

86

Note to Recorder:

Record against the real property located in Washington County, Utah described in Exhibit C.

Recorded at the Request of
Land Development, LLC

After recording mail to:
Jenkins Jensen & Bayles, LLP
Attn: Bruce C. Jenkins
1240 East 100 South, Suite 9
St. George, UT 84790

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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR
HIGH CHAPARRAL SUBDIVISION
AT THE WASHINGTON BENCH**

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**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND RESERVATION OF EASEMENTS
FOR / AT THE WASHINGTON BENCH
HIGH CHAPARRAL SUBDIVISION
(PHASE 1)**

PREAMBLE

This Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for High Chaparral Subdivision (Phase 1) affects the following real property located in Washington County, State of Utah:

*At the Washington Bench

Phase I - See Exhibit A attached hereto and incorporated herein.

The terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

RECITALS

A. Land Development, LLC, as Declarant, will develop the real property described in Exhibit A as a residential planned unit development.

B. Declarant has established or will establish High Chaparral Owners Association and the Association will be vested with powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Property, promulgating Rules and Regulations through its Board and Architectural Control Committee, and collecting and disbursing the assessments and charges hereinafter created.

C. The Declarant intends that the Property shall be maintained, developed and conveyed pursuant to a general plan for the Property and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth.

D. The Declarant hereby declares that all of the Property shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Property or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Property and shall be binding upon all persons having or acquiring any right, title, or interest in the Property, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, the Association, as hereinafter defined, each owner and their respective heirs, executors and administrators, and successors and assigns.

E. These Recitals shall be deemed covenants as well as recitals.

ARTICLE I
DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1 ACC. ACC shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

1.2 ACC Rules and Regulations. ACC Rules and Regulations shall mean such rules and regulations as may be adopted and promulgated by the ACC pursuant to Sections 8.1 and 8.4 hereof as such rules and regulations may be amended from time to time.

1.3 Annexable Territory. Annexable Territory shall mean the real property described in Exhibit B attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article XV hereof. Annexable Territory shall also mean any real property which the Declarant desires to annex into the Development which is contiguous to the real property described in Exhibit A or B.

1.4 Annual Assessment. Annual Assessment shall mean the annual charge against each Owner and his Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.5 Articles. Articles shall mean the Articles of Incorporation of the Association filed in the office of the Department of Commerce of the State of Utah, as such Articles may be amended from time to time.

1.6 Association. Association shall mean HIGH CHAPARRAL OWNERS ASSOCIATION, a corporation formed under the Nonprofit Corporation Law of the State of Utah, its successors and assigns.

1.7 Beneficiary. Beneficiary shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

1.8 Board. Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.9 Budget. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

1.10 Bylaws. Bylaws shall mean the Bylaws of the Association, as adopted by the Board, as such Bylaws may be amended by the Board from time to time.

1.11 **Corrective Assessments.** Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association for corrective action set forth in Sections 2.8, 9.1, and 14.9, Article XI, and as otherwise provided for herein.

1.12 **Common Area.** Common Area means that portion of property owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the Owners and all improvements constructed thereon.

1.13 **Common Expenses.** Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and improvement of the Common Area; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, certain landscaping and Improvements on the Common Area, gardening, against the Property, or portions thereof; and the costs of any other items incurred by the Association for any reason whatsoever, in connection with the Property, for the benefit of all of the Owners.

1.14 **Declarant.** Declarant shall mean Land Development, L.L.C., its successors and any Person to which it shall have assigned any rights hereunder, except that a party acquiring all or substantially all of the right, title and interest of Land Development, L.L.C., in the Property by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Land Development, L.L.C. as Declarant under this Declaration.

1.15 **Deed of Trust.** Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

1.16 **Development.** Development shall mean HIGH CHAPARRAL SUBDIVISION according to the Plat. AT THE WASHINGTON BENCH

1.17 **Dwelling Unit.** Dwelling Unit shall mean a single family dwelling, with or without walls or roofs in common with other single family dwelling. Dwelling Unit includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines.

1.18 **Fiscal Year.** Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.19 **Improvement.** Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to Dwelling Units and other buildings, walkways, sprinkler pipes, swimming pools, athletic fields or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, wind-breaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.20 Lot. Each Lot is owned in fee simple by the Owner. Lots shall be designated on the Plat.

1.21 Manager. Manager shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

1.22 Member, Membership. Member shall mean any Person holding a membership in the Association, as provided in this Declaration. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws and Rules and Regulations.

1.23 Mortgage, Mortgagee, Mortgagor. Mortgage shall mean any Recorded first mortgage or first deed of trust. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot to another (*i.e.*, the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.24 Notice of Members Meeting. Notice of meetings of the Members required or provided for in this Declaration shall be in writing, shall satisfy the notice requirements set forth in the Bylaws, and may be delivered either personally or by first class or registered mail. Notice of Members Meetings shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

1.25 Owner. Owner shall mean the Person or Persons, including Declarant, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.26 Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.27 Plat. Plat shall mean the "HIGH CHAPARRAL SUBDIVISION" Plat executed and acknowledged by Declarant, prepared and certified by Bush & Gudgell, Inc., recorded in the records of the Washington County Recorder, as the same has been modified, amended, supplemented or expanded in accordance with the provisions of Article XV concerning amendments or supplements to this Declaration in conjunction with annexations to the Property as herein provided.

