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RUSSELL SHIRTS * WASHINGTON CO RECORDER
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TITLE OF UTAH

COVENANTS, CONDITIONS & RESTRICTIONS
OF
THE NEW WARM SPRINGS SUBDIVISION – PHASE III

A SUBDIVISION LOCATED IN
WASHINGTON COUNTY, UTAH

JOHN G. GRAHAM and MARY GAIL GRAHAM, hereinafter referred to as the “Developer,” is the owner of the following described property, hereinafter referred to as the “Property”, located in Washington County, State of Utah, to-wit:

(SEE LEGAL DESCRIBED ATTACHED HERETO AS EXHIBIT “A” AND INCORPORATED
HEREIN BY THIS REFERENCE)

Developer hereby includes all of the Property in the plats recorded herewith of The New Warm Springs Subdivision – Phase III, together with lots that have been added from The New Warm Springs Subdivision – Phase II, according to the Lot Dedications recorded herewith (or hereafter recorded (if any)), and divides the Phase III Property into Lots as shown on said plat(s) and dedicates the streets shown on said plat(s) to the public. The easements indicated on said plats are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements.

Developer further declares that all of the Property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and every Lot, part or portion thereof. The acceptance of any deed or conveyance of any Lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer and with each other to accept, hold, improve, use and convey the Property described and conveyed in or by such deed or conveyance subject to said, covenants and conditions. These restrictions, covenants and conditions shall run with the land.

ARTICLE 1 – USE RESTRICTIONS

1.1 Land Use and Building Type: All Lots shall be used only for detached single family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the Lot restrictions contained in the section shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal, business or professional telephone calls or correspondence therefrom; or (d) establishing a valid home occupations approved by the City of Washington, provided that there shall be no retail sales conducted at the lot.

“Family” is defined to persons related by blood or marriage, by legal adoption, or by operation of law.

1.2. Lot Size: Lot sizes as described on the recorded plat of subdivision are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the recorded plat of said subdivisions. Lots may be combined for construction of a single residence.

In the event of such combination of adjacent Lots, all easements and rights of the Association, Lot owners, its members and third parties, such as utilities, in the boundary area between such Lots which had been exercised prior to construction of the home on the Lot would remain in place, in perpetuity. However, all easements and other rights in the boundary area between such Lots which had not been used prior to construction of the home could not thereafter be exercised. In the event of such a combination of Lots, the combined Lots shall be assessed as one Lot.

The Lot purchaser is required to obtain a soils test and recommendation on foundation from a Utah registered engineer prior to construction. The Architectural Control Committee requires that the Lot owner obtain a soils test and recommendation on foundation prior to the final approval. Furthermore, the Architectural Control Committee may condition final approval following the recommendations set forth in the soils test document.

1.3. 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. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that:

- (a) Any damage caused by such entry shall be repaired at the expense of the owner whose property was the subject of the repair work which caused the same;
- (b) Any such entry shall be made only at reasonable times and with as little inconvenience as possible to the owner of the entered Lot; and
- (c) In no event shall said easement be deemed to permit entry into the interior portion of any dwelling.

Each owner shall be responsible for maintenance of his Lot. In the event any owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property, or affect adversely the value or use of any other Lot, the Directors of the Owners Association shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

1.4. Care and Maintenance of the Common Areas Landscape. The Owners Association shall be responsible for care and maintenance of the common areas, currently consisting of the clubhouse and pool located in The New Warm Springs Subdivision – Phase II (as set forth in the Plat thereof on file in the Washington County Recorder’s office). Any damage caused to the common area by any Lot owner and/or their agents, guests or invitees must be repaired by the Lot owner as soon as possible after such damage is discovered, and in the event of failure of the

owner to make such repairs, the Association may make such repairs and the expense of such repairs shall be borne by the Lot owner.

1.5. Easements: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction of flow of drainage channels in the easements, or which may 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 company is responsible. The title holder of each Lot shall from time to time as may be reasonably required grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

1.6. No Hazardous Activities. No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

1.7. Motorbikes. All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only on established streets and parking areas and are specifically prohibited from all other portions of the Property, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational purposes anywhere within the Project.

1.8. Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Living Units, the Landscape easements, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants, which are injurious to crops, livestock, land or the public health.

1.9. Nuisances: No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood.

No clothes drying or storage of any articles, which are visible from any public street, shall be permitted. No clutter, debris, or other such materials shall be permitted which are visible from any public street.

