

When Recorded Return To:  
Gary G. Kuhlmann  
113 East 200 North, Suite 1  
St. George, Utah 84770

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HIGHLANDS AT GREEN VALLEY SUBDIVISION, PHASE 1

KNOW ALL MEN BY THESE PRESENTS:

RECITALS

Whereas, the undersigned (hereafter "Developer") is the owner of certain real property located in St. George, Washington County, State of Utah, such property being more particularly described in Exhibit A attached hereto and made a part hereof (hereafter "Property"); and

Whereas, Developer has subdivided the Property into lots and common areas identified as The Highlands at Green Valley Subdivision, Phase 1, and shall cause such lots and common areas to be conveyed subject to certain protective covenants, conditions and restrictions as hereinafter set forth in this Declaration of Covenants, Conditions and Restrictions (hereafter "Declaration").

DECLARATION

NOW THEREFORE, Developer hereby declares that all of the Property described in Exhibit A shall be held, sold, used, occupied, and conveyed subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat of The Highlands at Green Valley Subdivision, Phase 1, recorded concurrently herewith, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These covenants, conditions and restrictions shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, and shall inure to the benefit of each such party. The acceptance of any deed to or conveyance of any lot, part or portion of the Property by the grantees named therein or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer and with one another to accept, hold, improve, use and convey the property described and conveyed in such deed or conveyance subject to this Declaration.

ARTICLE 1 - DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Association means The Highlands at Green Valley Owners Association, its successors and assigns.

Section 1.2. Board of Directors means the governing body of the Association.

Section 1.3. Common Area means all real property (including the improvements thereto) owned or hereafter acquired by the Association for the common use and enjoyment of the Members and includes that portion of Property owned by the Association, shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Directors. Specifically exempted from Common Area are Lots and dedicated public streets that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

Section 1.4. Developer means QRS Development, Inc., a Utah corporation, and the Developer's heirs, successors and assigns.

Section 1.5. Declaration means this instrument, and any amendments thereto.

Section 1.6. Entire Membership means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B Members.

Section 1.7. Lot means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common Areas.

Section 1.8. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.9. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.10. Owner means the entity, person, or group of persons owning fee simple title to any Lot which is within the Properties. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner."

Section 1.11. Plat means the subdivision plat recorded herewith entitled "The Highlands at Green Valley Subdivision, Phase 1" consisting of one sheet, prepared and certified by Bush & Gudgeon, Inc. by Kelly Schmutz, a Utah Registered Land Surveyor or any replacements thereof, or additions thereto.

Section 1.12. Property or Properties means that certain real property described on Exhibit A hereto, and such additions and annexations thereto as may hereafter be subjected to this Declaration.

Section 1.13. Directors means the members of the governing body of the Association.

## ARTICLE 2 - PROPERTY RIGHTS

Section 2.1. Title to the Common Area. Developer will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards. The Developer warrants the improvements to be of good materials and workmanship for a period of one year from the date of conveyance of the Common Area to the Association. In the event that defects in materials or workmanship occur within such one year period, the Developer, at its sole option, shall either repair or replace the defective improvements. The Association further agrees that, other than the immediately preceding limited warranty, the property is conveyed **"AS IS" AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

Section 2.2. Owners' Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service of the Association or provided upon the Common Area.

(b) The right of the Association to limit the number of guests of Members using the Common Area.

(c) The right of the Association to suspend the voting rights of a Member for any period during which any assessment or portion thereof against the Member's Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration;

(e) The right of the Association, if there is no Class B membership, with the approval of sixty-seven percent (67%) of the Entire Membership, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility.

(f) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.

(g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

(h) The terms and conditions of this Declaration.

(i) The right of the Association, through its Directors, to adopt rules and regulations concerning use of the Common Area.

(j) The right of the Developer to take such actions as it may deem necessary so long as the expansion of the Project shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

Section 2.3. Delegation of Use. An Owner or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Area and facilities to family Members, tenants, or contract purchasers who reside on the Property. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be an assessment charged to the Lot Owner.

Section 2.4. Rules. The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Members.

Section 2.5. Lot. Each Lot is owned in fee simple by the Owner.

### ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner is a Member of the Association. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

Section 3.2. Voting Rights. The Association has two classes of voting membership:

CLASS A. Class A Members shall be all Owners with the exception of the Developer, as defined in this Declaration. Class A Members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a single Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B Member shall be the Developer (as defined in this Declaration) and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) upon conveyance of seventy-five percent (75%) of Lots to purchasers; or
- (b) the expiration of seven (7) years from the first Lot conveyance to a purchaser; or
- (c) the surrender of Class B membership status by the express written action of the Developer.

In the case of expansion (as provided under Article 8 hereof) the Developer's memberships appurtenant to the Lots in the expansion area shall be Class B memberships. At such time as Developer exercises its right to expansion and additional subdivision plats are filed, the voting shall be adjusted accordingly, so that Developer regains Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

#### ARTICLE 4 - FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Developer and each subsequent Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (c) any other amount or assessment levied or charged by the Association or Board of Directors pursuant to this Declaration; and (d) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used: (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and (b) for the improvement and maintenance of Properties, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association Property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve accounts for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board of Directors, for the payment of other charges, including, without limitation, maintenance, management, and water charges.

Section 4.3. Maximum Annual Assessment. Until January 1 following recording of this Declaration, the maximum annual assessment shall be One Hundred Dollars (\$100.00) per Lot. This amount shall be the basis of calculation for future maximum annual assessments. From and after the date referred to above, the maximum annual assessment may be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership. The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period. Such change may be made by the Board of Directors if there is Class B membership. If there is no Class B membership, any such change shall have the assent of sixty-seven percent (67%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose. The actual annual assessment need not increase annually however, the ability to increase assessments shall be cumulative with each passing year. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each Owner as provided in Section 9.10. The Board must set the actual annual assessment to be an amount at or less than the maximum annual assessment.