1.28 Property. Property shall mean the High Chaparral Subdivision described in the Plat.

1.29 Record, Recorded, Filed or Recordation. Record, Recorded, Filed or Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Washington County, Utah.

1.30 Rules and Regulations. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Property is maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

1.31 Recreational Vehicles. Recreational Vehicles shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, all-terrain-vehicles and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, or devices similar to any of the foregoing.

1.32 Special Assessments. Special Assessments shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI.

1.33 Streets. Streets shall mean public streets and thoroughfares on the Property.

1.34 Vehicle. Vehicle shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects -- or are designed to be transported on wheels, skids, skis or tracks-- including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, Recreational Vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

ARTICLE 1A

DESCRIPTION OF PROPERTY

The real property which is associated with the Development and which has been and shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of all the property described in Exhibit A hereto; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which effect the above-described land or any portion thereof, including

without limitation, any Mortgage; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

ARTICLE II
OWNERS' PROPERTY RIGHTS

2.1 Common Area. The Common Area shall consist of certain landscaping strips as marked on the Plat.

2.2 Form For Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

AT THE WASHINGTON BENCH

All of Lot _____ of HIGH CHAPARRAL SUBDIVISION, according to the official Plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions and Reservation of Easements, on file in the office of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

2.3 Transfer of Title to Common Area. Declarant represents that it will, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Area, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and close of escrow of the last Lot.

2.4 Limitations on Common Area Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- (a) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, upon Notice of Members Meeting be assented to by two-thirds (2/3) of the vote of the Membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. The quorum requirement for such meeting shall be as set forth in the Bylaws.

(b) The right of the Association, to be exercised by the Board, to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement;

(c) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area;

(d) The right of the Association, to be exercised by the Board, to reasonably restrict access to portions of the Common Area; and

(e) The easements reserved in Sections 2.5, 2.7, 2.8, and 2.9.

2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future owners within the Property, easements for public services of the City of Washington in which the Property are located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.6 Waiver. No owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof.

2.7 Easements for Water and Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Property, easements for public and private utility purposes. The Lots shall also be subject to such public utility easements as shown on the Plat and as required by the City of Washington.

2.8 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Board to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Board, become a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense, and the Association may levy against the Lot as a Corrective Assessment any amounts paid by the Association to rectify the problem.

2.9 Easement for Encroachments. If any portion of a Dwelling Unit or other Improvement constructed by Declarant, or if any portion of a Dwelling Unit or other Improvement reconstructed so as to substantially duplicate the Dwelling Unit or other Improvement originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

ARTICLE III

HIGH CHAPARRAL OWNERS ASSOCIATION

3.1 **Organization of Association.** Declarant has caused or will cause the Association to be organized and the Articles filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

3.2 **Parties and Powers.** The Association shall have such duties and powers as set forth in the Articles, Bylaws, and this Declaration (and such other powers and duties as properly delegated or assigned through the Rules and Regulations), as such documents are amended from time to time.

3.3 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.

3.4 **Transfer.** Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

ARTICLE IV

VOTING RIGHTS

4.1 **Vote Distribution.** The Association shall have the following two classes of voting membership:

(a) **Class A.** Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Lot which the interest required for Membership, in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Class B.** The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) upon conveyance of seventy-five percent (75%) of the Lots subject to this Declaration to purchasers; or

(ii) the expiration of seven (7) years from the first Lot conveyance to a purchaser.

4.2 **Multiple Ownership.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any-of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

ARTICLE V

JURISDICTION OF ASSOCIATION

The Association has been organized to provide for the operation, maintenance, preservation and architectural control of the Property and Improvements, to administer the Common Areas of the Association, and to reasonably regulate the Members of the Association. The Association shall have jurisdiction and authority over the Property and the Members of the Association to the full extent allowed by law and also as provided for in this Declaration and in the Articles, Bylaws, and Rules and Regulations, as such documents may be modified from time to time.

ARTICLE VI

COVENANT FOR ASSESSMENTS

6.1 **Creation of Assessment Obligation.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Corrective Assessments, and (4) any other amount or assessment levied by the Board pursuant to this Declaration; all such assessments to be established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Special Assessment or Corrective Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments liability shall not pass to any new Owner ("Purchaser") successors in title unless expressly assumed by such Purchaser. For the purpose of assessment, the term "Owner" shall exclude the Declarant, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, who shall pay no assessment unless a unit constructed on a Lot is occupied for a permanent residence, provided that the Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses (not

including reserves or capital replacement). The determination of the reasonable cash needs for ordinary and necessary maintenance expenses shall be within the sole discretion of the Board and Declarant shall have no liability to the Association if subsequent Boards shall disagree with the determination of the Board which made such determination. In no event, however, shall the subsidy exceed the monthly assessments.

