

10816744  
10/14/2009 11:35:00 AM \$92.00  
Book - 9770 Pg - 7041-7070  
Gary W. Ott  
Recorder, Salt Lake County, UT  
INTEGRATED TITLE INS. SERVICES  
BY: eCASH, DEPUTY - EF 30 P.



DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
of  
DISCOVERY COVE

THIS DECLARATION made and executed this 13 day of October, 2009, by Discovery Land, LLC, a Utah limited liability company with its principal place of business located in Midvale, State of Utah (hereinafter referred to as "Declarant").

RECITALS:

- A. Declarant is the owner of certain real property located in Salt Lake County, State of Utah (the "Property") more particularly described in Article II of this Declaration.
- B. Declarant desires to provide for preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to the covenants, restrictions, easements, charges, liens hereinafter set forth.
- C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, 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 Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah, as a nonprofit corporation, DISCOVERY COVE SUBDIVISION HOMEOWNERS' ASSOCIATION.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the Covenants, restrictions, conditions, easements, charges, assessments, obligations, and lien hereinafter set forth.

I. DEFINITIONS

- 1.1. Association shall mean and refer to DISCOVERY COVE SUBDIVISION HOMEOWNERS' ASSOCIATION, a Utah nonprofit corporation.
- 1.2. Board shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1.3. Building Pad shall consist of either

(a.) The area designated upon a Plat where a Living Unit or other building may be located, or

(b.) If no such area is designated upon a Plat, the area located within the Lot boundaries, reduced however, by all setbacks which are required by the terms of this Declaration or by appropriate governmental agencies.

1.4. Common Areas shall mean and refer to that part of the Property which is not included with the Lots (other than Common Area Lots designated upon a Plat) which is owned by the Association and those easements either granted to or reserved for the benefit of the Association or the owners and intended for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines and fixtures and other personal property owned by the Association when the context so requires: Subject to the limitations contained in this Declaration, the Trails are part of the Common Areas.

1.5. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.6. Architectural Guidelines shall mean and refer to those guidelines and regulations created by the Declarant for the design and construction of Living Units and other improvements within the Development and the corresponding landscaping of Lots.

1.7. Development shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.8. Environmental Law. The term "Environmental Laws" shall mean any federal, state, local or foreign statutes, codes, plans, regulations or common laws related to pollution or protection of the environment, including, without limitation, any common laws of nuisance or trespass and any laws or regulations relating to emissions, discharges, releases or threatened releases of Toxic Materials into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Toxic Materials. "Environmental Laws" shall also include all orders, decrees, judgments, injunctions, notices or demand letters issued, entered, promulgated or approved under those Environmental Laws.

1.9. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all Improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.10. Lot shall mean and refer to any one of the separately numbered and individually described Lots of land described on a Plat:

(a.) Which is intended to be owned individually, rather than by an association of Owners or in common by owners of different lots: and

(b.) Which is intended to be used as the site of a single Living Unit. Reference to a "Common Area Lot" shall not mean a Lot as described herein.

1.11. Member shall mean and refer to every person who holds a membership in the Association.

1.12. Mortgage shall mean any mortgage, deed of trust or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed or deed of trust.

1.13. Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.14. Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.15. Parcel shall mean and refer to the Property which is subject to this Declaration, which is filed for record in the office of the County Recorder of Salt Lake County, Utah. is separately subjected to the terms of this declaration with the intention that it shall thereby comprise the Development. The real property described in Article II of this Declaration constitutes the Parcel.

1.16. Plat shall mean and refer to any subdivision plat, any plat of a planned unit development, or any plat or map similar to any of the foregoing:

(a.) Which covers the Property;

(b.) Which describes or creates one or more Lots;

(c.) On which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise the Development; and

(d.) Which is filed for record in the office of the County Recorder of Salt Lake County, Utah. Recorded concurrently with this Declaration is a Plat of Discovery Cove Subdivision, and executed and acknowledged by Declarant on. Said Discovery Cove subdivision plat constitutes a Plat.