No resident's use of a Lot shall endanger the health or disturb the reasonable enjoyment of any other owner or resident.

1.10. Safe Condition: Without limiting any other provision of these covenants, each owner shall maintain and keep such owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the safety or reasonable enjoyment of other owners of their respective Lots.

1.11. Oil and Mining Operations: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

1.12. Animals, Livestock, Poultry, Agriculture: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property, except that dogs, cats or other domesticated household pets, two (2) or less in total number may be kept in a residence constructed on a Lot, provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances, and shall be on a leash or inside a fence when outside the owner's residence. No dog runs are allowed.

1.13. Garbage and Refuse Disposal: No Lot or part or portion of the Property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property, shall be kept only in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

1.14. Water Supply: Each resident shall be connected to and use the municipal culinary water supply. No individual culinary water supply system shall be used or permitted to be used on any Lot, part or portion of the Property.

1.15. Sewage Disposal: Each residence shall be connected to and use the municipal sewage disposal system. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

1.16. RV's, Boats, and 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 set-back area. No such vehicles shall be parked overnight on any street located within the subdivision. Trailers, motor homes, and trucks, over 9,000 pounds GVW are not allowed to be stored upon any vacant Lot or street or road area adjacent to the Property.

Motor vehicles that are inoperable shall not be permitted to remain upon any street or Lot or road areas adjacent thereto. In the event an inoperable motor vehicle remains upon any Lot or road area for a period exceeding thirty (30) days, the developer or other Lot owners residing within the Property may remove the inoperable motor vehicle after a ten (10) day written notice. The cost of such removal shall attach to the vehicle and the Lot as a valid lien in favor of the

persons, entities, or parties causing such removal. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle that is unable to operate in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of not less than six (6) weeks.

1.17. Rules: The Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Property, and persons with the Property. These rules of the Association shall be compiled and copies shall be made available by the Directors for inspection at a reasonable cost.

1.18. Business and Sales: Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Developer, or its written designee, 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 of homes and sale of Lots during the Development Phase, and upon such portion of the Property including Lots or common area, if any, 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 Property into a residential community and to encourage the marketing thereof, the Developer shall have the right of use of any Lots or any common area and facilities thereon, including any landscape easement, community buildings, without charge during the sales and construction period to aid in its marketing activities. The Developer shall specifically have the right to utilize the clubhouse and pool for marketing and office purposes, and may allow owners of the New Warm Springs Subdivision – Phase I or II to utilize the clubhouse and pool on a fee or dues basis.

ARTICLE 2 – ARCHITECTURAL CONTROL

2.1. Architectural Control Committee: Prior to the commencement of any excavation, construction, or remodeling of any building or structure or of any addition to any building or structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the Architectural Control Committee is required.

- a. Two (2) complete sets of building plans and specifications shall be filed with the Architectural Control Committee, together with a site or plot plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the Architectural Control Committee may determine from time to time, and an application and such supporting material, such as samples of building materials, as the Architectural Control Committee deems necessary. No work shall commence unless and until the Architectural Control Committee shall endorse on both sets of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said Architectural Control Committee pursuant hereto. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee.

b. Said Architectural Control Committee shall be the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.

c. The Architectural Control Committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.

d. In the event said Architectural Control Committee fails to approve or disapprove in writing any such plans within sixty (60) days after the submission thereof to the Architectural Control Committee, then approval shall be deemed to have been given.

e. The Architectural Control 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 Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designed, architect, or contractor. The Architectural Control Committee's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.

f. The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.

g. Until every Lot subject to the covenants, including Lots in any phases subsequent to the third phase, has been transferred to a bona fide purchaser, Developer may appoint three persons to be the Architectural Control Committee. Thereafter the Architectural Control Committee shall consist of the Board of the Association or of three (3) persons appointed by that Board. When the title to all of the Lots in said development has been transferred by the Developer, a majority of the owners of Lots subject to these covenants shall elect and appoint members of the Board which shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the property subject to these restrictions, covenants and conditions.

h. The Architectural Control Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspections upon request. The Architectural Control Committee shall, by majority

vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to members who have made application to the Architectural Control Committee for approval of plans.

- i. Unless authorized by resolution of the Board, the members of the Architectural Control Committee shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the Architectural Control Committee shall be paid such compensation as the Architectural Control Committee determines.
- j. Developer or its assigns shall be exempt from the provisions, restrictions, and requirements of the Article, relating to building, marketing, signage, sales and other such commercial activities, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Declaration.
- k. All Lots in Phases II, if added to this covenant, shall be built under the requirement of the covenant which applies to their Phase. Accordingly, this covenant shall not apply as to Architectural Control to any Lots in Phase II that may have dedicated their lot for purposes of membership in the common area.