6.2 Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles.

6.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The initial Annual Assessment shall be One Thousand One Hundred and Forty Dollars (\$1,140.00), payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment shall be based upon the Budget prepared by the Board. The Common Expenses of the Association, and therefore the Annual Assessment, may increase because of, among other reasons, Common Facilities constructed in the sole discretion of Declarant. Nothing herein shall obligate Declarant to construct any Common Facilities.

6.4 Special Assessments. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

(a) Approved by Board. Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:

(i) An extraordinary expense required by an order of a court; and

(ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment.

6.5 Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to subsections 6.2, 6.3, and 6.4(a) and (b) of this Declaration shall be assessed equally and uniformly against all Owners and their Lots.

6.6 Date of Commencement of Annual Assessments. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Lots on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in the Property. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to every owner subject thereto, not less than thirty (30) days prior to the effective date of such change. 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 or agent 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 against a Lot is binding upon the Association as of the date of its issuance.

6.7 Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Lot to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, including without limitation Sections 2.9, 8.7, 9.1, 14.9, and Article XI, plus interest and other charges on such Corrective Assessments.

The Board shall deliver a Notice of Noncompliance by the Board and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Board Adjudication and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

6.8 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- (a) All portions of the Property dedicated to and accepted by a local public authority; and
- (b) The Common Area owned by the Association in fee.

6.9 Notice of Members Meetings; Quorum Requirements. Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by Section 6.4(b) shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

6.10 **Additional Assessments.** In addition to the annual assessments, special assessments, and corrective assessments, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to the Common Areas from the activities of the City of Washington in maintaining, repairing or replacing the City's utility lines and facilities thereon.

6.11 **Preparation of Budget.** The Board shall prepare a Budget to be presented to the Members at the annual meetings of the Members held as provided in the Bylaws.

6.12 **Reserve Fund.** The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

ARTICLE VII

NONPAYMENT OF ASSESSMENTS; REMEDIES

7.1 **Nonpayment of Assessments; Remedies.** Pursuant to Utah Code Ann. §§ 57-8a-101, *et seq.* (2004), any assessment installment payment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date any such installment payment on assessments become due. If any installment payment on the assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment service charge of Ten Dollars (\$10.00) if the assessment is not paid within ten (10) days of when it is due, or such larger amount as set by the Board, provided the charge does not exceed twenty-five percent (25%) of the amount of the installment payment, and the Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. If a monthly installment payment is not timely made, the Board may declare the entire Annual Assessment in default and accelerate the Annual Assessment and declare the entire amount of the Annual Assessment immediately due and owing.

7.2 **Washington County Tax Collection.** It is recognized that under the Charter the Association will own the Common Area and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Charter, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed to do so. In the event that the assessor shall

separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

7.3 Lien. The Board may elect to file a claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or any other manner provided by law, including without limitation, a deed of trust as set forth in this Charter.

7.4 Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Lot and all Improvements thereon for the purpose of securing payment of all assessments (including basis of collection) provided for in this Charter. For purposes of this Section and Utah Code Ann. §§ 57-1-19, *et seq.*, as amended from time to time. The Trustee shall mean the attorney for the Association and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the Washington County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

7.5 Perfection of Lien and Priority. Upon the recording of Notice of Lien by the Manager or Board, such lien constitutes a lien on the Lot Owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

- (a) tax and special assessment liens on the Lot in favor of any assessing lot or special improvement district; and
- (b) encumbrances on the interest of the Lot Owner:
 - (i) recorded prior to the date of the recording of Notice of Lien; and
 - (ii) that by law would be a lien prior to subsequently recorded encumbrances.

The Manager or Board may enforce the assessment lien by sale or foreclosure of the Owner's interest. The Manager or Board may bid at a sale or foreclosure and hold, lease, mortgage, or convey the Lot that is subject to the assessment lien.

7.6 Future Lease Payments. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this Section. The notice shall: (i) provide notice to the tenant that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Charter, Bylaws, or Association Rules; (ii) state the amount of the assessment due, including any interest or late payment fee; (iii) state that any costs of collection, not to exceed One Hundred Fifty Dollars (\$150.00), and other assessments that become due may be added to the total amount due; and (iv) provide the requirements and rights described in this Section. If the Owner fails to pay the assessment due by the date specified in the notice, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to this Section. The Manager or Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due to the Association; (ii) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (iii) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement. If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be: (i) deposited in a separate account; and (ii) disbursed to the Association until the assessment due, together with any cost of administration which may not exceed Twenty-Five Dollars (\$25.00), is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association. Within five (5) business days after payment in full of the assessment, including any interest or late payment fee, the Manager or Board shall mail a copy of such notification to the Owner.