1.17. Property shall mean and refer to all of the real property which is covered by a Plat.

1.18. Subdivision shall mean and refer to the entire residential development which is created and covered by a Plat.

1.19. Toxic Materials. The term "Toxic Materials" shall mean any flammable explosives, asbestos, industrial substances, pollutants, contaminants, chemicals, wastes, discharges, emissions, radioactive materials and other hazardous substances, whether injurious by themselves or in combination with other materials, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances" described in the "Environmental Laws."

## II. PROPERTY DESCRIPTION

2.1. Submission. The Property which is and shall, be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following described real property situated in Salt Lake County, State of Utah

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Lots included with the above-described tract; provided, however; that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration):

(a.) To construct a Living Unit on each and every Lot, and

(b.) To improve the Common area with such facilities, including, but not limited to roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the

above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions, all mineral reservations and exclusions; all mineral reservations of record and rights incident thereto; all Instruments of record which affect the above described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record

### III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every 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 appertains.

3.2. **Voting Rights.** The Association shall have the following described two classes of voting membership:

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

**Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

- (a.) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
- (b.) The expiration of Seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

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 such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned

unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4. Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of \$25.00, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Section 5.5.

IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated there from. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

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

Lot No. \_\_\_\_\_, contained within DISCOVERY COVE SUBDIVISION Subdivision, as the same is identified in the Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ and in the "Declaration of Covenants, Conditions, and Restrictions of DISCOVERY COVE SUBDIVISION" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of the Salt Lake County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Salt Lake County Recorder.

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

4.3. Transfer of Title. Declarant agrees to convey to the Association title to the various Common Areas free and clear of all Liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by

governments or quasi-governmental authorities), as each such Common Area is substantially completed. In the event the Declarant fails to convey the Common Areas by deed or other instrument, the filing of the Plat shall nevertheless be deemed a conveyance of the Common Areas to the Association.

4.4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a.) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
- (b.) The right of the Architectural Review Committee to approve and designate the point of access from a Lot to any street in accordance with the requirements of Article VIII;
- (c.) The right of Salt Lake County, Murray City, and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and
- (d.) The right of the Association to dedicate or transfer all or any part of the Common Areas and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by
  - (i.) All holders of first Mortgages secured by Lots and
  - (ii.) By two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose written or printed notice setting forth the purpose of the meeting and the action proposes shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

## V. ASSESSMENTS

5.1. Personal Obligation and Lien. Each Owner shall, by acquiring or in anyway becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain:

(a.) A charge and continuing lien upon the Lot with respect to which such assessment is made; and

(b.) The personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

(c.) Declarant shall pay assessments on any lot where a model or spec home has been built. No assessments on vacant lots shall be due, except for special assessments voted on by the HOA.

5.2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

5.3. Special Assessments. From and after the date set under Section 5.7, the Association may levy special assessments for the purpose of defraying, in whole or in part:

(a.) Any expense or expenses not reasonable capable of being fully paid with funds generated by monthly assessments: or

(b.) The cost of any construction, reconstruction or unexpectedly required repair, replacement in connection with the common Areas. Any such special assessments must be assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each class of Members), present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.4. Reimbursement Assessment on Specific Lot. In addition to the monthly assessment and any special assessment authorized pursuant to Sections 5.3 and 5.4 above, the Board may levy at any time Special Assessments



- (a.) On each Lot specifically benefited by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged;
- (b.) On each Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and
- (c.) On each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 3.4, Section 6.18, Section 6.2(a.) or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessment"). The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefited.

5.5. Rate of Assessment. Except as provided in Section 5.5 above, monthly and special assessments may be adjusted based on lot size.

5.6. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on

- (a.) The date a deed is delivered to the purchaser of a Lot, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto.
- (b.) The date of occupancy agreement or the date the Owner actually takes possession of a Lot, or
- (c.) If either of the foregoing has occurred as of the date of recording of this Declaration, the first day of the month following recording, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be thereafter all monthly assessments shall be due and payable on the first day of each month.