2.2. Washington City Permit Required. No living unit, accessory or addition to a living unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefor is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may reasonably require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Architectural Control Committee to refuse to approve any such matter.

2.3. Design Restrictions: In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines, together with any guidelines hereafter established by the Architectural Control Committee, are applicable to the Property.

- (a) Purpose and Intent. The intent of these Architectural Guidelines is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture of the created environment of the project. These standards allow design latitude and flexibility, while ensuring that the value of the property will be enhanced through the control of site planning, architecture and landscape elements.

The Architecture Guidelines serve as an evaluative aid to owners, builders, project developers, design professionals, City staff, the Planning Commission,

City Council and the Architectural Control Committee in the design review of individual, private and public developments within The New Warm Springs project. The City of Washington Zoning Regulations will apply for any area of design not addressed in these guidelines.

- (b) Permitted Structures. The only building(s) or structure(s) permitted to be erected, placed or permitted to be located on any Lot within the subdivision shall be (i) a detached single family dwelling placed within the building envelope for each Lot and not to exceed the height requirements found in this section; which must include a minimum two car, private, enclosed garage; and (ii) an accessory building such as a tool shed or storage building, not to exceed 100 square feet in the floor space, with a height less than twelve feet. All construction must be of new materials. All structures shall be constructed in accordance with the zoning and building ordinances of Washington, Utah, in effect from time to time.
- (c) Minimum Area. The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any single-story residential dwelling constructed on any Lot within the subdivision shall be not less than 1,200 square feet single level, exclusive of porches, balconies, patios, and garages. Two-story homes shall have a minimum of 1,200 square feet on the main floor, with a total square footage of not less than 1,700 square feet, exclusive of porches, balconies, patios and garages.
- (d) Setbacks. The following minimum setback standards apply to the Lot. All measurements shall be made from the applicable Lot line to the foundation, porch or other extension of any building or structure, whichever is nearer to such a Lot line.
- Front - Minimum of 20 feet Lot line to structure.
- Side - Side Setbacks are 10 feet.
- Rear - Minimum of 10 feet from Lot line to structure.
- (e) Building Height. Maximum building height shall be 35 feet for two-story residence and 25 feet for a one-story residence. Height is measured from a base line parallel to the existing Lot grade to a parallel line intersecting the highest point of any roof element.
- (f) Dwelling. Elevations should be consistent with the intended architectural style of the residence and carried around all four elevations of the structure.
- (g) Facades. Facades shall be stucco, brick or stone, or such other material as approved by the Architectural Control Committee.

- (h) Roof Materials. Roof material shall be limited to clay or concrete tiles or slate. Colors shall be subdued earth tones to complement the natural beauty of the area selected from or in harmony with approved samples, or in such other colors as may be allowed by the Architectural Control Committee.
- (i) Sheet Metal. Flashing, vents and pipes must be colored or painted to match the material to which they are attached or from which they project. No reflective exterior surfaces or materials shall be used. Copper is allowed.
- (j) Colors. Base building colors shall be in subdued earth tones to complement the natural surroundings and conform to or be in harmony with approved samples. White is allowed. Pastels or high gloss finishes may not be used. Complementary accent colors can be used on, window trim, shutters and doors.
- (k) Prohibited Structures. Dome Structures, Log homes, Re-located homes, manufactured homes, and Earth or Berm Homes of any type are not allowed.
- (l) Temporary or Other Structures. No trailer, bus, basement, outhouse, tent, shack, garage, or accessory building shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any of said Lots nor shall any such structures be erected or placed on said property at any time. It is the Developer's intention that all dwellings and other buildings be erected within the subdivision be new construction, of good quality, workmanship, and materials
- (m) Accessory Buildings. One storage or utility structure such as a tool or storage shed is allowed on each Lot. Such a building shall be of the same architectural style and constructed of the same materials as the principal dwelling structure. Such building shall not exceed 100 square feet in floor space, and the height shall not exceed twelve feet. No such building or structure shall be used for human habitation. All such structures must abide by set back and side yard requirements.
- (n) Driveways and Parking. There shall be area on the driveway (excluding sidewalk areas) to park not less than two vehicles per Lot. Each driveway on a Lot shall be constructed out of cement, brick, concrete, or interlocking pavers. Cinders, sand, gravel, asphalt or dirt shall not be permitted for driveway material in the front and side yards areas of each Lot.
- (o) Fences and Sight Obstructions. No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangle area formed by the street property lines and a line connecting them at points forty (40) feet from the intersection of the street, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley

pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines. No fence, wall, hedge, shrub, or other structure shall be placed 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 Architectural Control Committee, shall create a serious potential hazard or an aesthetically unpleasant appearance to the other residents of the area.