7.7 Statement of Account. The Manager or Board shall issue a written statement indicating any unpaid assessment with respect to a Lot covered by the request, upon the written request of any Owner, and payment of a reasonable fee not to exceed Ten Dollars (\$10.00). The written statement shall be binding in favor of any person who relies in good faith on the written statement upon the (i) remaining Owners; (ii) Manager; and (iii) Board. Unless the Manager or Board complies with such request within ten (10) days, any unpaid assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.

7.8 **Payment by Encumbrancer.** An encumbrancer holding a lien on a Lot may pay any unpaid assessment due with respect to the Lot. Upon such payment, the encumbrancer has a lien on the Lot for the amounts paid.

7.9 **Cumulative Remedies.** The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.10 **Mortgage Protection.** Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Charter, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Charter and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.11 **Rent After Foreclosure.** In the event the Association takes title to a Dwelling Unit through foreclosure, the Board may elect to allow the occupant to remain in the Dwelling Unit and the occupant shall be required to pay a reasonable rental to the Association for the Dwelling Unit.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.1 **Members of Committee.** The ACC shall consist of three (3) to five (5) members. The Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board need not be Members of the Association. If the ACC is not appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members.

8.2 **ACC General Powers.** The ACC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed Plans conform harmoniously to the exterior design and existing materials of the Improvements on the Property. This power shall include the power to issue ACC Rules and Regulations which, among other provisions, may set forth procedures for the submission of Plans for approval, and state additional factors which it will take into consideration in reviewing submissions.

8.3 **Review of Plans and Specifications.** The ACC shall consider and act upon any and all Plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of

construction in progress to assure its conformance with Plans and specifications approved by the ACC. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, external decoration or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, in the Property shall be commenced or maintained, until the Plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC. The ACC shall approve Plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Lots and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

8.4 Meetings of the ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC, shall be sufficient to enact resolutions or motions of the ACC. The attendance of a majority of the members at any meeting shall constitute a quorum.

8.5 No Waiver of Future Approvals. The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted for approval or consent.

8.6 Compensation of Members. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

8.7 Limitation on Liability. Neither the ACC, the Board nor Declarant, nor any member thereof, acting in good faith shall be liable to the Association or to any owner for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or rejection of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests (ii) the construction or performance of any work, whether or not pursuant to approved Plans, (iii) the development or manner of development of any of the Property, or (iv) any engineering or other defect in approved Plans, drawings and specifications.

8.8 Declarant's Rights. The Declarant shall not be required to comply with the provisions of this Article in the initial construction of the Property.

ARTICLE IX

MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Maintenance by Owner. An Owner shall not commit any act which shall detract from the appearance of the Dwelling Unit. Each Owner shall be responsible for the repair and maintenance of their Lot and all Improvements thereon.

9.2 Operation and Maintenance by Association. The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas.

9.3 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall, including perimeter walls, shall be shared by the Owners who make use of the wall in proportion to such use, or the Owner of the wall even if there is no wall in common.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of Directors of the Association shall select an arbitrator for the refusing party.

9.4 **Perimeter Walls.** The Association shall not be obligated to maintain any walls in the Project. Walls dividing a Lot and Common Area shall be maintained by the Owner of the Lot.

9.5 **Mold.** Whether or not you as an Owner experience mold growth depends to a great extent on how you manage and maintain your Dwelling Unit. You are hereby given notice to take all reasonable means to detect and prevent growth and infestation of mold and other similar agents. The Declarant will not be responsible for any damages, and as Owner you waive any claim to damages, caused by mold, or by some other agent, that may be associated with customary construction practices in the area, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects or losses. Any implied warranties, including but not limited to an implied warranty of workmanlike construction, an implied warranty of **habitability**, an implied warranty of merchantability or an implied warranty of fitness for a **particular purpose**, are hereby waived and disclaimed by you as the Owner.

ARTICLE X

USE RESTRICTIONS

All real property within the Property shall be held, used and enjoyed subject to such limitations and restrictions set forth below.

10.1 **Single Family Residence.** Subject to the provisions of Section 10.2, each Lot shall be used as a residence for a single family, except as may be authorized below.

10.2 **Business or Commercial Activity.** Subject to the following exceptions, no part of the Property shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes without the prior written approval of the Board; provided, however, that the Declarant, its successors and assigns, may use any portion of the Property for a model home site, display and sales office in connection with the sale of Lots on the Property by Declarant. Occupations without external evidence thereof, including, without limitation, traffic generation, which are merely incidental to the use of the Dwelling Unit as a residential home and for so long as such occupations are conducted in conformance with all applicable governmental ordinances shall be permitted.

