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 Russell Shirts Washington County Recorder
 08/31/2020 11:11:14 AM Fee \$40.00 By
 VANGUARD TITLE INSURANCE AGENCY, LLC -
 ST. GEORGE 1

**DECLARATION OF PROTECTIVE COVENANTS FOR
 THE HILLS AT SANTA CLARA PHASE 3**

a residential subdivision located in
 St. George, Utah

Bright Ideas REI, LLC, a Utah limited liability company ("Developer"), owns certain real property in Washington County, Utah, which is more particularly described as follows (the "Property"):

Tax ID Nos.: SC-6-2-17-241-A and SC-220-A-1-A-1

Beginning at the Center Quarter Corner of Section 17, Township 42 South, Range 16 West, Salt Lake Base & Meridian, said point being on the southerly line of The Hills at Santa Clara Phase 2B, and running; thence easterly the following (2) courses along said The Hills at Santa Clara Phase 2B; thence South 89°15'11" East 19.25 feet; thence North 26°04'19" East 52.22 feet to the southerly line of The Hills at Santa Clara Phase 1B; thence easterly the following (8) courses along said southerly line of The Hills at Santa Clara Phase 1B; thence South 89°48'07" East 12.61 feet; thence North 00°50'19" East 3.62 feet; thence Northeast 21.77 feet along an arc of a 20.00 foot radius curve to the right (center bears South 88°31'09" East, long chord bears North 32°39'46" East 20.71 feet with a central angle of 62°21'51"); thence Northeast 8.85 feet along an arc of a 47.00 foot radius curve to the left (center bears North 26°09'19" West, long chord bears North 58°27'12" East 8.83 feet with a central angle of 10°46'59"); thence East 23.70 feet along an arc of a 25.00 foot radius curve to the right (center bears South 36°56'18" East, long chord bears North 80°13'09" East 22.82 feet with a central angle of 54°18'53"); thence North 13°07'38" East 34.09 feet; thence North 49.00 feet along an arc of a 25.00 foot radius curve to the right (center bears North 17°22'35" East, long chord bears North 16°28'05" West 41.53 feet with a central angle of 112°18'39"); thence Northeast 142.37 feet along an arc of a 161.50 feet radius curve to the right (center bears South 50°18'46" East, long chord bears North 64°56'32" East 137.81 feet with a central angle of 50°30'35") to and along The Hills at Santa Clara Phase 1A; thence easterly the following (2) courses along the southerly line of Clary Hills Drive; thence South 89°48'17" East 313.23 feet; thence Southeast 178.20 feet along an arc of a 130.00 foot radius curve to the right (center bears South 00°11'49" West, long chord bears South 50°32'02" East 164.57 feet with a central angle of 78°32'18"); thence South 06°11'06" East 111.26 feet to the center section line; thence North 89°15'11" West 0.63 feet along said center section line; thence South 00°17'35" West 1,328.74 feet to the 1/16th line; thence North 89°21'04" West 666.36 feet along said 1/16th line to the South 1/16th Corner of said Section 17; thence North 00°11'54" East 1,329.90 feet along the center section line to the Point of Beginning.

Containing 1,004,713 square feet or 23.07 acres

Developer desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential subdivision. Therefore, Developer hereby declares that all of the Property be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, and easements, and to the Plat recorded concurrently herewith. The covenants, conditions, restrictions and all terms in this Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE 1 DEFINITIONS

The following definitions control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

1.1 **"Additional Property"** means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Plat. If any Additional Property is annexed to this Declaration, it shall become part of the Property.

1.2 **"Developer"** means Bright Ideas REI, LLC, a Utah limited liability company and its heirs, successors, and assigns.

1.3 **"Declaration"** means this instrument, and any amendments, restatements, supplements, or annexations thereto, recorded in the office of the Washington County Recorder.

1.4 **"Development Phase"** means the period of time in which the Developer controls development of the Property. The Development Phase is not dependent or contingent upon Developer's ownership of any Lot within the Property. The Development Phase will end by Developer's express surrender of the same, which surrender must be in a written instrument signed by Developer and recorded in the office of the Washington County Recorder. Unless the instrument specifies a different date, the date the Development Phase expires will be the date of recording of the instrument.

1.5 **"Lot"** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.6 **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot within the Property.