Section 4.4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area structures, fixtures and personal property related thereto. If there is no Class B membership, special assessments must have the assent of sixty-seven percent (67%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 4.5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, 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 Common Areas from the activities of St. George City ("City") in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 4.6. Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.7. Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots; provided, however, that no assessments shall accrue against the Developer so long as the Developer has Class B membership. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Directors determine.

Section 4.8. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days prior to the commencement of each new assessment period, the Directors shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a prerequisite to the validity of the assessment. In the absence of a determination by the Directors as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the Directors. The Directors may

provide for the payment of annual and special assessments in equal installments throughout the assessment year. The Board shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it sets the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 4.9. Effect of Non-Payment of Assessment - Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid. In addition, the Directors may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment. The Directors may, in the name of the Association: (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) may foreclose the lien against an Owner's Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Owner. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees, together with an amount for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were a beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of the power of sale foreclosure. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Lot.

Section 4.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

Section 4.11. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

Section 4.12. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein:

- (a) All property dedicated to and accepted by any local public authority;
- (b) All Common Area;

- (c) All Lots owned by Developer.

#### ARTICLE 5 - INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area. The Association may insure any property, whether real or personal, owned by the Association, against liability, loss, damage or hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

Section 5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot Owners.

Section 5.3. Liability Insurance. The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 5.4. Fidelity Insurance. The Directors may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall seek a policy which shall: (a) name the Association as obligee or beneficiary, plus (b) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the Property which may be damaged or destroyed.

#### ARTICLE 6 - ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Creation. The Developer shall appoint an Architectural Control Committee (hereafter referred to as "the Committee") consisting of three persons, one of whom shall be knowledgeable in the area of residential development. The Developer shall have the power to remove members of the Committee and fill vacancies on the Committee until the earliest of the following: (a) the Developer relinquishes this power in writing; (b) ninety percent (90%) of the Lots on the Property have been sold; or (c) residential structures have been constructed on seventy-five percent (75%) of the Lots in all phases of The Highlands at Green Valley Subdivision and such structures are legally occupied. When the Developer ceases to have this power, it shall give written notice of this event to each property Owner and thereafter the property Owners in The Highlands at Green Valley Subdivision shall, within sixty (60) calendar days, elect new members of the Committee. Each Lot Owner shall have one vote for each Lot owned. The initial Committee members elected by the Lot Owners shall be elected for terms of three years. No member of the Committee shall receive any compensation or make any charge for services rendered.

The Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties. The Committee may fix the time and place for its regular meetings and such other meetings as may be necessary. The Committee shall meet monthly, or more or less often, on a regular basis as determined by the Committee. Written minutes shall be kept of Committee meetings and such minutes shall be open to Lot Owners for inspection at reasonable times upon request. The Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary. The duties of each will be such as usually appertain to such offices.

Section 6.2. Approval of Plans. No construction, remodeling, addition or modification of any kind of any structure and no excavation, grading or modification of the topography of any Lot may occur without the written consent of a majority of the Committee. Submission and approval of applications to engage in the above activities shall be governed by rules, regulations and standards adopted by the Committee. The initial rules and regulations, subject to amendment by the Committee, are attached as Exhibit B. After termination of the right of the Developer to appoint and remove Committee members as set forth in Section 6.1, any rule or regulation may be amended, adopted or repealed by majority vote of the property Owners, by one vote for each Lot owned. The issuance of a permit or granting of any approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Committee to refuse to approve such matter. Applications for approval shall be passed upon by the Committee within thirty (30) days of submission. In the event the Committee has not acted upon an application within such thirty (30) day period, the application will be deemed to be approved. At the time of initial purchase of a Lot, the purchaser shall deposit with Developer the sum of \$3,000.00 to insure compliance with this Section. Upon the determination of the Committee that the provisions of this Section have been met, and after issuance of a certificate of occupancy for the building by the City of St. George, Utah, the deposit shall be returned, without interest, to the person making the deposit. In the event that the provisions of this Section are not complied with in any regard, the deposit shall be deemed forfeited to the Developer and the Developer shall be entitled to use such funds as deemed fit, including, but not limited to, the payment of costs and attorney fees incurred in enforcing this Section.

Section 6.3. Immunity from Liability. The Committee shall not be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Declaration. Any errors or omissions in the design, construction, improvement or landscaping of any structure or property and any violation of this Declaration or of any law or regulation are the sole responsibility of the Lot Owner and the applicable designer, architect, or contractor. The Committee's review of plans shall in no way be concerned with structural, engineering or mechanical integrity or soundness, nor compliance with applicable laws or regulations.

Section 6.4. Injunctive Relief. Purchasers or Lot Owners within The Highlands at Green Valley Subdivision acknowledge that any construction, remodeling, addition or modification of any kind of any structure and any excavation, grading or modification of the topography of any Lot which occurs without the written consent of a majority of the Committee will cause irreparable harm to other Owners and purchasers within The Highlands at Green Valley Subdivision. Based thereon, any violation of this paragraph Article 6 by any person shall entitle the Committee, the Developer, or purchaser or Owner of any Lot within any phase of The Highlands at Green Valley Subdivision to enforce this provision through immediate injunctive relief through the appropriate court. By purchasing a Lot within The Highlands at Green Valley Subdivision, such purchaser or Lot Owner, for themselves and their agents, representatives, successors and assigns, waives any and all defenses to the granting of such injunctive relief. Additionally, any purchaser or Lot Owner of any Lot within The Highlands at Green Valley Subdivision agrees that such injunctive relief is in addition to any other damages or claims which the Committee, the Developer, or any purchaser or Lot Owner within The Highlands at Green Valley Subdivision may have hereunder or pursuant to law.

## ARTICLE 7 - USE RESTRICTIONS

Section 7.1. Construction, Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Developer to maintain such facilities and conduct such activities as in the sole opinion of Developer may be reasonably required, convenient or incidental to the construction and sale of Lots during the period of construction and sale of said Lots and upon such portion of the premises as Developer deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof, the Developer shall have the right of use of the Common Area and facilities thereon without charge during the sales and construction period to aid in its marketing activities.

