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WHEN RECORDED PLEASE MAIL TO:

20-7

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE
BRAXTON COURT SUBDIVISION**

This Declaration is made and executed this 9th day of May, 2005, by Steve D. Clark and Dianne Clark, Brett J. Pinegar and Susan H. Pinegar, David Wathen and Gail Wathen, and Pamela O. Call, owners of the real property described herein and hereinafter collectively referred to as "Declarants".

RECITALS

A. Declarants are the record owners of those certain tracts of Property more particularly described in Exhibit "A" (attached and hereby incorporated) of this Declaration. Declarants desire to create a homeowners association to manage, maintain and care for the Common Area as described herein.

B. Declarants desire to provide for preservation of values and amenities in Braxton Court Subdivision, for maintenance of the Common Area, and for promotion of the health, safety and social welfare of each Owner of a part thereof. To this end and for the benefit of the Property and of the Owners thereof, Declarants desire to subject the Property described in Exhibit "A" to the covenants, restrictions, easements, charges and liens hereinafter set forth.

C. Declarants deem it desirable, for the efficient preservation of value in the development, to create an association which possesses the power to maintain and administer the Common Area, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose the Declarants have herein created, in conjunction with the recordation of this Declaration, an unincorporated association, the characteristics of which are defined herein and which shall be known as The Braxton Court Subdivision Owners Association.

NOW, THEREFORE, for the foregoing purposes, Declarants hereby declare that all of the Property described in Exhibit "A" of this Declaration is and shall be held, occupied, improved, transferred, sold, leased and conveyed subject to the following easements, restrictions, covenants and conditions, which 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 I DEFINITIONS

1.1 When used in this Declaration (including the foregoing portion hereof entitled "Recitals"), unless the context clearly indicates otherwise, the following terms shall have the meaning indicated.

1.2 **Association** shall mean and refer to the Braxton Court Subdivision Owners Association, an unincorporated association subject to the Community Association Act, 75-8a-101 et seq, Utah Code Annotated (the "Act"). The name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the management committee or officers thereof on behalf of the agents for the Lot Owners in the manner specified by the Act, the declaration, or the bylaws, is: "The Braxton Court Subdivision Association".

1.3 **Common Area** shall mean and refer to that part of the Property which is maintained by the Association. All real property in Braxton Court is privately owned by one of the four Lot Owners; however, some of the real property and the improvements thereto are open to common use by all the Lot Owners. Thus, the term "Common Area" as used herein does not mean or grant an undivided ownership interest in another Lot Owner's property, but is used to define the real property in Braxton Court that shall be openly used, jointly maintained, and in which the remaining Lot Owners shall presently own and in the future shall continue to own an easement over and across. For example, the property lines for each of the Lots extend to the center of the road which is used and shared by all the Lot Owners; and that portion of a Lot Owner's Property that constitutes the road shall be Common Area and governed by the provisions of this Declaration dealing with Common Area. The Common Area as defined herein shall include the following: the brick fence along 6400 South; the planted area between said fence and 6400 South; lighting and the fixtures appurtenant thereto, both on the front pillars and also in the planted area; the entry gate and entry gate controls; and the paved roadway which serves as a right of way for ingress and egress, hereinafter referred to as the road. The Common Area shall be jointly maintained and/or replaced at the expense of the HOA. A map identifying some of the Common Area (the roadway only) is set forth in Exhibit "B", attached.

1.4 **Declaration** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions of Braxton Court Subdivision, as the same may be amended from time to time (The Declaration may at times also be referred as the CC&Rs).

1.5 **Declarants** shall mean and refer to Steve D. Clark and Dianne Clark, Brett J. Pinegar and Susan H. Pinegar, David Wathen and Gail Wathen, and Pamela O. Call, and their successors and assigns if such successors or assigns should acquire all or substantially all of the Declarants' undeveloped and partially undeveloped Lots.

1.6 **Lot** shall mean and refer to any of the four (4) separately numbered parcels of land shown on the Plat Map comprising the Braxton Court Subdivision.

1.7 **Management Committee** shall mean and refer to a committee composed of the individual Owners of the four Lots, who are charged with and shall have the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

1.8 **Manager** shall mean and refer to the person, firm or company, if any, designated from time to time by the Association to manage, in whole or part, the affairs of the Association and the Property.