1.7 **"Plat"** means the subdivision Plat recorded concurrently herewith prepared and certified by a Utah Registered Land Surveyor and any replacements thereof, or additions thereto.

1.8 **"Property"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

ARTICLE 2
USE RESTRICTIONS

2.1 **Land Use.** All Lots shall be used only for detached single-family residential purposes. As used herein, the term "family" means persons related by blood or marriage, by legal adoption, or by operation of law.

2.2 **Commercial Activity.** Home occupations conducted entirely within a dwelling and carried on only by persons primarily residing in the dwelling, and which are incidental and secondary to the use of the dwelling for single-family residential purposes, are permitted so long as they comply with applicable laws and ordinances. Examples of these permitted uses include private piano lessons, private tutoring, a professional home office or library, hairstyling studio, and similar incidental uses that do not change the character of the residential dwelling or permit more than a single person to enter on any Lot for services at any given time. Such uses must be properly licensed by the Santa Clara City. Except for these limited and incidental uses, any commercial, business, or use for remuneration is prohibited. This prohibition includes any activity in which an Owner or a permitted tenant surrenders full-time occupancy or exclusive use of his or her dwelling to another. Examples of prohibited uses include rehabilitation or addiction treatment facilities, halfway homes, and nightly, short-term or vacation rentals through or similar to services such as Airbnb, VRBO, and HomeAway.

2.3 **Leasing and Rentals.** The Hills at Santa Clara Phase 3 is developed as a residential community. To protect the value and desirability of The Hills at Santa Clara Phase 3 as a harmonious and attractive residential community, the leasing or rental of any dwelling on any Lot for any period of less than 90 days is prohibited. This prohibition includes using Lots as short-term or nightly rentals, or for any use that would violate the commercial activity restrictions in Section 2.2. Subject to the restrictions and requirements in this section, leasing is otherwise permitted so long as it is for single-family residential purposes. All leasing and rental agreements shall be subject to the provisions of this Declaration. Any violation of this Declaration by any lessee or tenant may be enforced against the Owner.

2.4 **Lot Size.** Lot sizes as described on the Plat are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the Plat. Lots may not be combined for construction of a single home.

2.5 **Care and Maintenance of Lots.** Owners shall keep their Lots free from rubbish, litter, and noxious weeds. All structures, landscaping, and improvements must be maintained in good condition and repair at all times.

2.6 **Weed Control.** Each Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials so as to minimize weeds, fire and other hazards to surrounding Lots, homes, structures, 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 means and refers to those plants that are injurious to crops, animals, land, or the public health.

2.7 **Pest Control.** No Owner shall permit anything or condition to exist upon the Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. Each Owner shall perform such pest control activities as may be necessary to prevent insects, rodents, and other pests from being present on their Lot.

2.8 **Animals, Livestock, Poultry, and Agriculture.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Owners.

2.9 **Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained as a 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 in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property.

2.10 **Sewage Disposal.** Each home 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.

2.11 **RVs, Boats, and Inoperable Vehicles.** No boats, trailers, buses, motor homes, campers, recreational vehicles, or similar vehicles shall be parked or stored upon any Lot except within an enclosed garage, on a cement pad behind the required front Lot line set-back area, or in a location on the Lot that is reasonably shielded from public view by an approved privacy wall or gate. No such vehicles shall be parked overnight on any street located within the Property. Motor vehicles that are inoperable cannot remain upon any street or Lot (other than within an enclosed garage or in a location on the Lot that is reasonably shielded from public view by an approved privacy wall or gate) or road areas adjacent thereto. If an inoperable motor vehicle remains upon any Lot or road area for a period exceeding 30 days, the Developer or other Owners may remove the inoperable motor vehicle after a 10-day written notice to the Owner. The cost of such removal shall attach to the Lot of the offending Owner as a valid lien in favor of the party causing such removal. For the purpose of this section, a vehicle is

inoperable if it is unable to operate in a normal manner upon the streets under its own power or which is unlicensed or unregistered for 6 weeks or more.

2.12 **Developer's Business, Marketing, and Sales.** Notwithstanding any provisions to the contrary in this Declaration, it is 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 as Developer deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices.