Section 7.2. Land Use and Building Type. None of the Property or Lots shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height and one "casita" style guest house attached by the roof line to the primary dwelling. Every dwelling shall have, as a minimum, a two-car garage. All residences shall have a concrete paved driveway connecting the parking with a street in such a way as to allow safe ingress and egress. All construction shall be of new materials, except that used brick or stone may be used with the prior written approval of the Architectural Control Committee. In no event shall the total finished living area of any dwelling constructed on any Lot within the Property and having a single level or a ground level and basement, be less than One Thousand Eight Hundred (1,800) square feet, exclusive of porches, balconies, patios and garages. The minimum total finished square footage of living area on the first level above ground of any dwelling having multiple levels above ground shall not be less than One Thousand Four Hundred (1,400) square feet. Living area shall be defined as that area containing lighting fixtures, permanent floor coverings, and painted, paper or vinyl-covered walls and ceilings.

Section 7.3. Building Location. All buildings shall be located on all Lots so as to comply with any requirements noted on the Plat and so as not to be in violation of St. George City ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building including eaves or steps, encroach upon any other Lot.

Section 7.4. Exterior Building Materials. Exterior building materials shall be limited to rock, stone, brick and stucco, or a combination of the same. All soffit and fascia materials must be stucco. No wood, vinyl, aluminum, or hardboard siding shall be allowed. No log homes will be allowed. All exterior construction shall be subdued earth tones of such colors as have been designated by the Developer in the Developer's color palette. A copy of the Developer's color palette may be obtained from the Developer or the Committee.

Section 7.5. Garages. All residences constructed on any Lot within the Property shall be constructed with a fully enclosed, private, attached garage, built to accommodate not less than two (2), nor more than five (5) vehicles. The minimum size for any such garage shall be twenty (20) feet by twenty (20) feet. The height of the garage door headers shall not exceed eight (8) feet of clearance above the height of a normal passenger vehicle, pickup truck or sport utility vehicle. All garages shall be constructed of the same exterior materials, and shall be in harmony and architecturally compatible with, the residence constructed on the Lot.

Section 7.6. Roofing Material. Roofing material shall be limited to slate, clay, or concrete tile in such colors as have been designated by the Developer in the Developer's color palette. A copy of the Developer's color palette may be obtained from the Developer or the Committee.

Section 7.7. Roof Mounted Heat Pumps and Solar Panels. No solar panels, heat pumps and/or air conditioning or heating units shall be allowed to be mounted on roofs. All such units shall be installed on the ground in the side or rear yard of the Lot and shall not be visible from any street.

Section 7.8. Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

Section 7.9. Landscaping. Landscaping of the front and side yards of Lots must be completed prior to occupancy. A \$1,000.00 deposit shall be tendered by the buyer of any Lot to the Committee at the time of submission of an application for approval of plans for improvement of any Lot and shall be held by the Committee to insure installation of the landscape and cleanup after construction on the Lot. The deposit shall be returned to the person making the deposit upon the Committee's determination, after inspection, that the provisions of this paragraph have been met and the Lot is in a clean condition. In the event the front and side yard areas are not landscaped prior to occupancy or the Lot is not cleaned after construction as deemed appropriate by the Committee, the deposit shall be deemed forfeited to the Committee and the Committee shall be entitled to use such funds as deemed fit, including, but not limited to, the payment of costs and attorney fees incurred in enforcing this paragraph. The Committee shall have no obligation to use such deposit for the installation of required landscaping or the cleaning of the Lot. Lots shall be landscaped such that all unpaved portions of street front or street side yards shall be planted in either grass, turf, other ground cover, or rock, all as acceptable to the Committee. Unless waived in writing by the Committee based upon special circumstances, front yard landscaping shall be planted with a minimum of fifteen percent (15%) and a maximum of thirty-five percent (35%) of grass, turf or otherwise vegetated by ground cover. Landscaping shall be maintained at a reasonable standard compatible with other homes in the The Highlands at Green Valley Subdivision. Shrub and tree planting on corner Lots shall be located so as not to create a hazard for the movement of vehicles along streets. No trees or shrubs shall be planted on any corner. Lots shall be kept free of all tall, noxious or offensive weeds and plant growth by the Owner of said Lots. Should excessive growth occur on any Lot, the Owner shall be notified by the Committee, in writing, of such condition and shall be given thirty (30) days to correct the same, after which time the Committee may order such correction affected, the expense of which shall be charged to the Owner of the Lot or Lots.

Section 7.10. Paving. All driveways, walkways, parking areas and other areas of similar nature shall be paved with concrete in accordance with Committee approved plans and specifications within sixty (60) days of completion of buildings or other improvements erected upon the subject Lot. Any RV or other parking pad proposed to be constructed to the side of a home or garage, must first be approved by the Committee in writing.

Section 7.11. Storage of Materials. During construction of buildings or improvements on a Lot and for a period of sixty (60) days after completion thereof, a Lot may be used for the storage of materials used in the construction of the building or improvement.

Section 7.12. Fences, Walls, Hedges and Shrubs. Fences, walls, hedges and shrubs may be erected, planted, or maintained in rear yards and side yards not extending beyond the front line of the dwelling to a height not exceeding six (6) feet, unless otherwise approved by the Committee in writing. Fences, walls, hedges and shrubs may be erected, planted or maintained on remaining side yards and property lines to a height not to exceed four (4) feet. No fence, wall, hedge, shrub or other structure shall be placed or maintained along any front property line. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner as, in the opinion of the Committee, shall create a potential hazard or aesthetically offensive appearance. Fences and walls must be either earth tone colored concrete, block, brick, stone or stucco and approved by the Committee. No wood, chain link, PVC or white-rail fences will be allowed.

Section 7.13. Sight Distance at Intersections. No fence, wall, hedge, or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within a triangle formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such

distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 7.14. Boats, Recreational, Trucks, Trailers and Other Vehicles. No boats, motorcycles, trailers, buses, motor homes, campers or other such vehicles shall be parked or stored upon any Lot except within an enclosed garage or on a concrete or other pad approved by the ACC at the side or back of the house. In no event shall any such vehicles be parked on the driveway or in the front yard area of any Lot or on any street located within the Property. All such vehicles shall be properly registered and licensed, or meet such other governmental approval as may be required. Trailers and motor homes with a length in excess of fifty (50) feet and trucks of a gross vehicle weight over ten thousand (10,000) pounds are not allowed to be placed, parked, or stored upon any street, Lot, or part or portion of the Property. All trailers and recreational vehicles must be placed within an enclosed garage or behind a privacy wall.