10.3 **Signs; Commercial Activity.** Except for one professional quality "For Rent" or "For Sale" sign of not more than four (4) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot. Such sign shall not be placed on the Common Areas, but shall be placed in the window of a Dwelling Unit. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Property. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

10.4 **Quiet Enjoyment.** No noxious or offensive activity or noise shall be carried on upon any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

10.5 **Parking for Outdoor Vehicles.** In order to prevent unsafe and unsightly vehicles from being parked on the street for long periods of time, no automobiles, RV's, boats, equipment, motorhomes, or other similar vehicles shall be parked or stored on a public street or rights of way within the Property for more than 72 consecutive hours. However, any such vehicle(s) may be stored on site as long as it is stored in a garage or parking stall (pad) alongside the garage or behind the garage. The Board may enforce this provision by giving notice to the Owner of the violation, or when the Owner is not readily available, by giving notice in the form of a written request placed on the vehicle in question and subsequently by notifying proper city authorities. Pursuant to city ordinances, vehicles in violation of this party may be towed, at the owner's expense. Unless otherwise approved by the Board, no commercial business equipment is allowed in the Property, other than temporary work equipment required solely for the building of homes.

10.6 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats, birds or other household pets may be kept in accordance with City of Washington Ordinances; provided that they are not kept, bred or maintained for any commercial purpose.

10.7 **Construction.** Construction of Dwelling Units shall be diligently pursued to substantial completion which generally shall occur within fifteen (15) months of commencement, subject to extensions by the ACC in its sole discretion. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or his contractor.

10.8 **Temporary Buildings.** No outbuilding, tent, shack, shed or other temporary building or Improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Property either temporarily or permanently.

10.9 **Drilling.** Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Property, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth-coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted on the Property.

The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot.

10.10 **Minimum Square Footage Required.** For a single story dwelling, the finished area above the grade will be no less than 1,600 square feet exclusive of open porches and garages. For a two (2) story dwelling, the finished area above the grade will not be less than 2,200 square feet (both floors), exclusive of open porches and garages. A minimum of 1,400 square feet on the main floor is required in two (2) story dwellings.

10.11 **Types of Homes Prohibited.** Four (4) level split entry (bi-level) homes will not be permitted in this Property unless approved by the ACC. No RVs, modular homes, underground or basement homes, round homes, octagon homes, prefabricated homes, rebuilt homes, concrete homes, or any other unusual style of home shall be allowed in the Property regardless of ACC approval of the same. No solar homes can be built unless approved by the ACC.

10.12 **Exteriors of Homes.** Tumbled or used brick, stucco, rock, or any combination of the same that is approved by the ACC are allowed as exteriors for all buildings in the Property, including accessory buildings and detached garages. There must be at least two (2) of the above named materials used in the front and side elevations of the home, with at least thirty percent (30%) of the front elevation to be of the lesser used material. In addition to the combination of any two (2) materials named above, vinyl siding is not permitted. Any other exterior material may be used only upon the express approval of the ACC. Home exteriors using stucco must be of high quality synthetic stucco. All roofs must be built using a tile or slate roof. Stucco should be of a slightly darker earth tone color, no pastels or white are to be used.

10.13 **Setbacks.** All setbacks shall comply with City of Washington ordinances.

10.14 **Landscaping.** All front yard landscaping, as well as side yard landscaping reaching to the half-way point of the total depth of the home, including grass, trees and shrubs must be completed at the issuance of a Certificate of Occupancy by the City of Washington. The front yard must be a minimum of ten percent (10%) grass. All landscaping shall be compatible with other homes in the Property. Shrub and tree planting and landscaping on corner lots shall be located so as not to obstruct the view and create a hazard for the movement of vehicles or pedestrians along the street.

10.15 City of Washington Requirements. All structures built on any Lot must be constructed in accordance with all applicable zoning and building ordinances of the City of Washington.

10.16 Driveways. Driveways shall be constructed out of concrete, inlaid brick, or other hard materials approved by the ACC. Driveways consisting of cinders, sand, gravel, asphalt or dirt shall not be permitted on any Lot. Driveways shall be of a sufficient size that two (2) vehicles can park thereon side by side, and shall in all other respects conform to City of Washington requirements. Driveways shall be limited solely to providing a connection between the street and the garage area; no private lanes or streets traversing Lots shall be allowed.

10.17 Walls. No wall over 7' high will be allowed. Only masonry walls will be permitted on the exterior of the Lot (sides and rear). All walls must be "Geneva Brown" or brown in color.

10.18 Further Subdivision; Lease Provisions. No Owner shall further partition or subdivide his Lot or the rooms in the Dwelling Unit, including without limitation any division of his Lot into time-share estates, time-share uses, or creation of additional living quarters; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Lot to a single family by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or some other form of joint ownership. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration and the Bylaws of the Association. Any failure by the lessee of such Lot to comply with the terms of this Declaration, the Bylaws of the Association or the Rules and Regulations shall constitute a default under the lease or rental agreement.

10.19 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot on the Property, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, and shall include drainage from the Lots on the Property onto the Common Area.

10.20 Water Supply and Sewage Disposal Systems. No individual water supply or sewage disposal system shall be permitted on any Lot on the Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations, if any, of the ACC and of any public agency having jurisdiction over the Property, the Washington County, Utah, Health Department, and all other applicable governmental authorities.

10.21 Trash Receptacles. Owners shall keep trash receptacles in the garage or on the patio, except when placing the receptacles at the curb for pick up. The Board may pass additional Rules and Regulations governing trash receptacles.