ARTICLE 3
ARCHITECTURAL CONTROL

3.1. **Architectural Control Committee.**

3.1.1 **Approval Required.** Approval of the Architectural Control Committee ("ACC") is required prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements.

3.1.2 **Developer as ACC.** The Developer shall act as or appoint individuals to serve on the ACC. Following the Development Phase, the ACC shall be comprised of three (3) Owners appointed by written consent of Owners holding not less than a majority of the Lots within the Property.

3.1.3 **Submission of Plans.** One set of building plans and specifications will be filed with the ACC, 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 ACC may determine from time to time, and an application and such supporting material, such as samples of building materials, as the ACC deems necessary. No work shall commence unless and until the ACC endorses the plans with 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 ACC pursuant hereto.

3.1.4 **Rights of Approval.** The ACC has the right to refuse or approve any 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.

3.1.5 **Architectural Standards.** The ACC may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.

3.1.6 **Non-Liability.** The ACC 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 Owner and the Owner's designer, architect, or contractor. The ACC's review of plans are in no way be concerned with structural or mechanical integrity or soundness.

3.1.7 **Time Frame for Action.** In the event the ACC fails to approve or disapprove in writing any such plans within 30 days after the submission thereof to the ACC, then approval shall be deemed to have been given.

3.1.8 **Waiver.** The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

3.1.9 **Rules and Regulations.** The ACC 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 review and inspection upon request. The ACC 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.

3.1.10 **Developer Exemption.** Developer is exempt from the provisions, restrictions, and requirements of this Article, as the same exists or as amended, supplemented, or replaced in accordance with other provisions of the Declaration.

3.2 **Governmental Permit Required.** No home, accessory or addition to a home, 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 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 ACC to refuse to approve any such matter.

3.3 **Design Restrictions.** In order to promote a harmonious community development and protect the character of the Property, the following design guidelines, together with any guidelines hereafter established by the ACC, are applicable to the Property:

3.3.1 Purpose and Intent. The intent of these Design Restrictions is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture of the created environment of the Property. Unless otherwise approved in writing by the ACC, the architectural character of any structure constructed within the Property shall be limited to a blend of Traditional Mediterranean, Desert Modern, and Southwestern Contemporary. 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.

3.3.2 ACC Enforcement. The ACC may levy a fine or penalty of up to \$50.00 per day against any Owner who fails to refrain from violating these covenants. A fine may be levied for each day of a continuing violation. Before levying any fine, the ACC must first give the Owner a written notice of the violation and allow 10 days for the Owner to correct, remedy, or otherwise cease the violation(s). After the initial notice, the ACC need not provide any additional notice prior to fining an Owner for a continuing violation. All attorney fees and costs incurred in any enforcement action, and all expenses incurred and any fines levied, shall constitute a lien on such Owner's Lot, and shall also be a personal obligation of said Owner, enforceable at law, until such payment therefore is made. Enforcement under this provision shall be in addition to any mechanism of enforcement provided in this Declaration or by applicable law.

3.3.3 Permitted and Required Structures. The only buildings or structures permitted that may be erected, placed or permitted to be located on any Lot within the subdivision shall be a detached single-family home and, to the extent permitted by applicable zoning and building ordinances, a maximum of one (1) accessory dwelling unit, each placed within the building envelope for each Lot and not to exceed the height requirements found in this Article. Notwithstanding the foregoing, in its sole and absolute discretion, and to the extent permitted by applicable zoning and building ordinances, the ACC may also permit a detached garage structure to be constructed within the building envelope of a Lot, subject to the height restrictions and other design restrictions set forth herein, together with any other reasonable conditions required by the ACC. Each home must include a minimum two car, private, enclosed and attached garage. All construction shall be of new materials. All structures shall be custom designs that are individual and distinctive and shall be constructed in accordance with the zoning and building ordinances of the Santa Clara City, Utah, in effect from time to time.

3.3.4 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 home with a basement constructed on any Lot within the Property shall be not less than 2,500 square feet, exclusive of porches, balconies, patios and garages. The minimum total square footage of living area on the ground floor located within the building envelope and

foundation for any single-story residential home without a basement constructed on any Lot within the Property shall be not less than 3,200 square feet, exclusive of porches, balconies, patios and garages. Two-story homes shall have a minimum of 2,000 square feet on the main level, with a total square footage of not less than 3,000 square feet, exclusive of porches, balconies, patios and garages. Provided, however, that the ACC, in its sole discretion, may adjust these minimums on a lot-by-lot basis to adjust for lot size, layout, or shape.