A monthly assessment not paid within ten (10) days of the thereof shall be deemed late and subject to a late fee of \$15.00. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

---

NOTWITHSTANDING THE FOREGOING, in the event that a majority of the Owners of Lot elect, the Association may provide for the payment of monthly assessments on a quarterly basis, provided such assessments are payable in advance.

5.7. **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrance of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.8. **Effect of Non-Payment; Remedies.** Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

5.9. **Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Salt Lake County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration. Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot if not paid to the association.

## VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration: the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a.) The Association shall accept all Owners as members of the Association.
- (b.) The Association shall accept title to all Common Areas conveyed to it by Declarant.
- (c.) The Association shall maintain, repair, and replace all landscaping and improvements in the Commons Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass and other Common Area improvements. Association shall have no obligation to perform any exterior maintenance and/or

---

repair of any part of a Living Unit or any other landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

(d.) The Association shall maintain all landscape installed at time of completion of home, including weekly lawn care and as needed weed maintenance in flower beds. Additional landscaping installed by an Owner without the Association's express agreement to maintain will not be maintained. Additional costs may be assessed based on lot size as set forth in Section 5.5.

(e.) As provided in Section 7.13, each Owner shall have the obligation to provide exterior maintenance of his Living Unit including but not limited to painting, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces, and landscaping installed by an Owner or his predecessor in title, such Owner shall paint, repair, and otherwise maintain the exterior and interior of his Living Unit and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems. The maintenance of all Living Units and accessory buildings shall be in accordance with the Architectural Guidelines.

(f.) In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitee of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

(g.) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(h.) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

(i.) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-

year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

6.2. Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a.) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article VII of this Declaration. The Association shall have the right to close all or any portion of a Common Area to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b.) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of Living Units to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter, the Board may provide for:

- (i.) Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of Living Units upon Lots to the extent necessitated by the failure of Owners of such Lots) on such terms and conditions as the Board shall deem appropriate;
- (ii.) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board and the Owners;

- (iii.) Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;
  - (iv.) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
  - (v.) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and
  - (vi.) Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.
- (c.) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

6.3. Association Rules. The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things:

- (a.) The use of the Common Areas;
- (b.) The use of any roads or utility facilities owned by the Association;
- (c.) The collection and disposal of refuse;
- (d.) The types of animals permitted and the maintenance of permitted animals on the Property;
- (e.) The use of Living Units for business or rental purposes; and
- (f.) Other matters concerning the use and environment of the Property and the conduct of residents. The Board may also adopt additional Architectural Guidelines, in addition to those adopted by the Declarant, for the construction of Living Units; provided, however, that until the earlier of the expiration of ten (10) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, or all Units to be located upon the Property and the Additional Property have been sold to third parties. Declarant shall have the unilateral right to amend or modify the Architectural Guidelines or to reject any additional Architectural Guidelines proposed by the Board Rules and Regulations and/or

Architectural Guidelines adopted by the Board may be enforced in accordance with the provisions of Section 7.18.

6.4. **Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

6.5. **Insurance.** The Association shall secure and at all times maintain the following insurance coverage:

- (a.) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to "Discovery Cove Homeowner's Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."
- (b.) A policy or policies insuring the Owners, the Association, and its directors, offices, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitee or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$500,000 for any one person injured; \$2,000,000 for all persons injured in any one accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- (i.) In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.
- (ii.) All policies shall be written by a company holding a rating of "AA" or better from Bests Insurance Reports.
- (iii.) The Association shall have the authority to adjust losses.

(iv.) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(v.) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitee, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

6.6. Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follow: At the first meeting called, the presence of members or of proxies shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five days following the immediately preceding meeting.

#### VII. USE RESTRICTIONS

7.1. Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

7.2. Use of Lots and Living Units. All Lots are intended to be improved with Living Units and are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Living Unit; provided, however nothing herein shall preclude the use of a home office. Each Living Unit shall be used only as a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas. With city and HOA approval, lots may be combined to make a larger lot, still for only one single living unit. When lots are combined, the HOA fee may be increased proportionate to the additional costs from the landscape maintenance crew for the larger lot maintenance.