10.22 Exception for Declarant. Notwithstanding the restrictions contained in this Article X, Declarant shall have the right to use any Lot or Dwelling Unit owned or leased by it in furtherance of any reasonably necessary or appropriate construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate the sale of Lots and/or Dwelling Units owned by Declarant. This exception shall not extend to the ordinary brokerage activities of Declarant as to which the Declarant shall be subject to the same rules and regulations as are other real estate brokerages.

10.23 FCC Antenna and Dish Policy.

(a) Types of Antennas.

(i) This Amendment applies only to the following types of antennas listed in the FCC Rule:

(1) Direct Broadcast Satellite (“DBS”) antennas one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may now be installed, while DBS antennas larger than one meter are *prohibited without the approval of the ACC.*

(2) Multi-point Distribution Service (“MDS”) antennas one meter or less in diameter or diagonal measurement, designed to receive video programming services (wireless cable) or to receive or transmit fixed wireless signals other than via satellite, may now be installed, while MDS antennas larger than one meter are *prohibited without the approval of the ACC.*

(3) Antennas designed to receive local television broadcast signals (“TVBS”) may now be installed. Masts higher than 12 feet above the roof line are *prohibited without the approval of the ACC.*

(4) Antennas designed to receive and/or transmit data services, including Internet access, may now be installed. Masts higher than 12 feet above the roof line are *prohibited without the approval of the ACC.*

(5) If the FCC expands the types of antennas that fall under the FCC Rule, this Amendment shall encompass those antennas as well.

(ii) All other antennas, except the ones listed above, are *prohibited without the approval of the ACC.*

(b) **Location and Installation.** If the antenna is one of the three types now allowed *without prior approval from the ACC*, the antenna must still comply with the following regulations:

(i) No antenna may encroach upon the Common Area or the property of another Owner.

(ii) An antenna must be placed on the backside of the roof (or in the attic) or screened in the backyard so no part of the antenna or satellite dish may be seen from the street in front of the Dwelling Unit, provided an acceptable signal quality may be received from such location.

(iii) The antenna must be shielded from view from the street and neighboring Property to the maximum extent possible as long as an acceptable signal quality may be received. If necessary to shield the antenna from view, the Association may require that the antenna be shielded by reasonably priced landscaping that complies with the Association's landscape requirements.

(iv) Antennas, masts and any visible wiring must be painted to match the color of the structure to which they are installed, provided the painting does not interfere with acceptable quality signal and does not void the manufacturer's warranty.

(v) The antenna must comply with all applicable city, county and state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits.

(vi) Installation must be pursuant to the manufacturer's instructions.

(vii) In order to protect against personal injury and property damage, an antenna may not be placed in a location where it may come into contact with a power line.

(viii) In order to protect against personal injury and property damage, all antennas must be properly grounded and secured.

(ix) In order to protect against personal injury, antennas may not block or obstruct any driver's view of an intersection or street.

(x) If the antenna is attached to a mast, the following regulations apply:

(1) Mast height shall be no higher than absolutely necessary to receive acceptable signal quality.

(2) Masts that extend more than twelve feet above the roof line must be approved by the Association before installation and the application must include a detailed description of the method by which the mast is secured and an explanation regarding the necessity of such a mast. See Exhibit D.

(3) Masts must be installed and painted to match their surroundings.

(4) Masts must not encroach upon the Common Area or another Owner's property.

(5) In order to protect against personal injury, masts installed upon a roof may not be installed nearer to the lot line than the total height of the mast and antenna.

(6) In order to protect against personal injury and property damage, a mast may not be installed so that it would touch a power line if it fell.

(c) Maintenance.

(i) The Owner is responsible for all costs associated with the installation and maintenance of an antenna.

(ii) The Owner is responsible for all damage caused by or connected with the antenna.

(iii) The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the antenna.

(iv) The Owner shall keep the antenna in good repair so that it does not violate any portion of this Amendment.

(d) FCC Notice. The FCC rules provide that a restriction will impair installation, maintenance, or use if it:

(i) Causes unreasonable delay in installation;

(ii) Unreasonably increases the cost of the equipment or its installation, maintenance, or use; or

(iii) Precludes reception of an acceptable quality signal.

(e) Notification.

(i) An Owner must complete the notification form attached as Exhibit C and submit a copy of the completed form to the Association within five (5) business days after installing an antenna allowed pursuant to this Amendment.

(ii) If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna.

(f) Enforcement.

(i) In the event of a violation of this Amendment, the Association may bring an action for declaratory relief with the FCC or the Fifth District Court, Washington County, after notice and an opportunity to be heard. If the FCC or Court determines that this Amendment is enforceable, the Owner shall pay a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time, additional fines of \$10.00 per day will be imposed for each day that the violation continues.

(ii) If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna.

(iii) The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Amendment.

(g) Severability.

(i) If any provision of this Amendment is ruled invalid, the remainder of these rules shall remain in full force and effect.