Section 7.15. Antennas. No external radio, television, dish or other antenna of any kind or nature, or device for the reception or transmission of radio, microwaves or other similar signals shall be constructed or maintained on any Lot or residence in such a manner as to extend above the height of the residence on the Lot nor shall such devices be located on any Lot or on any residence on any Lot so as to be visible from the street. Satellite dishes shall only be allowed in backyard areas and only if screened from view from streets and other Lots.

Section 7.16. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon, in or under any Lot or part or portion of the Property, nor shall any oil or gas well, tank, tunnel, mineral excavation or shaft be permitted upon, in or under such Lot or part or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or part or portion of the Property.

Section 7.17. Care and Maintenance of Lot. The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times.

Section 7.18. Nuisances. No noxious or offensive activity shall be carried out on any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No Lot shall be used for any illegal purpose.

Section 7.19. Prohibited Structures. No basement home, mobile home, or pre-manufactured home shall be placed, located or constructed on any Lot. No structure of a temporary character, trailer, mobile home, basement with no upper structure, pre-manufactured home, tent, shack, garage, barn or any outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No lumber, material or building materials shall be kept, stored or allowed to accumulate on any Lot except building or other materials to be used in connection with any construction, alteration or improvement approved in accordance with the terms hereof.

Section 7.20. Signs. No signs of any kind shall be displayed to the public view on any Lot except one sign of not more than one square foot for identification (numbering) purposes. One sign of not more than two (2) square feet on each side may be used for advertising the Lot for sale or rent or identifying the home during construction. Any sign used for advertising the Lot or home thereon for sale or rent, or for identifying the home during construction, shall be of the style, size, color and design, and shall strictly conform in all respects with the sign depicted on Exhibit C attached hereto and made a part hereof. Except as specifically provided in this Section 7.20, no signs, including but not limited to banners, flags or streamers of any nature, shall be allowed on any Lot.

Section 7.21. Animals, Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets, not exceeding two (2) of each, may be kept, provided that they are not kept, bred or maintained for any commercial purpose and

are restricted to the Owner's premises or on a leash under the handler's control. Pets shall not be kept if they create noise or odors that, in the opinion of the Committee, constitutes a nuisance.

Section 7.22. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers which are emptied on at least a weekly basis. No unsightly materials or other objects are to be stored on any Lot in view of the general public or neighboring Lot Owners.

Section 7.23. Vehicles. Motor vehicles that are inoperable shall not be permitted to remain upon any street or Lot or road areas adjacent thereto for a period of more than seventy-two (72) hours. No automobile, recreational vehicle, commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired or repainted on or in front of any Lot unless performed within a completely enclosed garage or other permitted structure located on the Lot which screens the sight and sound of such activity from the public streets and neighboring Lots. The foregoing restriction shall not be deemed to prevent temporary parking for loading or unloading of such vehicles. No boats, trailers, buses, motor homes, campers, recreational vehicles or other such vehicles shall be parked or stored upon any Lot except within an enclosed garage or on a cement pad behind the required front Lot line setback area. Any parking of vehicles, boats or other equipment must be in compliance with all ordinances of the City of St. George.

Section 7.24. Commercial Activities Prohibited. Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind. However, this restriction shall not prohibit an Owner or resident from (a) maintaining his personal professional library therein; (b) keeping his personal business or professional records or accounts therein; or (c) handling his personal business or professional telephone calls or correspondence therefrom.

Section 7.25. Slope and Drainage Control. No structure, planting or material shall be placed or permitted to remain and no activities shall be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. No change in the elevation of a Lot shall be made and no change in the condition of the soil or level of the land of a Lot shall be made which results in any permanent change in the flow and drainage of surface water which is detrimental to any other Lot. Construction of improvements and installation of landscaping shall be done in such a way that drainage water is retained on the Lot and/or conveyed to appropriate drainage facilities and as not to detrimentally drain onto or across any other Lot. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Section 7.26. Re-subdivision or Combining of Lots. No Lot in The Highlands at Green Valley Subdivision shall be divided, subdivided, partitioned, parceled or broken up into smaller Lots or units. In the event any person desires to combine two or more Lots, either by use or plat amendment, approval shall first be obtained from the Committee. The responsibility to comply with all legal requirements and pay all costs associated with such combination shall be borne exclusively by the person desiring such combination of Lots.

Section 7.27. Damages. Any damage inflicted upon existing improvements such as curbs, gutters, streets, sidewalks and such, by the purchaser or Owner of any Lot and/or their agents or builders, must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the Lot purchaser or Owner.

Section 7.28. Use of Common Area Owners are hereby prohibited and restricted from using any of Common Area, other than as permitted in this declaration of covenants, as depicted on the plat, or as may be allowed by the Directors. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area. As part of the overall program of

development of the Properties into a residential community and to encourage the marketing thereof, the Developer shall have the right of use of the Common Area and facilities thereon without charge during the sales and construction period to aid in its marketing activities.

Section 7.29. Preservation of Views. In planning, constructing, installing and maintaining any structure, improvement or landscaping on any Lot, the Owner thereof shall take reasonable measures in an effort to not unduly restrict the views of surrounding Lots and properties.

#### ARTICLE 8 - EXPANSION

Developer reserves the right, at its sole election, to expand the Properties to include additional property more particularly described below by unilateral action of Developer without the consent of Owners, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah. The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah. and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY PREVIOUSLY DESCRIBED HEREIN, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT.