7.3. Building Features and Materials. The location of all buildings, and each building's design features and materials must be consistent and in accordance with the Architectural Guidelines. Reference must be made to the Architectural Guidelines for additional requirements and conditions for the design and construction of Living Units.

- (a.) Building Location. Each building (including Living Unit) shall be located such that it meets the minimum setback requirements as defined by Murray City.
- (b.) Garages. Garages must be fully enclosed and located within the Building Pad accommodate a minimum of two cars and be equipped with an automatic garage door opener. Carports are not permitted within the Subdivision. Each owner shall make every effort to keep their garage door's down at all times except when they are entering and exiting with their vehicles.
- (c.) Accessory/Structures. Patio structures, trellises, sunshades, gazebos and any other appurtenant buildings shall be solely located within the Building Pad, shall be constructed of materials consistent with the colors, textures and materials approved for the dwelling and shall be integral to the architecture of the Living Unit. All such appurtenant buildings shall be subject to the approval of the Architectural Review Committee before their construction and/or installation.
- (d.) Mailboxes. Each Owner shall purchase, install (at an approved location) and maintain a mailbox as specified by the Architectural Review Committee and Murray City; provided, however that the Association may maintain common mailboxes at the entrance to the Project. Common area or individual mailboxes shall be determined based on a decision of the Post Master for Murray City.
- (e.) Fences and Walls. All fencing on the Property shall be approved by the Architectural Review Committee. Any fencing approved shall comply with all applicable building and safety codes. All fencing materials shall be approved by the Architectural Review Committee. All permitted fences on a Lot shall be maintained by Owners and the same shall not be permitted to go into disrepair. Front yards are to remain free from fencing of any kind.
- (f.) Paving. Driveways and other paved areas, including their location, are part of the Architectural Review Committee. Driveway and other flat paved areas generally may be composed of concrete, exposed aggregate concrete, stamped concrete, quarry tile, brick or paving blocks. Gravel areas and driveways are not permitted.
- (g.) Solar Equipment. Solar panels are to be integrated into roof design. Panels and frames must be copper or compatible with roof colors and all equipment must be screened from view.
- (h.) Antennas. All antennas are restricted to the attic or interior of the residence. Satellite dish antennas shall be allowed provided they are screened from view and their location is approved in advance by the Architectural Review Committee. Satellite dish antennas shall not be permitted on roofs.



- 
- (i.) Skylights. Skylights are to be designed as an integral part of the roof. Skylight glazing may not be reflective. Skylight framing shall be colored to match adjacent roofing materials.
- (j.) Pools, Spas, Fountains, Game courts, Etc. Pools, spas, fountains, game courts, children's play sets, etc. shall be approved by the Architectural Review Committee and shall be located to avoid impacting adjacent properties with light or sound. No game court shall be located in front or side yards. Pool heaters and pumps must be screened from view and sound insulated from neighboring houses. Children's play sets shall not exceed ten (10) feet in height. Nothing herein shall be construed as permitting the construction of skateboard areas and/or ramps, which structures shall be prohibited.
- (k.) Sheet Metal, Flashing and Vents. All sheet metal, flashing vents and pipes must be colored to match the material to which they are attached or from which they project, with the exception of copper, unless otherwise approved by the Architectural Review Committee.
- (l.) Mechanical Equipment. All air conditioning, heating equipment, and soft water tanks must be screened from view and insulated for sound attenuation. Air conditioning units are not permitted on roofs or through windows unless screened from view and approved by the Architectural Review Committee. Swamp coolers are not permitted.
- (m.) Gas and Electric Meters. Meter locations are to be designed into the architecture of the dwelling and screened from view.
- (n.) Exterior Lighting. It is intended that the Property and Lots be lighted adequately for safety and security. It is also desirable that each Lot have landscape lighting that subtly highlights landscaping rather than buildings. Bright, uncontrolled lighting that impacts adjacent residences or obscures the night sky is to be avoided, consistent with these objectives. Owners of a Lot shall not be permitted to utilize accent and spotlights on the Living Unit located upon such Lot as long as the same utilize the "dark sky" concept and are downward reflecting.
- (o.) Holiday Lighting. Holiday lights should be limited to the season. Owners are encouraged to not put up holiday lights any earlier than Oct. 25<sup>th</sup> and not to leave them up any longer than February 15<sup>th</sup>. While these windows are large, it is also encouraged that those lights will not be turned on until after November 20<sup>th</sup> of the year and not to remain on past January 1<sup>st</sup>.
- (p.) Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction, and grading must be performed within the confines of a Lot.