3.3.5 Setbacks. The following minimum setback standards shall apply to each Lot, except that to the extent the setback standards established by applicable zoning and subdivision ordinances are more restrictive than the standards set forth above, the more restrictive standards shall apply:

- Front: Minimum of twenty-five feet (25') from Lot line to structure
- Sides: Minimum of ten feet (10') from Lot line to structure
- Rear: Minimum of thirty feet (30') from Lot line to structure

3.3.6 Roof Materials and Colors. Roof material are limited to slate, clay, concrete tiles or such other materials as may be allowed by the ACC. Colors shall be subdued earth tones or such other colors as may be allowed by the ACC.

3.3.7 Colors. Base building colors shall be in earth tones or such other colors as may be allowed by the ACC. Pastels or high gloss finishes may not be used. Complementary accent colors can be used on fascia, window trim, shutters and doors.

3.3.8 Facades. Facades shall be stucco, masonry, brick or stone, or such other materials a may be approved by the ACC, with accents of brick, stone, or such other material as approved by the ACC.

3.3.9 Prohibited Structures. Dome structures, log homes, pre-manufactured homes; re-located homes; and Earth or Berm homes of any type are not allowed.

3.3.10 Building Height. Except as specifically set forth below, the maximum building height of any structure constructed on a Lot (measured from finished grade to the highest point of the structure) shall be eighteen feet (18'). Notwithstanding the foregoing, the following Lots shall be subject to the corresponding maximum building heights for such Lots set forth below:

<u>Lot(s)</u>	<u>Maximum Building Height</u>
302, 303 and 304	Twenty-eight feet (28')
318, 319, 324 and 325	Thirty feet (30')

Notwithstanding anything to the contrary set forth herein, in no event shall any structure be constructed on a Lot with a building height that (a) unreasonably interferes with the sightlines or view of neighboring Lots, or (b) exceeds the maximum building height permitted under applicable zoning and building ordinances.

3.3.11 Reflective Exterior Surfaces or Materials. No reflective exterior surfaces or materials shall be used. 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.

3.3.12 Accessory Buildings and Structures. Storage or utility buildings are allowed, provided that such buildings are of a color that complies with the architectural guidelines set forth in this Declaration.

3.3.13 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 yard area of any Lot. The driveway in the front and side yard areas of each Lot shall be of a color that blends with the exterior of the structure located on such Lot.

3.3.14 Fencing and Walls. Fencing, walls and other barriers shall be approved by the ACC and constructed of the same material and in the same color as the perimeter walls constructed by Developer. No fences shall be constructed in the front setback area unless necessary for drainage or support. No wire mesh, chain link, or wooden fences are allowed. Vinyl fencing is not allowed except to provide accents or gates as approved by the ACC.

3.3.15 Location of Air Conditioning, Heating, and Soft Water Equipment. Air conditioning, heating equipment, and soft water tanks must be screened from view so as not to be visible from neighboring property or from the streets of the development, and shall be insulated for sound attenuation. Air conditioning units are not permitted on roofs or through windows.

3.3.16 Landscaping. Landscaping shall be completed in accordance with the landscape plan submitted to and approved by the ACC prior to construction of the home, and may include but shall not be limited to the preparation for the planting of lawn, grass (artificial grass is permitted) or other appropriate ground cover and appropriate shrubbery.

3.3.17 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. Owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

3.3.18 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.

3.3.19 Easements. Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the Plat. No structure, planting or other material shall be placed or permitted to remain within these easements which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements 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, except for those improvements for which a public authority or utility company is responsible.

3.3.20 Signs; Commercial Activity. Except for one "For Rent" or "For Sale" sign, 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 Property. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Developer or its agents during the Development Phase.

3.4 **Construction and Contractor Provisions.**

3.4.1 Completion of Construction. The construction of any building 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 12 months after such commencement.

3.4.2 Building Materials Storage. No Lot, part or portion of the Property shall be used or maintained as a storage for building materials except during a construction phase. Once a home is occupied or made available for sale all building materials shall be removed or stored inside such home, out of public sight.