1.9 **Member** shall mean and refer to every person or entity who holds membership in the Association.

1.10 **Mortgage** shall mean any first mortgage or first deed of trust by which a Lot or any part thereof is encumbered.

1.11 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage.

1.12 **Owner** shall mean and refer to the owner of record (in the office of the County Recorder of Salt Lake County, Utah), whether one or more persons or entities, of a fee or undivided fee interest in any Lot, including contract sellers, but not including purchasers under contract until such contract is fully performed and legal title is conveyed of record.

1.13 **Plat** shall mean and refer to the subdivision map of Braxton Court Subdivision, attached as Exhibit "B".

1.14 **Property** shall mean and refer to the tract of real property covered by the Plat, a description of which is set forth in Exhibit "A" of this Declaration.

1.15 **Subdivision** shall mean all the Property, Common Area and Lots in the Braxton Court Subdivision.

ARTICLE II NATURE AND INCIDENTS OF OWNERSHIP

2.1 The Property and Lots shall be held, occupied, sold, leased, transferred and conveyed subject to the provisions of this Declaration. The Property is divided into Lots, each consisting of a fee simple interest in a Lot and an easement to over and across those portions of the Property defined as Common Areas. The easements described herein are hereby declared to be appurtenant to the respective Lots.

ARTICLE III ASSOCIATION MEMBERSHIP AND VOTING

3.1 **Membership.** Every Lot Owner shall be a member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it is appurtenant. Any devise, encumbrance, conveyance or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and the rights appurtenant thereto. Membership shall begin automatically and immediately upon becoming an Owner, and shall terminate immediately and automatically upon ceasing to be an Owner. No person or entity other than an owner or his designated legal representative (who must be a family member of the owner: spouse, child or parent) may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

3.2 **Voting Rights.** The Association shall have one class of voting membership, which shall be equal for all Lot Owners.

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

3.4 **Consent in Lieu of Vote.** In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such a requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership concerned.

3.5 **Bylaws.** Attached hereto as Exhibit "C" are the Association Bylaws which shall govern those matters as set forth therein.

ARTICLE IV OWNERS RIGHTS IN COMMON AREA

4.1 **Owners' Easements of Use and Enjoyment.** Every Owner shall have a nonexclusive right and easement of use and enjoyment over those portions of the common area consisting of the entry gate and entry gate controls; and the paved roadway which serves as a right of way for ingress and egress, hereinafter referred to as the road. Only the road is a right of way. The "common areas" associated with the wall and plantings between the wall and 6400 South are defined as a common area from a maintenance perspective. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Such right and easement shall be subject to the following:

(a) The right of the Association to adopt, rescind, amend and enforce rules and regulations governing the use of the Common Area.

(b) The right of the City of Murray, of Salt Lake County, and any other governmental or quasi-governmental authority having jurisdiction over the Property to access and ingress and egress over and across any private open space contained within the Common Area for purposes of providing police and fire protection, and providing any other municipal or governmental service.

(c) The rights and easements set forth below in Article V of this Declaration.

ARTICLE V OTHER EASEMENTS

5.1 Utilities and Easements. If the Common Area or any improvement thereon is traversed or partially occupied by a permanent utility line or similar or related improvement (including, but not limited to lines, pipes, wires, conduit and other equipment for culinary or secondary water, sewer, storm water, gas, telephone, electricity, television cable or multiple mailboxes) a perpetual easement for such utility or improvement and for the maintenance, repair and replacement thereof shall exist.

5.2 Easements for Maintenance and Repair. There is hereby granted to the Association, its officers, agent and employees (including employees of the Manager, if any) a right and easement to have access to all of the Common Area and to have access to the Lots from time to time during such reasonable hours as may be necessary or appropriate to perform the Association's obligations of maintenance and repair, to maintain any utilities for which and easement has been granted, to prevent damage to the Common Area or any residence or to perform any other function which the Association is obligated or permitted to perform under this Declaration, Bylaws or rules and regulations of the Association. Any damage caused thereby shall be repaired by the Association and at the expense of the Association.

ARTICLE VI OPERATION AND MAINTENANCE

6.1 Operation and Maintenance of Common Area by Association. Subject to the rights and duties of the Owners as set forth in this Declaration, the Association shall provide and be responsible for the management, control, operation, care, maintenance, repair, replacement and upkeep of the Common Area, and shall keep the same safe, operational, and in good working order.