(q.) Site Grading and Drainage. Salt Lake County and other applicable governmental agencies require that each Lot Owner retain on his own Lot water runoff in accordance with the approved grading and drainage plan submitted by the Declarant in connection with its application for subdivision approval. CAUTION: each Owner shall be solely responsible for any and all drainage requirements necessitated by construction of such Owner's Living Unit or any damage or loss occasioned by water runoff.

(r.) City and Other Approval. Approval of any improvements by the Architectural Review Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Review Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines.

(s.) Metal Awnings. Metal awnings, metal "lean-tos", or metal patio covers shall not be permitted on any Lot.

#### 7.4. Landscaping and Common Area Improvements.

(a.) Except for the construction of a Living Unit which is approved in accordance with the Procedures set forth in Article VIII, each Owner shall be restricted from removing or modifying trees (4 inches in caliper or larger) which are located upon and naturally grow upon such Owner's Lot, unless the same shall be dead or dying. Each such Owner shall be responsible at his own cost and expense to maintain and water all such trees, including any which Declarant may have installed upon such Lot during development of the Subdivision or which are installed by Owner (or predecessor) after approval by the Architectural Review Committee in accordance with the requirements of Section 8.2. all trees, shrubs and other vegetation (excluding annuals) to be installed to the front of any Living Unit or the side yard of any Lot abutting a street shall be approved by the Architectural Review committee prior to installation. The addition to, modification of, or removal of trees and other approved vegetation (including removal of the same because of death which is not thereafter replaced by substitute approved vegetation) without the prior approval of the Architectural Review Committee shall be deemed a violation of the requirements of Owner to maintain the same and the Architectural Review Committee shall have the right to require Owner to restore such area to its prior approved condition at the sole cost of Owner. In the event Owner fails to restore such area as required herein, the Association shall have the right to restore the same and the cost of such restoration together with administrative expenses equal to ten percent (10%) of such costs. shall be added to and become part of the Reimbursement Assessment (as set forth in section 5.5) to which such costs, is subject. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the Property including: the development of Common Areas and the installations of utilities serving the Subdivision.

7.5. Recreational Vehicles. No boats, trailers, snowmobiles, all terrain vehicles, wheeled or tracked vehicles, large trucks and commercial vehicles (herein collectively 'belonging to Owners or other residents of the Property) shall be parked in front of or in the driveway within the Development, except temporary parking not to exceed twenty-four (24) hours. No motor vehicle of any kind shall be repaired, constructed or reconstructed upon any Lot, street or Common Areas, except that these restrictions shall not apply to emergency repairs to vehicles. Any motor or recreational vehicle must be kept in any enclosed garage or behind a closed gate.

7.6. Pets. No animals other than household pets (not exceeding two in number of dogs and/or cats) shall be kept or allowed on any Lot, in any Living Unit, or within any part of the Common Areas. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall be allowed to make an unreasonable amount of noise or otherwise become a nuisance. Any Owner or other resident within the Development who violates this Section shall be subject to such penalties or fines as the Board by resolution or as regulation may provide. Owners of pets must clean up after pet, particularly on walks and kept when possible out of neighbor's yards. Pets not to exceed a weight limit of 50lbs.

7.7. Common Areas. The Common Areas of the Development shall be improved and used only for the following purposes:

- (a.) Pedestrian and bicycle access to and from and movement within the Development; provided, nothing herein shall preclude the use of Trails by members of the public.
- (b.) Recreational use by Owners and occupants of Living Units and their guests. Owners must be present during guest use of the common areas.
- (c.) Beautification of the Development.
- (d.) Privacy for the Owners and occupants of Living Units
- (e.) Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Review Committee.