3.4.3 Landscaping. Front yard landscaping shall be complete prior to occupancy.

3.4.4 Soils Test. Owners are encouraged to obtain a soils test and recommendation on foundation from a Utah registered engineer prior to construction. The ACC may require that the Owner obtain a soils test and recommendation on foundation prior to the final approval. Furthermore, the ACC may condition final approval following the

recommendations set forth in the soils test document. By approving the commencement of construction after review of any soils test and recommendation, the ACC is not warranting and shall not be deemed to have warranted the results of such test or recommendation.

3.4.5 **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 30 days after such damage is discovered, and the expense of such repair shall be borne by the Owner.

3.4.6 **Maintenance of Lot During Construction.** Contractors or subcontractors as owner/builders must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean work site during construction and shall not leave construction material or debris in the public streets. The ACC may levy a fine or penalty of up to \$500.00 per day against any violator of this subsection and the Owner who fails to refrain from violating these covenants. A fine may be levied for each day of a continuing violation. Before levying any fine, the ACC must first give the Owner a written notice of the violation and allow 10 days for the Owner to correct, remedy, or otherwise cease the violation(s). After the initial notice, the ACC need not provide any additional notice prior to fining an Owner for a continuing violation. All attorney fees and costs incurred in any enforcement action, and all expenses incurred and any fines levied, shall constitute a lien on such Owner's Lot, and shall also be a personal obligation of said Owner, enforceable at law, until such payment therefore is made. Enforcement under this provision shall be in addition to any mechanism of enforcement provided in this Declaration or by applicable law.

ARTICLE 4 ENFORCEMENT

4.1. **Violation Constitutes Nuisance.** Every act or omission whereby any covenant, condition, or restriction contained 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. The remedies provided for hereunder shall be deemed cumulative and not exclusive.

4.2. **Enforcement.** Each and all of the covenants, conditions, and restrictions contained herein are for the benefit of the Developer and Owners. 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 covenants, conditions, and restrictions 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 or any 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 any Lot, part or portion of the Property shall be bound and obligated by the said covenants, conditions, and restrictions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise.

ARTICLE 5
AMENDMENT AND EXPANSION

5.1 Amendment by Owners. This Declaration may be amended, modified, extended, or revoked, in whole or in part, upon the written consent of no less than the Owners of 67% of the number of Lots within the Property. Any proposed amendment shall be provided to every Owner at least 30 days in advance of seeking such consents. Consents must be obtained within a 180-day period thereafter. To be valid, a written consent must be signed by the record Owner(s) of the Lot consenting to the amendment and such signature(s) must be notarized in a recordable form. Any amendment, modification, termination, or revocation shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment, modification, termination, or revocation accompanied by the original signed and notarized consents. Notwithstanding the above, however, Owners may not amend, modify, or revoke this Declaration during the Development Phase, without the Developer's written consent.

5.2 Amendment by Developer. The Developer may unilaterally amend, modify, extend, or revoke this Declaration, in whole or in part, during the Development Phase.

5.3 Additional Property. The Developer may unilaterally subject additional property to this Declaration. The Developer shall indicate its intent to have such property bound by this Declaration on the plat of such additional property and shall record a declaration of annexation including and subjecting such property to this Declaration. Thereafter, such additional property shall be considered as part of the Property in all respects, and lots therein shall constitute Lots under this Declaration.

ARTICLE 6
GENERAL PROVISIONS

6.1 Duration of Covenants. The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of 50 years from the date this document is recorded, after which said covenants shall be automatically extended for successive periods of 10 years each, subject to amendment as herein set forth.

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

6.3 **Construction and Severability.** All of the covenants, conditions, and restrictions 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 any of the remaining restrictions, covenants or conditions, or parts thereof.

6.4 **Assignment of Developer's Rights.** Any and all rights and powers of the Developer herein contained may be delegated, transferred or assigned. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Developer, indicate the extent and nature of such assignment, and be recorded in the Office of the Washington County Recorder.

6.5 **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the 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.

6.6 **Waivers.** No provision contained herein shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.

6.7 **Topical Headings.** The topical headings contained herein are for convenience only and do not define, limit, or construe the contents of these covenants.

[signature page follows]