Expansion shall occur by the Developer filing:

a. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation: and

b. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Developer's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration. Any additional properties annexed hereto by the Developer shall be exclusively for residential single family dwellings, architecturally compatible to the existing homes, similar to the homes already constructed, constructed out of similar materials, with similar lot size. The Developer shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Developer deems necessary and such Common Areas shall be owned by the Association. The Common Area and Limited Common Area in such expansion area shall be deeded by the Developer to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation, and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of Association Property and facilities. Developer's Class B ownership status shall extend to all lots in the expansion area. Otherwise, Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each lot and lot Owner in any expansion area shall be equal to the liability of each Lot and Lot Owner in the original Properties.

#### ARTICLE 9 - GENERAL PROVISIONS

Section 9.1. Enforcement. The Association, the Developer 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, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event

action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Directors may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 9.2. Developer Immunity. By purchasing property within The Highlands at Green Valley Subdivision, the Lot purchaser or Owner:

A. Is relying upon its own investigations and inspections of the Lot and Property in deciding to purchase the Property;

B. Specifically purchases the Property **“AS IS” AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE;**

C. Agrees that it is the purchaser's or Owner's sole responsibility to obtain and comply with recommendations from competent geotechnical and engineering professionals with regard to the inspection of the Property prior to purchase and construction on the Lot;

D. Acknowledges and agrees that the Developer makes no warranties whatsoever with regard to the Lot or Property;

E. Represents that the purchaser or Owner has inspected the Lots and Property as deemed advisable by the purchaser or Owner and accepts the Lots and Property in its current condition, and assumes any and all risk of damage and personal injury and, for themselves and their heirs, representatives, successors and assigns, waive any and all known or unknown claims of whatever nature against the Developer and its agents, employees, officers, representatives, successors and assigns. Such waiver specifically includes, but is not limited to, any claims or damages caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock falls, rock, block or other walls installed by or for the Developer, the slope, elevation, or drainage of the Lots and Property and/or any adjoining properties, or any other condition that may be associated with, or directly or indirectly related to, defects in design, construction, installation or management of improvements within, related to, or servicing the Lots or Property. All of the foregoing also applies, without limitation, to claims with regard to the Common Area or conditions or improvements thereon.

A waiver and release agreement in the form set forth on Exhibit D and incorporated herein by reference shall be executed by all purchasers at the time any Lot is first sold to any purchaser and shall be recorded as part of the closing of such sale. However, the assumption of liability and waiver and release set forth in this paragraph shall be effective against any and all purchasers or Lot Owners of any Lot within The Highlands at Green Valley Subdivision whether or not the waiver and release shown on Exhibit D is signed and recorded.

Section 9.3. Severability. All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Developer, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 9.4. Duration. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any

Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 9.5. Amendment. After the occurrence of one of the events set forth in Section 6.1 which terminates the Developer's right to appoint and remove members of the Committee, this Declaration may be amended by a written document signed by the Owners of two-thirds (2/3) of the Lots in The Highlands at Green Valley Subdivision. Until such time as one of the events set forth in Section 6.1 occurs which terminates the Developer's right to appoint and remove members of the Committee, the Developer is vested with the right to unilaterally amend this Declaration as may be reasonably necessary or desirable in the sole discretion of the Developer.

Section 9.6. Developer Exemption. The Developer and all activities carried on by the Developer in connection with the subdivision, development, sale, or related activity, with regard to the Property or any Lot, is exempt and free from all restrictions and constraints in this Declaration.

Section 9.7. Violation as Nuisance. Every act or omission whereby any restriction, covenant or condition in this Declaration is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer or any Owner or Owners from time to time of any Lot or portion of the Property. Remedies under this Declaration shall be deemed cumulative and not exclusive.

Section 9.8. Enforcement. Each and all of the restrictions, covenants and conditions contained in this Declaration are for the benefit of the Developer and the Owner or Owners from time to time of any Lot or portion of the Property. Each restriction, covenant and condition shall inure to the benefit of and pass with each and every Lot or portion of the Property and shall apply to and be binding upon each and every successor in interest thereto. The restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or non-compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer or the Owner or Owners from time to time of any Lot or portion of the Property; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of such Lot or portion of the Property shall be bound and obligated by this Declaration, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. Failure by the Developer or any Owner or Owners of any Lot or portion of the Property, or their respective legal representatives, heirs, successors, or assigns, to enforce any of the provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.9. Attorney Fees and Costs. In the event enforcement hereof is required against any person or entity, the prevailing party to such action shall be entitled to recover all costs and attorney fees so incurred, whether or not suit is filed, and at trial or on appeal.

Section 9.10. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Such notices shall be deemed received upon actual receipt or five (5) days after mailing, whichever is sooner.

Section 9.11. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and (he necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall In all cases be assumed as though in each case fully expressed.