6.2 Rules and Regulations. The Association shall have the power and the authority to promulgate, rescind, amend and enforce reasonable rules and regulations governing the use of the Common Area; provided, however, that such rules and regulations shall be consistent with the rights and obligations established by this Declaration. The Association shall

furnish to each Owner copies of all such rules and regulations promulgated by the Association, and copies of all amendments thereto and rescissions thereof.

6.3 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable.

6.4 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE VII ASSOCIATION'S INSURANCE AND TAXES

7.1 **Public Liability Insurance.** The Association may obtain and maintain at all times a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as the Association deems advisable to provide adequate protection for the Association, its Management Committee, the Manager (if any), agents and employees of the Association and the Members against liability for personal injury, death, and property damage arising from or incident to the ownership, operation, management, maintenance, repair, use, and other functions related to the Common Area. Said policy or policies of insurance shall provide a cross-liability endorsement pursuant to which the rights of the named insured among themselves are not prejudiced.

7.2 **Fire and Casualty Insurance.** In the event that the Common Area shall include any building or structures or other insurable improvements having an aggregate value in excess of Ten Thousand Dollars (\$10,000.00), the Association may obtain and keep in full force and effect at all times a policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full replacement value of all insurance improvements comprising part of the Common Area. The insured under any such policy shall be the Association.

7.3 **Fidelity Insurance or Bond.** The association may purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of officers, agents or employees, destruction or disappearance of money or securities, and forgery.

7.4 **Officers and Directors Liability Insurance.** The Association may purchase and maintain insurance on behalf of any person who is a member of the Management Committee or other officer, director, agent or employee of the Association in such forms and amounts as the Association may deem necessary or appropriate in accordance with its Bylaws to protect any such person against liability asserted against him or incurred by him in any such capacity or arising out of his status as such.

7.5 **Additional Insurance.** In addition to the insurance coverage required by this Declaration, the Association shall have the power and authority to obtain and maintain other

similar and dissimilar insurance coverage in relation the Common Area and the Association's duties and responsibilities hereunder, which additional insurance coverage may be in such amounts and in such forms as the Association from time to time deems appropriate.

7.6 **Adjustment and Contribution.** Exclusive authority to adjust losses under policies hereafter purchased and maintained by the Association hereunder shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

ARTICLE VIII BUILDING STANDARDS AND ARCHITECTURAL CONTROL

8.1 **Architectural Control Committee.** No structure shall be erected, placed or altered on any lot in the Subdivision until the construction plans and specifications and a plot plan showing the location of the structure have been approved in writing by the Architectural Review Committee (hereinafter "ARC"), as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. The ARC shall consist of the members of the Management Committee. All decisions of the ARC shall be made by majority vote. Members of the ARC shall not be entitled to compensation for their services.

8.2 **Compliance with Declaration.** Notwithstanding the foregoing provisions, the ARC members shall have no affirmative obligation to be certain that all construction in the Subdivision complies with the restrictions contained herein and no ARC member shall have any liability or responsibility for any decision or lack thereof, in carrying out the duties of a ARC Member. The sole responsibility for compliance with the provisions of this Declaration shall rest with the lot owners in the Subdivision.

8.3 **Residential Lots.** All Lots in the Subdivision shall be known and described as residential lots. No structure shall be erected, altered, placed or permitted to remain on any Lot which is not a single family dwelling not to exceed two stories in height with no less than a two-car garage. Any other outbuildings must be approved in advance by the ARC. Carports are prohibited.

8.4 **Dwelling Quality and Size.** All dwellings shall be of comparable size and quality as those existing at the time this Declaration is recorded.

8.5 **Construction Methods and Materials.** The exterior of any structure erected in the Subdivision shall have one hundred percent (100%) of its front area covered with brick or stone and a majority of remaining structure covered with brick or stone. Other exterior materials must be approved by the ARC. There shall be no log homes, log-like siding, vinyl siding or aluminum siding permitted, unless in place at the execution date of this agreement. All buildings shall have a roof of at least a 4x12 pitch. All shingles shall be architectural asphalt shingles or bar tile or wood shake shingles.

8.6 **Temporary Structures Prohibited.** No structure of a temporary nature, such as a trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence.