(ii) If the FCC modifies its rules, the modified rules shall be incorporated into this Amendment as if fully set forth herein.

ARTICLE XI

DAMAGE AND CONDEMNATION

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member. All expenses of fixing the damage may be levied by the Association as a Corrective Assessment.

(b) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

ARTICLE XII

INSURANCE

12.1' Casualty Insurance. The Association may secure liability and casualty insurance for the Common Area.

12.2 Fidelity Insurance. A fidelity policy or policies to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums] without at least thirty (30) days prior written notice to all Mortgagees of Lots.

12.3 Lots and Dwelling Units Not Insured by Association The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Dwelling Unit on a Lot or any Improvement thereon erected by the Owner.

ARTICLE XIII

MORTGAGEE PROTECTION CLAUSE

Notwithstanding any other provision of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

13.1 Preservation of Regulatory Structure and Insurance. Unless the holders of seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design of the exterior, appearance of Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.2, or the upkeep of the Common Area;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance values (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of improvements on the Common Area.

13.2 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least seventy-five percent (75%) of all first mortgagees (based on one (1) vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Declarant), the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the owner thereof.

Neither this Article XIII nor the insurance provisions contained in Article XII may be amended without the prior approval of all first Mortgagees.

13.3 Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

(a) there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(b) there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area within ten (10) days after the Association learns of the same the Association plans to abandon or terminate the planned unit development established by this Declaration.

13.4 Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association, and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

13.5 Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

13.6 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

13.7 Rights Upon Foreclosure of Mortgagee. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of, and shall not be liable for any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

ARTICLE XIV

GENERAL PROVISIONS

14.1 Enforcement. This Declaration may be enforced by the Association, Declarant, and any Owner as follows:

(a) Breach of any of the provisions contained in the Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Declarant so long as Declarant owns a Lot

in the Development, and by the Association. The offending party is entitled to such notice and rights to a hearing as provided for in the Bylaws. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the provisions contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Declarant for so long as Declarant owns a Lot.

(c) The remedies herein provided for breach of the provisions contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(e) Any breach or amendment of the provisions contained in this Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Declaration, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

14.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.3 Term. Unless earlier terminated pursuant to Section 14.5 below, the covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant for so long as Declarant owns a Lot in the Development, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which the term shall be automatically extended for successive periods of ten (10) years unless a declaration of termination satisfying the requirements of an amendment to the Declaration as set forth in Section 14.5 is Recorded.

14.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the

plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

14.5 Amendment. Any amendment to this Declaration shall require the affirmation of at least two-thirds (2/3) of all Membership votes represented in person, by proxy, or by ballot are entitled to cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board causing to be delivered another Notice of Members Meeting, at which meeting a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Notwithstanding anything herein contained to the contrary, until seventy-five percent (75%) of the Lots in the Property have been sold to purchasers, Declarant shall have, and it hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable; (a) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information or mortgage requirements, (b) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration; or (c) to conform this Declaration, or any amendments thereto, to local ordinances, to Utah law, or to the requirements of law of any other jurisdiction or state where the project may be registered, or as may be amended from time to time, or to conform to the underwriters guidelines of major secondary market investors in order to facilitate the availability of financing. Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred, except for amendments unilaterally made by the Declarant.

14.6 Notice. Any notice, including without limitation Notice of a violation of this Declaration, the Bylaws, or any Rules and Regulations of the Association, permitted or required to be delivered as provided herein shall be fair and reasonable if given in writing and may be delivered either personally or by first class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

14.7 Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent

permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

14.8 Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

14.9 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Property are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties and fines for the infractions of any Rules and Regulations, this Declaration, or the Bylaws. Fines levied may be assessed as a Corrective Assessment against the Lot.

ARTICLE XV

ANNEXABLE TERRITORY

15.1 Annexation by Declarant. Declarant may expand the real property subject to this Declaration by the annexation of all or part of the Annexable Territory. The annexation of such land shall become effective and extend this Declaration to such real property upon the Recordation of a Supplementary Declaration or similar instrument which:

(a) describes the real property to be annexed or incorporated by reference within the description contained in the Annexable Territory portion of the Plat;

(b) declares that the annexed real property is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Properties subject to the Declaration; and

(c) sets forth such additional limitations, restrictions, covenants, conditions complementary additions to the covenants, conditions and restrictions contained in this Declaration as are not inconsistent with this Declaration and which do not create a character different than exists in the Development and is intended by this Declaration.

When such annexation becomes effective, said real property shall be subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in the Properties shall automatically be members of the Association.

Such annexation may be accomplished in one or more annexations or Phases of Development without limitation as to size or location within the Annexable Territory.

15.2 Limitation on Annexation. Declarant's right to annex said real property to the Properties shall be subject to the following limitations, conditions and rights granted to the Declarant:

(a) The annexed real property must be part of the Annexable Territory as of the date of this Declaration. However, Declarant reserves the right to expand the borders of Annexable Territory to real property contiguous to the property described in Exhibits A and B, but with no obligation to do so and no claim as to right, title or interest to said real property.