## EXHIBIT A

### BOUNDARY DESCRIPTION

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 27, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE N88°05'44"W 1407.23 FEET ALONG THE SECTION LINE; THENCE N24°49'47"E 190.27 FEET; THENCE NO°33'08"E 5 46.62 FEET; THENCE S89°26'52"E 130.00 FEET; THENCE NO°33'08"E 251.87 FEET; THENCE N10°38'24"E 4 60.72 FEET; THENCE N24°22'28"W 98.61 FEET TO A POINT ON A 274.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S30°22'42"E; THENCE NORTHEASTERLY 16.79 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 3°30'38" TO THE POINT OF TANGENCY; THENCE N63°07'56"E 89.86 FEET TO THE POINT OF A 531.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 58.23 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°16'59" TO THE POINT OF TANGENCY; THENCE N56°50'57"E 107.10 FEET TO THE POINT OF A 44.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 5.57 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 7°15'08" TO THE POINT OF TANGENCY; THENCE N64°06'05"E 129.63 FEET TO THE POINT OF A 56.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 4.95 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 5°04'10" TO THE POINT OF TANGENCY; THENCE N59°01'55"E 68.40 FEET TO A POINT ON A 20.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S14°36'18"W; THENCE SOUTHEASTERLY 29.08 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 83°18'41" TO A POINT ON A 125.00 FOOT, NON-TANGENT RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS N82°05'01"W; THENCE NORTHWESTERLY 60.42 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 27°41'35" TO THE POINT OF TANGENCY; THENCE N19°46'36"W 57.18 FEET; THENCE N70°13'24"E 39.28 FEET TO THE POINT OF A 537.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 56.59 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°02'16"; THENCE N13°44'20"W 6.00 FEET TO A POINT ON A 543.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S13°44'20"E; THENCE NORTHEASTERLY 216.59 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 22°51'16"; THENCE S30°02'41"E 15.59 FEET TO A POINT ON A 531.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS S10°10'41"W; THENCE SOUTHEASTERLY 57.05 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°09'21" TO THE POINT OF A 279.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE SOUTHEASTERLY 151.90 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°11'43" TO THE POINT OF A 431.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE NORTHEASTERLY 146.12 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°25'30" TO THE POINT OF TANGENCY; THENCE S85°26'11"E 179.69 FEET TO THE POINT OF A 294.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHEASTERLY 38.19 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 7°26'33" TO THE POINT OF TANGENCY; THENCE N87°07'16"E 53.11 FEET TO THE POINT OF A 161.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 66.89 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 23°48'16"; THENCE N28°40'25"E 33.42 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF "DIXIE DRIVE", ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDS OF WASHINGTON COUNTY; THENCE S26°41'00"E 11 6.00 FEET ALONG SAID RIGHT OF WAY LINE; THENCE LEAVING SAID LINE N82°02'25"W 33.42 FEET TO A POINT ON A 239.00 FOOT, NON-TANGENT RADIUS CURVE TO THE RIGHT, THE RADIUS POINT BEARS N26°41'00"W; THENCE SOUTHWESTERLY 160.11 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 38°22'56" TO THE POINT OF A 794.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE NORTHWESTERLY 98.88 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 7°08'07" TO THE POINT OF TANGENCY; THENCE N85°26'11"W 121.27 FEET TO THE POINT OF A 369.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY 125.10 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 19°25'30" TO THE POINT OF A 341.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT; THENCE NORTHWESTERLY 185.66 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 31°11'43" TO THE POINT OF A 469.00 FOOT RADIUS REVERSE CURVE TO THE LEFT; THENCE NORTHWESTERLY 50.11 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°07'20"; THENCE S31°51'32"E 43.31 FEET TO A POINT ON A 437.81 FOOT, NON-TANGENT RADIUS CURVE TO THE LEFT, THE RADIUS POINT BEARS S14°00'45"W; THENCE NORTHWESTERLY 97.26 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 12°43'43"; THENCE S24°55'49"W 243.39 FEET; THENCE N65°04'11"W 4.69 FEET; THENCE S24°55'49"W 556.36 FEET; THENCE S65°04'11"E 140.00 FEET; THENCE S24°55'49"W 26.97 FEET; THENCE S65°13'57"E 180.00 FEET; THENCE S65°04'11"E 50.00 FEET; THENCE S24°55'49"W 18.96 FEET; THENCE S65°01'37"E 100.01 FEET; THENCE N24°55'49"E 215.00 FEET; THENCE S65°01'37"E 251.39 FEET; THENCE N48°09'53"E 14.57 FEET; THENCE S88°38'23"E 123.40 FEET TO A POINT ON THE EAST LINE OF SAID SECTION 27; THENCE S0°39'29"W 962.45 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING. CONTAINS 37.77 ACRES.

## EXHIBIT B

### RULES, REGULATIONS AND STANDARDS OF THE HIGHLANDS AT GREEN VALLEY SUBDIVISION, PHASE 1

While the controls exercised by the Architectural Control Committee (hereafter referred to as the "Committee") must be maintained, the Committee does not intend to stifle innovative designs or architectural freedom. If any design elements of a prospective home appear to be in conflict with the controls or recommendations set forth, such conflicts must be resolved by the Committee and will, whenever possible, be resolved in favor of aesthetic and design quality.

The guidelines and restrictions contained herein are consistent with the provisions of the recorded covenants, conditions and restrictions of The Highlands at Green Valley Subdivision, Phase 1 (hereinafter "Covenants"). The Covenants are on record in the office of the Recorder, Washington County, Utah, at 87 North 200 East, St. George, Utah. Any violations of these guidelines or the Covenants may result in required changes to floor plans, colors, materials, etc. at the owner's and/or contractor's expense.

No construction may begin in The Highlands at Green Valley Subdivision, Phase 1 without the issuance of a building permit issued by the City of St. George. A set of drawings and specifications with the Committee's stamp or signature of approval must be submitted to the City of St. George to obtain a permit. This stamp or signature of approval will be given upon compliance with all provisions stated in the Covenants and these rules, regulations and standards and by execution of a final agreement as established by these rules by the owner and contractor legally responsible for the proposed construction.

#### SECTION 1.

Three (3) complete sets of floor plans, outside elevations, and site plans as set forth and containing, at a minimum, the information listed below, shall be submitted to the Committee no less than ten (10) days prior to the desired date for commencement of construction. Two (2) sets will be stamped or signed and returned, one for the City of St. George and one for construction use. The plans must contain all of the following:

##### A. SITE PLAN

1. Show scale and over-all dimensions.
2. Indicate lot number and street name.
3. Indicate setback from street (front yard minimum setback is twenty-five (25) feet and side yards minimum setbacks are ten (10) feet and ten (10) feet).
4. Indicate grade elevations at front corners of lot and finished floor elevations.
5. All finished floor elevations must be a minimum of twelve (12) inches above the crown of the road of the front street elevations. Finished floor elevations are to be consistent with existing homes on the adjacent lots. (In instances where the contour of the land prohibits compliance, a special examination of the site will be made by the Committee and determination will follow.)
6. Location of the HVAC unit shall be noted. No HVAC unit will be placed on the roof.

##### B. FLOOR PLAN

1. Show scale and over-all dimensions.
2. Indicate window and door locations and sizes.
3. Show location of all HVAC units, satellite dishes, and any other mechanical and/or non-mechanical devices. Locations of these items must be in the rear of the house or out of street view. (Special consideration will be given when rear installation is not feasible. In such situation, the unit must be screened from the street view with materials compatible with materials used in the construction of the house.)