8.7 **Continuing Application.** The provisions of this Section shall apply not only to all initial construction and development of and within the Property, but also in connection with any alteration, addition, restoration or reconstruction of buildings which are now or may hereafter be constructed or installed on any portion of the Property. All buildings shall be constructed or installed in accordance with the plans and specifications approved by the Association. No buildings shall be altered and no approved plans and specifications shall be modified in any respect pertaining to the exterior appearance or design of the subject buildings (or any other aspect of the same which is reflected in the plans and specifications previously approved by the Association) unless such alterations or modifications are approved in writing by the Association.

ARTICLE IX ASSESSMENTS

9.1 **Covenant to Pay Assessments.** Each Lot Owner hereby covenants and each Owner of any Lot by acceptance of instruments of conveyance and transfer thereof, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all annual and special assessments, such assessments to be fixed, established, levied and collected from time to time as hereinafter provided. No Owner may exempt himself or his Lot from liability from payment of the assessments provided for herein or diminish the amount of such liability by waiver or non-use of his rights concerning the Common Area or of services and amenities provided by the Association or by abandonment of his Lot.

9.2 **Purpose of Assessments.** The annual and special assessments levied by the Association hereunder shall be used exclusively to promote the health, safety and welfare of the residents of the Property, to operate, maintain and improve the Common Area, and to perform any other functions which the Association is obligated or permitted to perform under this Declaration. Without limiting the generality of the foregoing provisions of this Section 9.2, the uses made by the Association of assessments collected hereunder may include, among other things, payment of the costs of the following: Expenses of management, including fees for a Manager, if any; all insurance that the Association is required or permitted to maintain hereunder; wages and related expenses for the services of such personnel as the Association may determine to be necessary or desirable for the proper performance of its functions hereunder whether such personnel are furnished or employed directly by the Association or by an person or entity with whom it contracts; legal and accounting services necessary or desirable in connection with the operation of the Property or the enforcement of this Declaration; snow removal, landscaping and gardening services; utility expenses, including water and electricity; other necessary or desirable services for the improvement and maintenance of the Common Area or for the common use and benefit of the Owners as herein provided; any deficit remaining from a

previous period; creation of a reasonable contingency, reserve, surplus and/or sinking fund; all goods and services procured by the Association in performing its responsibilities for maintenance of the Common Area and the exterior of the Lots hereunder; and any other expenses necessary or desirable to enable the Association to perform or fulfill its obligations, purposes, or functions under this Declaration.

9.3 **Annual Assessments.** The Association may fix the annual assessment at an amount necessary to pay all expenses for maintenance of the Common Area. The annual assessments may be collected on a quarterly basis, which shall be at the rate of \$300.00 per quarter, until modified by the Management Committee. Assessments shall be paid commencing for with the calendar beginning July 1, 2005.

9.4 **Special Assessments.** In addition to the annual assessments provided for above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (i) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments; or (ii) the cost of any construction, reconstruction or unexpectedly required repair or replacement of items on or an improvement of the Common Area. Any such special assessment must be assented to by seventy-five (75 %) of the votes of the membership which Members present in person or represented by Proxy are entitled to cast at a meeting duly called for that purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least five (5) but not more than twenty (20) days prior to the meeting date. Any special assessments levied hereunder shall be divided among and assessed to the Lots in accordance with the rates specified in Paragraph 9.5 below, and shall be payable over such periods and on such terms as the Association may determine.

9.5 **Rate of Assessments.** Both annual and special assessments shall be equally assessed against all Lot Owners. Notwithstanding any contrary provisions of this Declaration, this Section 9.5 may be amended only upon the affirmative vote of one hundred percent (100%) of the Lot Owners consenting and agreeing to such amendment by an instrument duly recorded in the official records of Salt Lake County, Utah.

9.6 **Quorum Requirements.** The quorum required for any action authorized by Section 9.4 above shall be as follows: At the meeting called the presence of Members or of proxies entitled to cast seventy-five percent (75%) of all the votes of the Lot Owners shall constitute a quorum.

9.7 **Late Fees and Interest.** Any annual or special assessment not paid within sixty (60) days of being due shall incur a late fee of not more than \$25.00 per month (as determined by the Management Committee) and shall bear interest at the rate of one percent (1%) per month from the date such portions become due until paid.