7.8. Insurance. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be cancelled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better). An Owner may be required to obtain flood insurance as a condition to obtaining any financing covering any improvements on the land.

7.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a Living Unit or appurtenant structures.

7.10. Maintenance and Repair. No Living Unit, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and subject to the requirements herein as to approval by the Architectural Review Committee, each such building structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner. Such obligation shall extend, but shall not be limited to, the painting, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces.

7.11. Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Lots. Without any of the foregoing, horns, whistles, bells or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Sounds are to be kept to a level that does not disturb the peaceful enjoyment of the neighbors during unreasonable hours.

7.12. Right of Entry. During reasonable hours, any member of the Architectural Review Committee or any member of the Board, or any officer or authorized representative of any of them, shall have the right to enter upon and inspect any Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the rules and regulations of the Board or of the Association have been or are being complied with.

7.13. Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

(a.) Such signs as may be required by legal proceedings.

(b.) Construction identification signs, placed and maintained only during construction of a Living Unit, not exceeding four feet wide and four feet high, for each Living Unit.

(c.) A "For Sale" sign, to the extent permitted by the Board.

(d.) Political Signs not exceeding 24 by 36 inches in size, further provided that such signs may be displayed only for a period of 45 days before a primary or general election through a date one day after each such election, as applicable.

7.14. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Architectural Review Committee. Insofar as possible, such containers shall be maintained as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary, not to exceed more than 24 hours, to effect such collection.

7.15. **Toxic Materials.** No Owner shall store, use, manufacture, process, distribute, treat, transport, handle, emit, dispose of, discharge or release any Toxic Materials at or from the Development or any portion thereof in violation of any Environmental Laws.

7.16. **Enforcement of Land Use Restrictions.** The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- (a.) Declarant, so long as it has any interest in any of the Property;
- (b.) Any Owner; or
- (c.) The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

7.17. **Exception for Declarant.** Notwithstanding the restrictions contained in this Article VII, for the seven (7) years following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah. Declarant shall have the right to use any Lot or Living Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement and or sale of all Lots owned by the Declarant.

#### VIII. ARCHITECTURAL CONTROL

8.1. **Architectural Review Committee.** After 75% of build out of homes, the Board of Directors of the Association shall appoint a three-member Committee. The function of which shall be to insure that all improvements and landscaping within the property harmonize existing surrounding and structures. The committee need not be composed of Owners. If such a Committee's not appointed the Board itself shall perform the duties required of the Committee. The Committee may also approve of general contractors who may perform construction work within the property, provided that the Declarant delegates such right to the Committee in accordance with the requirements of Section 8.11 herein below.

8.2. Submission to Committee. No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefore have first been submitted to and approved by the Committee and the Declarant or Committee has received notice of the identity of the Contractor. All such plans and specifications shall be consistent with the Architectural Guidelines and/or the Architectural Guidelines which shall be from time to time adopted by the Board.

8.3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the property conform to and harmonize with the Architectural Guidelines, existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project.

8.4. Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in duplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association and the remaining set of plans will be returned to the property owner.

The following Architectural review fees (made payable to the Association) are required with the submittal of plans and specifications: \$100.00 for each separate submittal of architectural, landscaping, fencing and/or lighting drawings; provided that if any of the foregoing plans are submitted together, all plans submitted at the same time shall be considered one submittal.

All plans and specifications shall be approved or disapproved by it in writing within twenty (20) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

8.5. Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within DISCOVERY COVE SUBDIVISION shall be submitted and approved by the Architectural Review Committee (prior to submittal to any required governmental agency) at the following address:

DISCOVERY COVE SUBDIVISION  
c/o Discovery Land, L.L.C  
Attn: Derek Wright  
PO BOX 1324  
Draper, Utah 84020

---

The Board of Directors of DISCOVERY COVE SUBDIVISION Homeowners' Association has the authority to change the address for the submittal of plans and specifications.

