any variations from the approved floor plans must be accepted and approved by the architectural control committee. Each Unit will contain at least the following improvements:

- (a) At least one finished bedroom, 1 and ½ baths, kitchen, family room, laundry area and single carport.
- (b) Frame construction with brick, stucco, rock and/or combination exterior, with aluminum soffits and eaves. Eighty percent (80%) of front elevation, 60% of rear elevation, and 50% of side elevation shall be in stucco, brick, or rock finish.
- (c) A one car garage or greater built by the builder(s). Carports will be allowed in condo or cottage area only.
- (d) Finished main floor and partial finished upper floors and basements will be available only at the sole discretion of Declarant.
- (e) All homes, condos, and town homes will be designed and constructed by Declarant or its assignees and will comply with the Development Agreement between Declarant and Spanish Fork City.
- (f) Model Homes, town homes and condos will be constructed and professionally designed to show various decor ideas to personalize each residence. The Declarant may construct up to 8 models per phase of the PD.

## ARTICLE VI RESTRICTIVE USES

Section 1. No noxious or offensive activities shall be carried on upon any Lot or Unit. Activities shall not emit orders, dust, fumes, noise, vibration, smoke, electrical interference or similar detriments to normal residential use.

Section 2. No animals, livestock, or poultry of any kind shall be raised or kept on any Lot or in any Unit, except that dogs, cats and other domesticated household pets may be kept provided that they are not kept or maintained for commercial purposes. No pets may be kept in unreasonable numbers and the Board may establish rules and restrictions from time to time concerning specific breeds or types or sizes of dogs, cats or other domesticated household pets. Each pet shall be kept on a leash when outside. It is expected that owners will clean up after their pets. No pets will be allowed to stay outside residence overnight. City noise ordinance will be enforced.

Section 3. No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes or other similar vehicles shall be parked or stored on a semi-private or public street or right-of-way within the development for more than 24 consecutive hours. The intent of this provision is to keep the roadways within the development open for daily traffic and to avoid the unsafe and

unsightly condition of vehicles parked on the street for long periods of time. The Association and/or Declarant may enforce this provision by first giving notice to the Owner of the violation (or where Owner is not readily available or ascertainable, by giving notice in the form of a written request placed on the vehicle in question), and subsequently by causing the vehicle(s) or equipment parked on the street in violation of this provision to be towed away at the Owner's expense. None of the above-reference vehicles or equipment may be kept or stored on any Lot unless stored in a garage or assigned parking stall.

Section 4. All perimeter fencing must comply with Spanish Fork City ordinances and regulations as presently constituted. All fencing must be approved by the architectural committee. All maintenance, installation, repairs or replacements will be at the expense of the owner. All fencing will comply with Development Agreement between DJ Elite and Spanish Fork City.

Section 5. Swamp coolers will not be allowed, however an exemption can be applied for medical purposes. Swamp coolers must be placed on the back side of the roof so that no part of the cooler can be seen from the street in front of the Unit.

Section 6. No radio or short wave antennas will be allowed. All T.V. antennas must be placed on the back side of the roof so that no part of the antenna is visible from the street in front of the Unit. No satellite antenna systems (disks) may be placed or installed in the front or side yards. Any such antenna systems must be obscured from view from the street in front of the Unit.

Section 7. Home occupations are allowable if they comply strictly with Spanish Fork City regulations for residential zones. They shall be carried on entirely within the dwelling unit by the residents residing in the home. Home occupations are not permitted in garages, decks or accessory buildings. Signage or exterior displays are not permitted. Conducting activities or storing materials or products outside the dwelling unit is prohibited. These home businesses shall not generate or require additional parking than is available in any residential neighborhood.

Section 8. Not more than one family unit may be maintained in or on a Lot or Unit within the Spanish Trail project. With the exception that live-in help and family members, their spouses children, and grandparents will be permitted to occupy the premises with the Owner.

Section 9. The Association security, and all public utilities and facilities will be provided by local municipalities and agencies approved by local government agencies and the Association.

## ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so after. All easements, covenants, conditions, restrictions in this document shall be governed by the laws of the State of Utah.