C. ELEVATIONS

1. Note scale on plan.

D. COLOR SCHEMES AND EXTERIOR MATERIALS

1. Colors shall be subdued earth tones. The color scheme should compliment the neighborhood. The Committee reserves the right to reject any scheme it deems not consistent with the area.
2. The general design expressed in the front of the house must continue to each side elevation.
3. Innovative designs used on the front of the house using stone, brick or other materials will be considered on an individual basis.

E. CONSTRUCTION AND MATERIALS WHICH ARE NOT ACCEPTABLE

1. Log house.
2. Pre-manufactured houses.
3. Earth or berm houses.
4. Re-located houses.

F. ACCEPTABLE ROOFING MATERIALS

1. Roofing materials must be slate, clay or concrete tile.

G. HEIGHT OF HOUSE

1. No house will exceed thirty five feet from street frontage view.
2. All houses proposed to be over one story in height will be examined by the Committee as to the aesthetic value for adjoining houses, lots and/or their views. The Committee has the right to restrict the height of any house, structure of landscaping if it unduly restricts a neighbor's view.
3. Minimum roof pitch on homes and accessory buildings will be 4/12.

H. SIZE OF HOUSE, LANDSCAPING, AND SPECIAL RESTRICTIONS

1. The outside measurement of each house containing a single level, or of each house containing a ground level and a basement level, will not be less than eighteen hundred (1,800) square feet on the ground floor, exclusive of garages, porches, patios, and storage. The ground floor of a two story home, exclusive of garages, porches, patios, and storage, will not be less than fourteen hundred (1,400) square feet.
2. All storage units, detached garages, etc., are to have the same design and materials as the main dwelling, except that colored block may be used for detached buildings.
3. All homes are to have a minimum two car garage attached or detached.
4. Fences and swimming pools will follow the St. George zoning requirements.
5. All required landscaping (as outlined in paragraph 7.9 of the Covenants) will be completed prior to occupancy.
6. Campers, boats, pickups and other recreational and commercial vehicles must be kept in a garage or on a concrete (or other suitable material) pad at the side or in the rear of the house.
7. All walls around houses shall be of colored masonry materials approved by the Committee and shall conform to the St. George zoning requirements. No chain link, wood or wire fences or walls will be allowed.
8. In order to maintain the integrity of the development, no roof-top mounted air conditioning or heating equipment, or any other such device will be allowed.

9. Basements: A geotechnical investigation was performed by Applied Geotechnical Engineering Consultants, Inc. The results of the investigation and specific recommendations of construction are compiled in a report dated July 7, 2004. This report is available from the Developer and a copy is on file with the City of St. George. Owners, builders and contractors should become familiar with this report and comply with its recommendations. In addition, all homes must be constructed in accordance with the recommendations of a geo-technical engineer on a lot by lot basis.

## I. EASEMENTS

1. Easements for installation and maintenance of utilities and drainage are reserved as shown on the recorded plat. Structures of any type are prohibited within these easements. Plants or other materials may be placed or permitted to remain within such easements which will not damage utilities, or which will not obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority or utility is responsible.

## SECTION 2.

DURING THE COURSE OF CONSTRUCTION, OWNERS AND CONTRACTORS WILL COMPLY WITH THE FOLLOWING CONDITIONS AND AGREEMENTS.

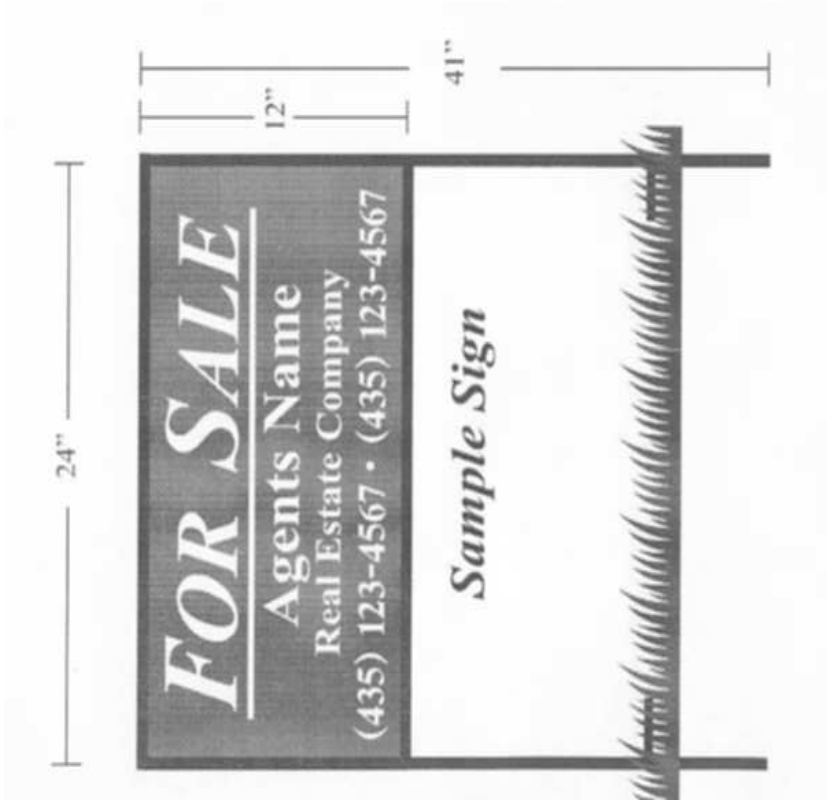
- A. Trash Receptacles and Debris Removal. Owners and contractors shall clean up all trash and debris at the end of each day. An approved trash receptacle must remain on the site at all times for this purpose to contain all lightweight materials or packaging. Trash receptacles must be emptied at least once a week (and more often if necessary) at an appropriate off-site facility.
- B. Concrete Trucks. Concrete trucks may be washed out only on the lot being built upon and inside the construction area. The owner and contractor are responsible for containing all washout to preclude this water from entering washes and contaminating tree roots.
- C. Cleanliness. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or affecting other parcels or any easement. Any cleanup costs incurred in enforcing these requirements shall be payable by the owner and contractor. Dirt, mud, or debris resulting from activity on each construction site shall be promptly removed.
- D. Materials Storage. Construction materials shall be stored on the lot, only for such time as reasonably needed and in orderly array.
- E. Sanitary Facilities. Each owner and contractor shall be responsible for providing adequate sanitary facilities for construction workers. Portable toilets must be provided.
- F. Vehicles and Parking Areas. All construction vehicles shall be parked within the lot being built upon or on the public street.
- G. Conservation of Native Landscape. The Committee shall have the right to protect major terrain features, rocks, or plants. Any trees or branches removed during construction must be promptly cleaned up and removed from the construction site.
- H. Dust and Noise Control. The owner and contractor shall be responsible for controlling dust and noise from the construction site, including the removal of dirt and mud that is the result of construction activity on the site and the owner shall ensure that the contractor undertakes such responsibilities. The volume of stereos, radios or any equipment must be maintained at a LOW LEVEL that does not disturb the quiet peace and enjoyment of adjoining property owners or the surrounding neighborhood.