8.7. Construction.

(a) Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

(i.) The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

(ii) The front, side and back yards of each Lot shall be landscaped within a period of six (6) months following completion or occupancy of the Living Unit: provided, however, that if completion of or occupancy of a Living Unit occurs during winter and such weather conditions preclude the installation of landscaping, such landscaping shall be completed not later than July 1 following such winter.

(b) Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Architectural Review Committee.

Construction crews shall not park on, or otherwise use, other lots or any open space. All construction vehicles and machinery shall be parked only in areas designated by the Architectural Review Committee.

8.8. Liability for Damages. The Committee shall not be held liable for damages by reason of any act on, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

8.9. Exception for Declarant. The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah.

8.10. Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all Living Units erected by it and all improvements of the Common Areas accomplished by it in the Development

(a.) Shall be architecturally compatible with respect to one another; and

---

(b.) That on or before seven (7) years from the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah. There shall be substantially completed and usable all Common Areas of the Subdivision, all approximately in the locations shown on the Plat.

#### IX. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

9.1. Notice of Default. In the event an Owner neglects for a period of thirty (30) days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Lot.

9.2. Abandonment, Termination, Etc. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

- (a.) To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;
- (b.) To partition or subdivide any Lot or the Common Areas;
- (c.) To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas, and further provided that the transfer of Trails to a public agency or authority for administration shall not require the consent of the first Mortgages; or
- (d.) To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

9.3. Notice of Substantial Damage or Destruction. The Association shall notify all holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that 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.

9.4. Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all holders of any first mortgage lien or equivalent security interest of 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.



9.5. Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance Shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees: In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

9.6. Rights Upon Foreclosure of Mortgage. The lien of the assessments provided in Section 1. Article V shall be subordinate to the lien of any First Mortgage upon such Lot: and the holder of a first mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure if such First Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgage Lot.

9.7. Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment.

9.8. Mortgagees' Rights to inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

#### X. MISCELLANEOUS

10.1. Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

10.2. Amendment. Subject to the provisions of Section 2 of Article VIII of this Declaration any amendment hereto shall require

- (a.) The affirmative vote of at least two-thirds (2/3) of all Class A membership votes, which Members present in person or represent by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists.

(b.) The written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows:

At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which a quorum shall be one-half (2) of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership then exists, and shall also be approved by the Salt Lake County Attorney. In such instrument the President or vice President of the Association shall certify that the vote required by this Section for amendment has occurred.

10.3. Consent in Lieu of Voting. 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 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 considered. The following additional provisions shall govern any application of this Section 10.3:

(a.) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b.) The total number of votes required for authorization or approval under this Section 10.3 shall be determined as of the date on which the last consent is signed

(c.) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d.) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

---

10.4. Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon: 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.) No lease agreement shall be for a period less than six (6) months.

10.5. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

10.6. Dissolution. Subject to the restrictions set forth in Article VIII of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of two-thirds (2/3) of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the By-laws, the articles of incorporation or this declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a non profit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters and sidewalks on a pro rata basis which conforms substantially with the assessment procedure, terms and conditions set forth in Article V of this Declaration.

10.7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct and complete all Common Areas improvements and amenities, if any, indicated on the Plat within two (2) years of the filing of this Declaration in the office of the County Recorder of Salt Lake County, Utah.

10.8. Enforcement by City. If the Association fails to maintain the Common Areas, the common access roadways, along with the curbs, gutters and sidewalk, in good order and condition, the City of Murray shall have the right, but not the obligation, upon giving the association thirty (30) days notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Lots and collect the costs thereof against the Owners as the Association has under this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall

---

include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.10. Property Part of Development. The Property shall comprise DISCOVERY COVE SUBDIVISION Subdivision.