9.8 **Lien for Assessments.** All sums assessed to or levied against any Lot by the Association pursuant to the provisions of this Article IX, together with interest thereon and costs of collection hereof as herein provided, shall be secured by a lien on such Lot in favor of the Association. To further evidence such liens for sums assessed pursuant to this Article IX, the Association may (but shall not be obligated to) prepare a written notice of lien setting forth the

amount of the assessment, the amount remaining unpaid, a description of the Lot, and the name of the record Owner thereof. Such notice shall be recorded in the office of the County Recorder for Salt Lake County, State of Utah. No such notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien shall exist solely by reason of this Declaration, and the preparation and recording of any such notice of lien shall not be required in order to create or perfect such lien, but shall be solely at the discretion and for the convenience and better protection of the Association. The Association may enforce such lien by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under Utah law. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In any such foreclosure, the Owner of the Lot involved shall be required to pay all costs and expenses incurred by the Association in such proceeding, including court costs and reasonable attorney fees, and such costs and expenses shall be secured by the lien being foreclosed.

9.9 Personal Obligation of Owner. The amount of each annual assessment and each special assessment against any Lot shall be the personal obligation of the owner of such Lot to the Association. The Association may maintain a suit to recover a money judgment for such personal obligations without foreclosing or waiving the lien securing the same. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay all cost and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney fee.

9.10 Statement of Account. Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot, the Association shall issue a written statement setting forth any unpaid amounts of prior annual and special assessments against such Lot, the amount of the current annual assessment against such Lot and the due date or due dates thereof, the amount of any obligations for reimbursement of the Association owing by the Owner of such Lot, and any credits or pre-paid items with respect to such Lot. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.11 Liability of Purchaser. Subject to the provisions of Section 9.10, a purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice such purchaser's right to recover from such seller the amount paid by the purchaser for such assessments.

ARTICLE X USE RESTRICTIONS

10.1 Residential Uses Only. Each Lot is intended to be improved with a Home to be used for single family residential purposes, and is restricted to such use. No Lot or

Home shall be used for business or commercial activity except as provided in Section 10.12; provided, however, that nothing contained herein shall be deemed to prevent any Owner from leasing his Lot and Home, subject to all of the provisions of this Declaration.

10.2 **Trash.** No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers. No metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property. No materials shall be kept or stored on any lot that would be unsightly or a fire hazard.

10.3 **Nuisances.** No noxious or offensive activity (including but not limited to the repair of motor vehicles) shall be carried on, in or upon any Lot or the Common Area nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any other Owner. Parking of junk cars (those not properly licensed and regularly used) in the Subdivision is prohibited. No loud noises or noxious odors shall be permitted on the Property and the Association shall have the right to determine, in accordance with the Bylaws, if any noise, odor or activity producing such noise, odor or interference constitutes a nuisance. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or other items which may unreasonably interfere with television or radio reception of any Owner in the Property, or exposed to the view of other Owners without the prior written approval of the Association.

10.4 **Prohibition of Damage and Certain Activities.** No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any guest of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste of the Common Area caused by such Owner, his family, guests, tenants, or invitees. No Lot or Home shall be used, occupied or altered in violation of the law, so as to jeopardize or cause a hazard to any person or other property, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in cancellation or increase in the cost of any insurance which the Association or any other Owner is required to maintain under this Declaration.

10.5 **Restrictions on Further Subdivision.** No Lot shall be further subdivided or separated into smaller lots nor shall any Lot or fractional portion thereof be sold or conveyed so as to be held in divided ownership.

10.6 **Signs.** No commercial sign of any kind shall be displayed to the public view on any lot except one professional sign of no more than 5 square feet advertising the property for sale. This is not intended to restrict the use of homemade signs signifying special occasions such as birthdays or homecomings erected on a homeowners property for a period of less than 72 hours.

10.7 **Fences.** No fence, wall or other similar structure shall be constructed or placed on any Lot nearer the street than the front house line, nor shall any fence, wall or similar

structure be constructed to a height greater than 6 feet without the prior written approval of the Association. Any fence in place at the execution date of this agreement may be maintained and improved upon at its existing height.