- (p) Fences, walls and other barriers shall be approved by the Architectural Control Committee and constructed of and approved material and color. No fences shall be constructed in the front setback areas.

Individual homeowners may construct walls in the rear and along the side property lines. Walls must harmonize with color and style of project perimeter wall and may not exceed six (6) feet on the highest side.

- (q) Light used to illuminate garages, patios, parking areas or for any other purposes, shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists. Low level outdoor illumination may be used for particular landscape features (trees, rock formations, etc.). All light sources must be shaded.

- (r) Antennas for radio, television, or device for the reception or transmission of radio, microwaves or other similar signals are restricted to the attic or interior of the residence. It is mandatory that all homes be pre-wired for cable reception. Satellite dish antennas shall be allowed provided they are located in such areas as may be designated by the Architectural Control Committee. In no event shall satellite dish antennas be visible from neighboring property or exceed 20 inches in diameter or width.

- (s) Air conditioning units are not permitted on roofs or through windows.

- (t) External Apparatus. No Lot owner shall cause or permit anything (including, without limitation, awnings or canopies) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Architectural Control Committee. Shutters are allowed.

- (u) Landscaping. Landscaping shall be completed in accordance with the Landscape plan submitted to and approved by the Architectural Control Committee prior to construction of the home, and may include but shall not be limited to the preparation for the planting of lawn, grass or other appropriate ground cover, and appropriate shrubbery.

Each owner shall be responsible for the maintenance of his Lot. In the event that any owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property or affect adversely the value of use of any Lot, the Directors of the Owners Association shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

(v) Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities 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. 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. Lot owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

(w) Easements. Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easement or which may impede ingress and egress. 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 company is responsible.

(x) Lateral and Subjacent Support and Drainage. An owner's activities which affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent landowners.

(y) Signs; Commercial Activity. Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the properties. The foregoing restrictions shall not apply to signs and billboards, if any, of the Developer or its agents during the construction and sales period or by the Association in furtherance or 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.

2.4. Construction and Contractor Provisions: In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines, which are applicable to the properties:

- (a) Completion of Construction. The construction of any building or structure on any portion of the Property shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within twelve (12) months after such commencement.
- (b) Landscaping. Landscaping shall be completed within 120 days of completion of construction.
- (c) Soils Test. The Lot purchaser is required to obtain a soils test and recommendation per City requirements.
- (d) Damages. Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the owner and/or their agents of any particular Lot in the subdivision must be repaired within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner.

ARTICLE 3 – MEMBERSHIP AND VOTING RIGHTS

Each Owner of a Lot within the Property as described on Exhibit A shall be a member of The New Warm Springs Phase III Owners Association by virtue of these Covenants. Lots added by Lot Dedication shall also be Members.

The Association shall have one class of voting membership. All members are entitled to one vote for each Lot owned. The Developer and his assigns are entitled to three votes for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a 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.

ARTICLE 4 – FINANCES AND OPERATIONS

4.1. Creation of Lien and Personal Obligation of Assessment. The Developer (subject to the reservation in paragraph 4.4 below) and each subsequent owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expresses in any such deed or other conveyance, covenants and agrees to pay The New Warm Springs Owners Association (hereinafter "Association"), assessments or charges and interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the owner of such property at the time when the assessments were fell due and (b) successors-in-title who took title when assessments were delinquent.

4.2. Purpose of Assessments. The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair, and preservation of the common area. At the time of this Declaration, the only common area is the clubhouse and pool located in Phase II. However, Developer reserves the right to add other common areas in future phases. 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 and maintaining the common area, or other common areas that may be added in future phases; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of the common areas which must be replaced on a periodic basis; and other amounts required that the Directors shall determine to be necessary to meet the primary purposes of the Association.