10.11. Covenants to Run With Land. This Declaration and all 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 the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing; shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.12. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

10.13. Lenders' Agreement of Subordination. By its execution of this declaration, the undersigned lender, secured by one or more Lots located in the Project (hereinafter the "Lender"), and each of them agrees, covenants and declares that this Declaration shall be senior in priority to such lender's interest as lien holder, regardless of when Lender may have obtained a lien, mortgage, deed of trust, and/or security agreement, as such instrument is described below by such Lender's signature (herein collectively "lien") and such lien shall be subordinate to and subject to this Declaration notwithstanding the fact that this Declaration is recorded later in time than the date such lender acquired a lien.

EXECUTED the day and year first above written.

10.14. Declarant reserves the right to amend Unilaterally prior to Termination of Declarant's Right of Control: Prior to the expiration of Declarant's control, Declarant may unilaterally amend this Declaration for any other purpose, provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owners or Member hereunder, nor shall it adversely affect title to any property without the consent of the affected owner or member.

10.15 Promotional: Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the property.

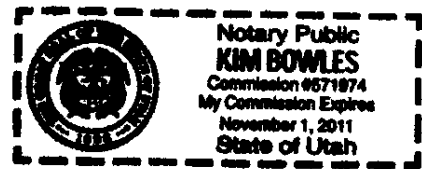
10.16 Declarant's Rights: No provision of the Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

DISCOVERY LAND, L.L.C., a Utah limited liability company:

By: Derek R. Wright  
Its: Manager

STATE OF UTAH )  
: SS  
COUNTY OF SALT LAKE )

On the 13<sup>th</sup> day of October, 2009, personally appeared before me Derek R. Wright, who being by me duly sworn did say that he is the Manager of Discovery Land, L.L.C., and that the within foregoing instrument was signed in behalf of said company by authority of a resolution of its members or in accordance with its Operating Agreement and the said Derek R. Wright duly acknowledged to me that said company executed the same.



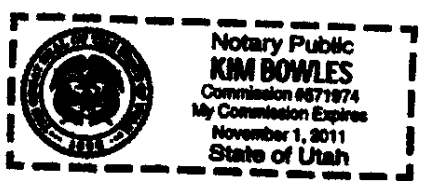
[Signature]  
NOTARY PUBLIC

Additional Land Owner \_\_\_\_\_:

By: [Signature]  
Its: Manager

STATE OF UTAH )  
: SS  
COUNTY OF SALT LAKE )

On the 13<sup>th</sup> day of October, 2009, personally appeared before me David Y. Freiss, who being by me duly sworn did say that he is the Manager of Freiss Development Group LLC of Discovery Land, L.L.C., and that the within foregoing instrument was signed in behalf of said company by authority of a resolution of its members or in accordance with its Operating Agreement and the said David Y. Freiss duly acknowledged to me that said company executed the same.



[Signature]  
NOTARY PUBLIC

## Exhibit "A"

Lots 1 thru 25, inclusive, DISCOVERY COVE PUD, (an Amendment of Discovery Cove Subdivision), according to the official plat thereof, as to be recorded in the office of the Salt Lake County Recorder.

### Parcel Identification Numbers:

22-17-332-071, Lot 1  
22-17-332-070, Lot 2  
22-17-332-069, Lot 3  
22-17-332-068, Lot 4  
22-17-332-067, Lot 5  
22-17-332-066, Lot 6  
22-17-332-065, Lot 7  
22-17-332-063, Lot 8  
22-17-332-062, Lot 9  
22-17-332-061, Lot 10  
22-17-332-060, Lot 11  
22-17-332-059, Lot 12  
22-17-332-072, Lot 13  
22-17-332-073, Lot 14  
22-17-332-074, Lot 15  
22-17-332-075, Lot 16  
22-17-332-076, Lot 17  
22-17-332-077, Lot 18  
22-17-332-079, Lot 19  
22-17-332-078, Lot 20  
22-17-332-080, Lot 21  
22-17-332-081, Lot 22  
22-17-332-082, Lot 23  
22-17-332-083, Lot 24  
22-17-332-064, Lot 25

**COURTESY RECORDING**  
This document is being recorded solely as a courtesy and an accommodation to the parties named therein. INTEGRATED TITLE INSURANCE SERVICES LLC hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.