10.8 **Easements.** Easements and rights of way shall be reserved to the Declarants, their successors and assigns, on and over the Subdivision, as shown on the recorded plat, for the erection, construction and maintenance and operation thereon or therein of drainage pipes or conduits, pipes, manholes, poles, wires and other means of conveying to and from Lots in the Subdivision, gas, electricity, water, telephone, sewage and other services for the convenience of lot owners in the Subdivision.

10.9 **Enforcement of Covenants.** The Management Committee or any Owner of any Lot in the Subdivision may enforce the covenants contained herein through any proceeding at law or in equity against any person violating them to enjoin or prohibit any violation and to recover any damages suffered by any Lot Owner.

10.10 **Parking.** Driveways within the Property shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. There shall be no overnight parking on the road. No motor vehicle which is inoperable or unregistered shall be parked in a driveway for more than ninety-six (96) hours. Motor homes, boats and RVs shall not be parked in a front driveway or in the yards in front of the house; however these vehicles may be temporarily parked on an Owner's front driveway for no more than fifteen (15) days for the purpose of cleaning, loading and unloading the vehicle, and short-term storage.

10.11 **Rental Restrictions.** The leasing of homes at Braxton Court is prohibited. However, the restrictions herein shall not apply if a Lot Owner moves from his home (a) due to temporary (less than three years) military, humanitarian, religious or charitable activity or service, and (b) leases his or her home with the intent to return to occupy his or her home when the military, humanitarian, religious or charitable service has concluded. Nor shall the restrictions herein apply if a parent or child leases their home to a family member (parent, grandparent, child, grandchild or sibling). Nor shall the restrictions herein apply if the Owner leases his home after having occupied the home for at least twelve (12) months. All leases, subleases, assignments of leases, and all renewals of such agreements shall be first submitted to the Braxton Court Management Committee who shall determine compliance with this section.

10.12 **No Businesses.** Inasmuch as Braxton Court is a residential community, no business of any kind whatsoever shall be established, conducted, permitted, operated, or maintained at Braxton Court except they meet all of the federal, state and municipal laws, ordinances and licensing requirements, as well as complying with this Declaration unless approved by a unanimous vote of the Members of the Association. None of the provisions of this Declaration shall apply to a business which operates from a home in the Subdivision at the effective date of this agreement. The following are the general requirements for home occupation businesses:

- (a) Customers, patrons, guests, clients or individuals may come to homes on

an "appointment only" basis for business activity,

- (b) Adequate off road parking will be provided by the homeowner for any customers, patrons, guests, clients or individuals coming to homes for business activity,
- (c) No signage or advertising to the general public will be allowed which indicates the operation of a business from the residence,
- (d) No products may be sold or delivered to or from the home and no regular deliveries may be made to or from the residence, unless such business operated at the time of the effective date of this agreement or is approved by a unanimous vote of the members in the homeowners association; and
- (e) Only services that are done on the telephone and computer, such as professional services involving consulting, tax preparation, computer or internet businesses, may be provided at the residence, unless such business operated at the time of the effective date of this agreement or is approved by a unanimous vote of the members in the homeowners association.

10.13 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of the 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 Lot Owners. All pets must be kept on the Lots or on a leash when not on a Lot. This provision may be made more restrictive by Rule of the Association.

10.14 **Drainage System.** The Association covenants to pay up to \$3,000.00 for the purchase and installation of a drainage line and dry well or other appropriate drainage system to resolve and remedy water problems in the Common Area portion of Subdivision, which problem shall be resolved on or before August 30, 2010. All parties hereto acknowledge that the Wathens have contributed \$3,000 to the Association as of the date of recording this document to be used to install the drainage line. This provision shall not be modified without the consent of one hundred percent (100%) of the Lot Owners.

ARTICLE XI MORTGAGE PROTECTION

11.1 **Notice of Owners' Default.** From and after the time a Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that the Owner of the Lot encumbered by the Mortgage held by such Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

11.2 **Subordination of Assessment Liens to Mortgages.** The lien on a Lot for unpaid assessments provided for under Article IX shall be subordinate to the Mortgage affecting such Lot, and the Mortgagee thereunder which comes into possession of the Lot shall take the same free of such lien for unpaid assessments, but only to the extent of assessments which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure.

ARTICLE XII GENERAL PROVISIONS

12.1 **Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the operation of the Property. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, limit, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof. Failure to enforce any provision, covenant, condition or restriction of this Declaration shall not operate as a waiver of any such provision, covenant, condition, or restriction or any other provision, covenant, condition, or restriction.