Section 2. Severability. An invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Covenants Run With Land. This declaration and all the provisions hereof shall constitute covenants which run with and bind the land and shall be binding upon and shall inure to the benefit of Declarant, all parties who heretofore acquired or hereafter any interest in a Lot or Unit shall comply with, and all interests in all Lots or in the Common Areas, the respective

grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot or Unit shall comply with, and all interests in all Lots or in the Common areas shall be subject to, the terms of this declaration and the provisions of any rules, regulations, agreements, instruments, and terminations contemplated by this declaration. By acquiring any interest in a Lot or in the Common areas, the party acquiring such interest consents to and agrees to be bound by, each and every provision of this declaration.

Section 4. Amendment. Except as provided below, this declaration may be amended by, and only by, an instrument recorded in the Utah County Recorder's Office, which is executed by the Owners (including Declarant), who collectively hold at least 75% of the total outstanding votes in the Association. Such right of amendment shall be subject to the following qualification: No amendment to any provision of this declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), or to a mortgagee shall be accomplished or effected unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant or by such mortgagee, as the case may be.

Section 5. Annexation. Additional residential property and Common Area may be annexed to the Spanish Trails PD with the consent of the Declarant only.

Section 6. Duration. This declaration shall remain in effect for a minimum of five (5) years, or until such time as there is recorded in the Utah County Recorders Office, an instrument of termination which is executed by all of the Lot Owners and the Mortgagees of each and every Lot.

IN WITNESS WHEREOF, undersigned, being the Declarant herein, has hereunto set its hand this 7<sup>th</sup> day of AUGUST, 2008.

MASTER DEVELOPER DECLARANT

By DJ Elite Development LLC  
Vic Deauvono Mgr.  
Vic Deauvono

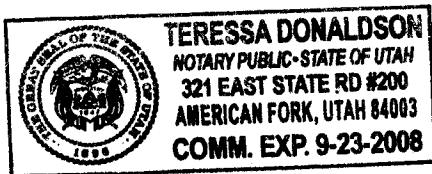
DEVELOPER DECLARANT

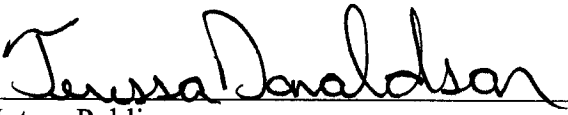
By SF WESTLAND, LLC  
Gordon, P. Jones, MANAGER



State of Utah  
County of Utah

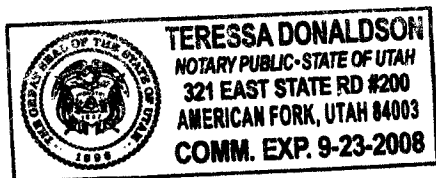
On August 7, 2008, personally appeared before me Gordon P. Jones, who being by me sworn did say that he are the member/manager of SF West Land, LLC, a Utah Limited Liability Company and that the within and foregoing instrument was signed on behalf of said Limited Liability Company by authority of its Articles of Organization and acknowledged to me that said Limited Liability Company executed the same.




  
Notary Public

State of Utah  
County of Utah

On August 7, 2008, personally appeared before me Vic Deauvono, who being by me sworn did say that he are the member/manager of DJ Elite Development, LLC, a Utah Limited Liability Company and that the within and foregoing instrument was signed on behalf of said Limited Liability Company by authority of its Articles of Organization and acknowledged to me that said Limited Liability Company executed the same.



  
Notary Public

**BOUNDARY DESCRIPTION**

ENT 88336:2008 PG 10 of 10

BEGINNING AT A POINT LOCATED S89°55'25"W ALONG THE 1/4 SECTION LINE 1,554.16 FEET AND SOUTH 790.70 FEET FROM THE EAST 1/4 CORNER OF SECTION 24, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE AS FOLLOWS:

COURSE	DISTANCE	REMARKS
S0°44'59"W	329.88	
N43°02'26"W	148.59	
N63°07'25"W	140.19	
S25°54'39"W	260.92	
S89°52'10"W	326.11	
S79°40'48"W	42.67	
S89°52'10"W	95.00	
N0°07'50"W	466.82	
S89°29'42"E	620.09	
S72°19'42"E	198.24	TO THE POINT OF BEGINNING

CONTAINING ±7.15 ACRES

BASIS OF BEARING: ALONG THE 1/4 SECTION LINE AS SHOWN

PLAT "C"

# SPANISH TRAILS

SUBDIVISION

SPANISH FORK

UTAH COUNTY, UTAH

SCALE 1" = 40 FEET