4.3. Special Assessments for Capitol Improvements. In Addition to the annual assessments, the Association 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 the landscape easement areas, or other common areas that may be added in the future

4.4. Uniform Rate of Assessment; Periodic Assessment. Assessments must be fixed at a uniform rate of all Lots; provided, however, that assessments shall not accrue against the Developer of Lots owned by the Developer, or Developer's assigns who hold the lots in the same position as Developer, for resale to the public. The obligation of the Developer (or his assigns as Developer) shall be limited to subsidizing the operating needs of the Association until assessments from lot owners (other than the Developer) shall meet the operating needs of the Association. Developer shall not be responsible for funding reserves as a part of this subsidy obligation.

4.5. Date of Commencement of Annual Assessments; Due Dates The assessment provided for herein shall commence to accrue on the first day of the month following conveyance to a purchaser. The first assessment shall be adjusted according to the number of months remaining in the calendar year.

The assessment due dates shall be established by the Directors.

The Directors shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount if the 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 paid.

4.6. 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 set by resolution) until paid. In addition, a late fee of \$10.00 for each delinquent installment shall be imposed.

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, or (b) may foreclose the lien against the property 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 member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee.

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 beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Director for purposes of power of sale foreclosure.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas or by abandonment of the Lot.

4.7. 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. 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 of transfer, however, shall relieve a Lot or owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

4.8. Books, Records and Audit. The association shall maintain current copies of the Protective Covenants, 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.

ARTICLE 6 – DURATION, ENFORCEMENT, AMENDMENT

6.1. Duration of Restrictions: The covenants and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. Until the Developer or its designee ceases to act as the Architectural Control Committee, the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part at any time and from time to time by the Developer or his successor or assigns by recorded instrument.

6.2. Amendment: Upon completion of the Development Phase, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of sixty-six percent (66%) of the number of Lots, provided that all signatures must be notarized and obtained within a 180 day period. After the Developer or its designee ceases to act as the Architectural Control Committee, written notice of any such proposed amendment shall be sent to every owner of any Lot, part or portion of the Property at least 30 days in advance.

6.3. Notices: Any notice required under the provisions of this document to be sent to any Lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to last known address of such owner.

6.4. Construction and Severability: All of the restrictions, covenants and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability of any of the remaining restrictions, covenants or conditions, or parts thereof.

6.5. Violation Constitutes Nuisance: Every act or omission whereby any restriction, covenant or condition in this document set forth 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, the Association, or a Lot owner or owners. Remedies hereunder shall be deemed cumulative and not exclusive.

6.6. Enforcement: Each and all of the restrictions, covenants, and conditions contained in this document is and are for the benefit of the Developer, the Association and of the Lot owner or owners from time to time of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said 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 compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer, the Association, or a Lot owner or owners; 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 said Lot, part or portion or the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. The Architectural Control Committee May levy a fine or penalty not to exceed 50% 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. A fine may be levied for each day of a continuing violation. All attorneys fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such a Lot owner's Lot, and shall also be a personal obligation of said Lot owner, enforceable at law, until such payment therefore is made.

6.7. Right to Enforce: The provisions contained in these covenants shall bind and inure to the benefit of and be enforceable by Developer, the Association or a Lot owner or owners, and

each of their legal representative, heirs, successors and assigns, and failure to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

6.8. Assignment of Powers: Any and all rights and power of the Developer herein contained may be delegated, transferred or assigned. Wherever the term "Developer" is used herein, it includes Developer and its successors and assigns.

ARTICLE 7 - RIGHTS OF FIRST MORTGAGEES

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

7.1. Preservation of Regulatory Structure and Insurance. Unless the holders of 66% of all first Mortgagees and 66% 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 Living Units, the exterior maintenance of Living Units under certain conditions provided in Section 2 of Article VI, or the upkeep of the Common Areas of the Property;

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

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

7.2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least 66% of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least sixty-six percent (66%) of the Lots (not including Lots owned by Developer) the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, 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 X nor the insurance provision contained in Article VI may be amended without the prior approval of all first Mortgagees.

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

(a) there is any default by the Owner of the Lot subject to the first mortgagee in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same; or

(d) any of the following matters come up for consideration or effectuation by the Association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

7.4. 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.

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

7.6. 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 Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Developer, 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.

7.7. Exemption from any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

7.8. Rights Upon Foreclosure of Mortgage. 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.

7.9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of 66% of first Mortgage liens on the Lots.