12.2 **Compliance and Enforcement.** Each Owner and other occupant of the Property shall comply with the provisions, covenants, conditions, and restrictions of this Declaration, all rules and regulations promulgated hereunder by the Association, and all decisions and resolution of the Association adopted pursuant to the foregoing, as the same may be amended, modified, revised, or adopted from time to time. Failure on the part of any Owner or other occupant of the Property to comply with any of the foregoing shall be grounds for an action to recover damages or for injunctive relief or both, maintainable by the Association or in a proper case, by an aggrieved Owner. In the event of any action by the Association to enforce the provisions, covenants, conditions, or restriction of this Declaration or rules and regulations promulgated hereunder, whether by formal legal proceedings or otherwise, the Association shall be entitled to recover from the offending Owner all costs and expenses incurred by the Association in connection therewith, including court costs and reasonable attorney fees. The obligations, provisions, covenants, conditions and restrictions contained int his Declaration with respect to the Association shall be enforceable by the Declarants or by any Owner through a proceeding for a prohibitive or mandatory injunction. The rights and remedies herein provided shall be in addition to all other rights and remedies of this Declaration, rules and regulations promulgated by the Association, and decisions and resolutions of the Association adopted pursuant thereto.

12.3 **Registration of Mailing Address.** Each Owner shall register with the Association from time to time his current mailing address. All notices and demands intended to be given to or served upon any Owner may be hand delivered or sent by first-class U. S. mail postage prepaid, and addressed to the Owner at his registered mailing address, or if no address has been registered, to the Owner at the address of his Lot.

12.4 **Obligation of Owners.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing or selling under contract his Lot. The Owner of a Lot shall have no obligation for assessments hereunder or other obligations hereunder (except interest and costs of collection with respect to prior obligations) accruing after he conveys such Lot.

12.5 **Amendment.** Except as otherwise provided herein, this Declaration may be amended only by an instrument duly executed and acknowledged by Members holding at least seventy-five percent (75%) of the votes of the Membership and recorded in the Official Records of the Court Recorder of Salt Lake County, Utah. Such right of amendment shall apply without regard to the subject matter or the nature of the amendment involved, provided only that such right of amendment shall be subject to the specific provisions of Article XI above (Mortgagee Protection) and Section 9.5 above (Rate of Assessments) and that any such amendment shall be consistent with applicable law.

12.6 **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarants, all parties who hereafter acquire any interest in a Lot or in the Common Area, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots or in the Common Area shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determination contemplated by this Declaration. By acquiring any interest in a Lot or in the Common Area, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

12.7 **Declarants's Rights Assignable.** The rights of the Declarants under this Declaration or in any way relating to the Property may be assigned to any person or entity who acquires all or substantially all of the Declarants's rights and interests in and to the undeveloped and partially undeveloped Lots.

12.8 **Effective Date.** This Declaration and any amendment hereof shall take effect upon recording in the office of the County Recorder of Salt Lake County, State of Utah.

IN WITNESS WHEREOF, the undersigned have executed this Declaration the day and year first above written.

DECLARANTS

BRAXTON COURT SUBDIVISION

By *Christine [Signature]*

By *[Signature]*

By *Randall R. Call*

By *Steve D. Clark*

STATE OF UTAH)
)
) :SS.
)
COUNTY OF SALT LAKE)

On the 9th day of May 2005, personally appeared before me, the undersigned Notary Public, who acknowledged to me that they did in fact execute this Declaration.

Randall R. Call
NOTARY

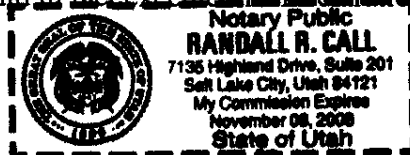


Exhibit "A"

PROPERTY DESCRIPTION OF LOTS IN BRAXTON COURT SUBDIVISION

Tax ID No.: 22-21-232-048 (Pinegar)

PARCEL 1:

Beginning at a point located 1220.76 feet South and 1074.41 feet West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Sale Lake Base and Meridian, and running thence West 126.75 feet to a concrete block wall; thence South 0 deg. 14'31" West 14.17 feet along said concrete wall; thence South 89 deg. 57'30" East 4.00 feet; thence South 0 deg. 15'01" West 135.74 feet to the North right of way line of 6400 South Street; thence South 89 deg. 57'30" East 123.41 feet along said right of way line; thence North 150.00 feet to the point of beginning.