- I. Material Deliveries. All building materials, equipment and machinery required to construct a residence must be delivered to and remain within the lot. This includes all building materials, earth moving equipment, trailers, generators, mixers, cranes, and any other equipment or machinery.
- J. Firearms. Carrying any type of firearm on the Property by construction crews is prohibited.
- K. Alcohol and Controlled Substances. The consumption of alcohol or use of any controlled substance on any construction site is prohibited.
- L. Fires and Flammable Materials. Careless disposition of cigarettes and other flammable materials, as well as the build-up of potentially flammable materials constituting a fire hazard on the construction site, are prohibited.
- M. Restoration of Property. Upon completion of construction, each owner and contractor shall clean his construction site and repair all property which has been damaged, including but not limited to, restoring natural contours, rocks, trees, and natural vegetation as approved or required by the Committee, and repair roadways, driveways, pathways, drainage, and culverts. The deposit required by paragraph 7.9 of the Covenants shall not be refunded until the requirements of this paragraph are met.
- N. Construction Signage. Temporary construction signs shall be limited to one sign per site not to exceed four (4) square feet of total surface area. The sign shall be free standing, not to exceed four (4) feet in height above natural grade, and of a design and in a location within the site as approved by the Committee. Attachment of signs or similar material to trees or rocks is strictly prohibited.
- O. Daily Operation. Daily working hours for each construction site shall be from 30 minutes before sunrise to 30 minutes after sunset.

## Sign Standards

All signs within The Highlands at Green Valley must comply with the following guidelines:

- Background shall be a .032" steel panel painted dark brown on both sides.
- Copy color shall be beige.
- All signs shall comply with these standards (ie. Open House, For Rent, etc.).
- If a flyer box is used, it must be a clear faced flyer box attached directly to the sign frame.
- No additional signs, banners, or permanent signs will be allowed within The Highlands at Green Valley, other than one St. George City building inspection sign of identical design as set forth above, no more than 24" x 36" in size.
- Signs shall be installed approximately 10' from the back of the sidewalk.
- Signs meeting the above requirements are available from Star Sign & Banner (435) 628-7806.



**EXHIBIT D**

**WAIVER AND RELEASE AGREEMENT**

\_\_\_\_\_, (“Owner(s)”) of Lot(s) \_\_\_\_\_, The Highlands at Green Valley Subdivision, Phase \_\_\_\_, according to the official plat thereof recorded in the office of the Washington County Recorder, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree that, by purchasing property within the subdivision, the Owner(s) are relying upon their own investigations and inspections of the Lot(s) in deciding to purchase the Lot(s). The Owner(s) are purchasing the Lot(s) **“AS IS” AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.** The Owner(s) acknowledge and agree that the Developer makes no warranties whatsoever with regard to the Property. The Owner(s) agree that it is the Owner(s)’s sole responsibility to obtain and comply with recommendations from competent geotechnical and engineering professionals with regard to the inspection of the Lot(s) prior to purchase and construction on the Lot(s). The Owner(s) represent that the Owner(s) have inspected the Lot(s) as deemed advisable by the Owner(s) and accept the Lot(s) in their current condition. The Owner(s) specifically and intentionally assume any and all risk of damage and personal injury and, for themselves and their heirs, representatives, successors and assigns, waive any and all known or unknown claims of whatever nature against the Developer and its agents, employees, officers, representatives, successors and assigns in any way related to such Lot(s) or The Highlands at Green Valley Subdivision. Such waiver specifically includes, but is not limited to, any claims or damages caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock falls, rock, block or other walls installed by or for the Developer, the slope, elevation, or drainage of the Lot(s) and The Highlands at Green Valley Subdivision and/or any adjoining properties, or any other condition that may be associated with, or directly or indirectly related to, defects in design, construction, installation or management of improvements within, related to, or servicing the Lot(s) or The Highlands at Green Valley Subdivision, all of the foregoing also applies, without limitation, to claims with regard to the Common Area or conditions or improvements thereon.

All rock retaining walls built by or for the Developer and all masonry or rock walls built by or for any Lot Owner(s) shall be owned and maintained by the Owner of the Lot on or adjacent to which the wall is located. Neither the City of St. George nor the Developer shall have any responsibility or liability whatsoever with regard to any aspect of any such walls, including defects therein.

This waiver and release is hereby made a part of the sale of Lot(s) \_\_\_\_\_ and the contract for the purchase and sale of such Lot(s) dated \_\_\_\_\_, shall survive the closing of any purchase transaction or transfer with regard to such Lot(s), and constitutes a covenant running with the land. The burdens and benefits under this waiver and release shall be binding upon the undersigned and their successors, representatives and assigns. Should any term or provision of this agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect. Should any action be brought to enforce the terms of this agreement, the prevailing party shall be entitled to recover their costs and attorney fees incurred in such action, whether or not suit is commenced, and at trial or on appeal.

By signing below, the undersigned acknowledges that they have carefully read and reviewed the terms of this waiver and release and agree to its provisions.

OWNER(S)

\_\_\_\_\_  
Date  
\_\_\_\_\_  
Date

(Acknowledgment for business entity or trust)