(b) All Lots added to the Properties shall be for residential purposes, except as otherwise provided for in this Declaration.

(c) Declarant reserves unto itself and its assigns the right to create Common Area, and Improvements thereon, within any portion of the annexed real property. Declarant makes no assurances that such Common Areas or Improvements will be established.

(d) The configuration of annexed land as to Lot size, Common Areas and the type of Improvements is reserved to the Declarant.

15.3 Expansion of Definitions. In the event the Properties are expanded, the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Properties as so expanded.

IN WITNESS WHEREOF, Declarant executed this Declaration on the 20 day of January, 2005.

DECLARANT:

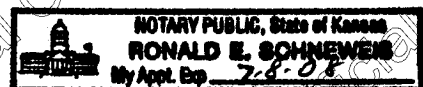
LAND DEVELOPMENT, LLC

By: Timothy E. Volz
Its: Managing Member

STATE OF KANSAS)
County of Todd) :ss.

On this 20 day of January, 2005, personally appeared before me Timothy E. Volz, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the Managing Member of Land Development, LLC, and that he executed the foregoing Declaration on behalf said limited liability company being authorized and empowered to do so by the operating agreement of said Company or resolution of its managers, and he acknowledged before me that such Company executed the same for the uses and purposes stated therein.

Ronald E. Schwenk
Notary Public



File No: 120745

EXHIBIT "A" - LEGAL DESCRIPTION

Beginning at the Southwest Corner of Section 25, Township 42 South, Range 15 West, Salt Lake Base and Meridian and running thence North $89^{\circ}38'19''$ East, 960.50 feet along the Section line; thence North $0^{\circ}21'41''$ West, 150.00 feet; thence South $89^{\circ}38'19''$ West, 3.40 feet; thence North $0^{\circ}21'41''$ West, 110.00 feet; thence South $89^{\circ}38'19''$ West, 108.22 feet; thence South $75^{\circ}18'57''$ West, 50.11 feet; thence North $89^{\circ}09'10''$ West, 113.67 feet; thence South $89^{\circ}38'19''$ West, 119.29 feet; thence North $82^{\circ}38'54''$ West, 50.71 feet; thence South $89^{\circ}12'25''$ West, 122.80 feet; thence North $11^{\circ}43'27''$ West, 93.22 feet; thence North $0^{\circ}34'29''$ East, 97.78 feet; thence North $0^{\circ}15'06''$ West, 100.05 feet; thence North $1^{\circ}32'21''$ East, 50.00 feet; thence North $88^{\circ}27'39''$ West, 5.83 feet; thence North $1^{\circ}32'21''$ East, 115.07 feet; thence South $89^{\circ}26'38''$ West, 400.11 feet; thence North $1^{\circ}09'53''$ East, 123.48 feet to a point on a 325.00 foot radius, non-tangent curve to the left, the radius point bears North $15^{\circ}58'18''$ East; thence Southeasterly 39.67 feet along the arc of said curve through a central angle of $6^{\circ}59'40''$; thence North $8^{\circ}58'38''$ East, 50.00 feet; thence North $16^{\circ}43'07''$ East, 130.88 feet; thence North $89^{\circ}26'38''$ East, 20.00 feet; thence North $15^{\circ}48'58''$ East, 137.86 feet; thence North $6^{\circ}48'58''$ East, 25.00 feet to a point on a 250.00 foot radius non-tangent curve to the right, the radius point bears North $6^{\circ}48'58''$ East; thence Northwesterly 101.57 feet along the arc of said curve through a central angle of $23^{\circ}16'43''$ to a point on a 200.00 foot radius non-tangent curve to the left, the radius point bears North $61^{\circ}48'32''$ West; thence Northeasterly 13.27 feet along the arc of said curve through a central angle of $3^{\circ}48'08''$; thence North $65^{\circ}36'40''$ West, 210.99 feet to a point in the center of the St. George and Washington Canal and to a point on the Westerly line of that particular Warranty Deed known as Parcel 3, recorded in Book 1549, at Page 203, Official Washington County Records; thence along said deed line and said center of canal line the following Nine (9) courses: South $25^{\circ}25'08''$ West, 80.12 feet; South $30^{\circ}10'08''$ West, 235.00 feet; South $22^{\circ}25'08''$ West, 112.00 feet; South $9^{\circ}10'08''$ West, 95.00 feet; South $0^{\circ}25'08''$ West, 103.00 feet; South $9^{\circ}49'52''$ East, 98.00 feet; South $20^{\circ}44'52''$ East, 350.00 feet; South $22^{\circ}14'52''$ East, 158.00 feet; South $19^{\circ}04'52''$ East, 147.27 feet to a point on the South line of Section 26, Township 42 South, Range 15 West, Salt Lake Base and Meridian; thence leaving said center of canal South $89^{\circ}08'36''$ East, 124.35 feet along said Section line to the point of beginning.

* * *

PROOFREAD