PARCEL 2:

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way, created by Warranty Deed recorded March 11, 1996 as Entry No. 6300093 in Book 7348 at Page 919, described as follows:

Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North 89 deg. 57'30" West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 129.92 feet; thence along a curve to the right 12.19 feet, (delta 46 deg. 34' R-15.0 feet); thence along a curve to the left 119.18 feet (delta 273 deg. 08' R-25.0 feet); thence along a curve to the right 12.19 feet,

(delta 46 deg. 34' R-15.0 feet, long chord bears South 23 deg. 16'52" East 11.86 feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South 89 deg. 57'30" East 25 feet along said right of way line to the point of beginning.

Tax ID No.: 22-21-232-049 (Call)

PARCEL 1:

Beginning at a point located 1009.80 feet South and 956.97 feet West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence 117.44 feet; thence South 187.00 feet; thence East 117.44 feet; thence North 187.00 feet to the point of beginning.

PARCEL 1A:

SUBJECT TO AND TOGETHER WITH a non-exclusive right of way for ingress and egress over the following described property:

Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North 89 degrees 57'30" West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 129.92 feet; thence along a curve to the right 12.19 feet, (delta=46E34' R=15.0 feet); thence along a curve to the left 119.18 feet, (delta=273E08', R=25.0 feet) thence along a curve to the right 12.19 feet, (delta=46E34', R=15.0 feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South 89E57'30" East 25.0 feet along said right of way line to the point of beginning.

Tax ID: 22-21-232-049

Tax ID No.: 22-21-232-050 (Clark)

Beginning at a point located 1196.80 feet South and 956.97 feet West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence; West 117.44 feet; thence South 173.96 feet to the North right of way line of 6400 South Street; thence South 89E57'30" East 117.44 feet along said right of way line; thence North 174.05 feet to the point of beginning.

SUBJECT TO AND TOGETHER WITH A non-exclusive right of way for ingress and egress over the following described property:

Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North 89E57'30" West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 129.92 feet; thence along a curve to the right 12.19 feet (delta=46E34'; R=15.0 feet); thence along a cure to the left 119.18

feet, ($\Delta=273E08'$, $R=25.0$ feet); thence along a curve to the right 12.19 feet, ($\Delta=46E34'$, $r=15.0$ feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South $89E57'30''$ East 25.0 feet along said right of way line to the point of beginning.

Tax ID No.: 22-21-232-047 (Wathen)

Beginning South 1009.80 feet and West 1074.41 feet from the Northeast Corner of Section 21, Township 2 South, Range 1 East, Salt Lake Meridian; and Running Thence West 118 feet to an Existing Fence Line as Described by That Certain Boundary Line Agreement, Recorded November 27, 1995, as Entry 6221643, in Book 7277, at Page 1694 of Official Records; Thence Running along Said Fence Line the Follow Three (3) Courses: (1) South $3^{\circ}45'24''$ West 59.22 feet; (2) South $4^{\circ}48'50''$ West 53.09 feet; (3) South $0^{\circ}14'31''$ West 98.97 Feet; Thence Leaving Said Fence Line East 126.75 feet; Thence North 210.96 Feet to the Point of Beginning

SUBJECT TO AND TOGETHER WITH A non-exclusive right of way for ingress and egress over the following described property:

Beginning at a point located 1370.85 feet South and 956.97 feet West and 104.94 feet North $89E57'30''$ West from the Northeast corner of Section 21, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence North 129.92 feet; thence along a curve to the right 12.19 feet ($\Delta=46E34'$; $R=15.0$ feet); thence along a cure to the left 116.44 feet, ($\Delta=266E52'$, $R=25.0$ feet); thence along a curve to the right 12.19 feet, ($\Delta=46E34'$, $r=15.0$ feet); thence South 129.90 feet to the North right of way line of 6400 South Street; thence South $89E57'30''$ East 25.0 feet along said right of way line to the point of beginning.

Exhibit "B"

MAP OF COMMON AREA

EXHIBIT C

BYLAWS