ARTICLE 8 – CONDEMNATION

If at any time or times the Common Areas 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 Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. 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 Areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot(s) or portion(s) thereof is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner(s) of such Lot(s) or portion(s) thereof to such Owner(s) and any first Mortgagee(s) of such Lot(s), as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

ARTICLE 9 – ANNEXATION OF ADDITIONAL LAND

9.1. Annexation by Developer. Developer may expand the Property subject to this Declaration by the annexation of all Phase IV Land and additional Phases. (See Exhibit "B" hereto for description of additional Phases.) Developer may also add lots in Phase II of The New Warm Springs Subdivision by Lot Dedication signed by the record owner thereof. The annexation of such land shall become effective and extend the plan of this Declaration to such property upon the recordation in the office of the County Recorder of Washington County, Utah, of a Supplementary Declaration or similar instrument which:

- (i) describes the land to be annexed or incorporated by reference within the description contained in the additional Phases land described at Exhibit B;

(ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration; and

(iii) sets forth such additional limitations, restrictions, covenants, conditions complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

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

Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within the additional Phases property.

9.2. Limitation on Annexation. Developer's right to annex said land to the Property shall be subject to the following limitations, conditions and rights granted to the Developer:

(a) The annexed land must be part of the land which is Phase II Land as of the date of this Declaration, as described at Exhibit "B" hereto. However, Developer reserves the right to expand the borders of additional Phases Land to be contiguous land within 1,000 feet of exterior borders, but with no obligation to do so and no claim as to right, title or interest to said land.

(b) Developer shall not effectuate any annexation of land which would cause the total number of living units existing on, or planned for, the Property to exceed 500 total Lots.

(c) Developer's right to annex land to the Property shall expire seven (7) years after the last Supplemental Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

(d) All Lots added shall be for residential purposes as provided for in this Declaration.

(e) Additional Living Units when constructed shall be consistent with the initial improvements in terms of quality of construction and compatible with existing structures on the Property (with respect to Living Units or common area improvements built by Developer or their assigns), (or as approved by the Architectural Control Committee if not built by Developer or its assigns.)

(f) The configuration of annexed land as to lot size, common areas and the nature, quantity or quality of improvements shall be in discretion of the Developer or its assigns. Additional amenities may (in the discretion of Developer) be added to future common areas of the Project. No assurances can therefore be given.

(g) Developer reserves unto itself and its assigns the right to create limited common areas and facilities within any portion of the annexed land. No assurances can therefore be made with respect to such items.

9.3. *Developer's Right to Amend.* Until all portions of the additional phases are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Developer shall have, and is hereby vested with, the right to unilaterally amend the Declaration and or the Plat as may be reasonably necessary or desirable:

(i) to adjust the boundaries of the Lots, including adding or deleting common areas (by filing an appropriate amended Plat) to accommodate design changes or changes in type of units or adjustment to lot configuration;

(ii) to more accurately express the intent of any provisions of the Declaration in the light of then-existing circumstances or information;

(iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Declaration;

(iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development; or

(v) to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

ARTICLE 10 – LEASE PROVISIONS

10.1. *Lease Provisions.* Any Owner may lease his Lot or Living Unit, provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing and must provide, inter alia, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the By-Laws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

(c) The lease of any Unit shall be limited to a 30-day minimum.

EXHIBIT "A"

BEGINNING AT A POINT S 0°19'19" E 2839.39 FEET ALONG THE CENTER SECTION LINE AND N 90°00'00" W 49.88 FEET FROM THE N 1/4 CORNER OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING THE SOUTHWEST CORNER OF "LOT 35 NEW WARM SPRINGS SUBDIVISION PHASE 2" AS RECORDED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AND RUNNING THENCE ALONG THE WESTERLY BOUNDARY OF SAID SUBDIVISION FOR THE FOLLOWING (7) COURSES: N 83°10'07" E 61.92 FEET; THENCE S 04°36'32" E 96.29 FEET; THENCE S 25°32'02" W 63.94 FEET; THENCE S 03°17'49" W 239.25 FEET; THENCE S 00°00'00" E 79.87 FEET; THENCE S 25°09'54" W 55.26 FEET; THENCE S 00°00'00" W 350.00 FEET; THENCE N 90°00'00" W 330.00 FEET; THENCE N 00°00'00" E 100.00 FEET; THENCE N 16°41'57" E 52.20 FEET; THENCE N 13°00'30" W 169.35 FEET; THENCE N 17°15'56" W 83.77 FEET; THENCE N 40°59'59" W 124.90 FEET; THENCE N 49°04'54" EAST 306.79 FEET; THENCE N 51°59'15" E 283.92 FEET TO THE POINT OF BEGINNING.