

When recorded mail to:  
J. Ballard Homes, Inc.  
321 East State Street, Suite 10  
American Fork, Utah 84003

## SPECIAL WARRANTY DEED

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency and receipt of which are hereby acknowledged, J. Ballard Homes, LLC., a Utah limited liability company aka J. Ballard Homes, Inc., a Utah Corporation with an address of 321 East State Street, Suite 10, American Fork, Utah 84003 ("**Grantor**"), hereby grants to **J. Ballard Homes, Inc., a Utah Corporation** with an address of 321 East State Street, Suite 10, American Fork, Utah 84003 ("**Grantee**"), the real property in the City of Lehi, Utah County, State of Utah ("**Property**"), that is described in Exhibit A attached hereto and incorporated herein by reference; provided, that said Grantor only warrants against the claims of those persons claiming by, through or under Grantor, but not otherwise, and subject to all other reservations and exceptions set forth below. Certain additional capitalized terms used herein are defined in Section D below.

EXCEPTING AND RESERVING UNTO GRANTOR, or Grantor's predecessors, and their respective successors and assigns, together with the right to grant and transfer all or a portion of the same, as follows, to the extent not already reserved by prior owners (including the Master Developer):

- A. Any and all oil rights, mineral rights, natural gas rights and rights to all other hydrocarbons by whatsoever name known, to all geothermal heat and to all products derived from any of the foregoing; and the perpetual right to drill, mine, explore and operate for and to produce, store and remove any of the subsurface resources on or from the Property, including the right to whipstock or directionally drill and mine from lands other than the Property, wells, tunnels and shafts into, through or across the subsurface of the Property, and to bottom such whipstocked or directionally drilled wells, tunnels and shafts within or beyond the exterior limits of the Property, and to redrill, retunnel, equip, maintain repair, deepen and operate any such wells or mines, but without the right to drill, mine, explore, operate, produce, store or remove any of the subsurface resources through or in the surface or the upper five hundred feet (500') of the subsurface of the Property.
- B. Any and all water, water rights or interest therein appurtenant or relating to the Property, whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicate, statutory or contractual, together with the right and power to explore, drill, redrill, remove and store the same from or in the Property or to divert or otherwise utilize such water, rights or interests on any other property owned or leased by prior owners; but without, however, any right to enter upon the surface of the Property in the exercise of such rights.
- C. Exclusive and Nonexclusive Easements for Telecommunications Services as defined below:

**C.1 Definitions.** When the following capitalized terms are used in this Special Warranty Deed, unless otherwise indicated therein, they have the following meaning:

- a. ***Improvement*** means any structure, fixture, vegetation and appurtenance including buildings, walkways, pipes, parking areas, recreational facilities, pools, driveways, parking areas, fences, walls, landscaping, antennae, poles, signs, and storage areas.
- b. ***Telecommunications Easements*** are described in paragraph D.2 below.
- c. ***Telecommunications Facilities*** are defined as (1) Improvements, equipment and facilities for (i) telecommunications, (ii) transfer of audio, video and data signals, (iii) transfer of any other signals used for transmission of intelligence by electrical, light wave, wireless frequencies or radio frequencies, and (iv) any other methods of communication and information transfer, (2) all associated Improvements, equipment and facilities, including but not limited to outside plant ducts, manholes, rise cables, protection equipment, communications rooms, antennas, power outlets, power conditioning and back-up power supplies, cross connect hardware, copper, fiber, and coaxial cables, towers, broadcasting and receiving devices, conduits, junction boxes, wires, cables, fiber optics, and any other necessary or appropriate enclosures and connections, and (3) power generation serving the Improvements, equipment and facilities described in subparts (1) and (2) of this sentence. The term "Telecommunications Facilities" is to be interpreted as broadly as possible and to include relocated facilities, expansion of facilities, and/or facilities used for new technology that replaces the Telecommunications Facilities that are used when this Special Warranty Deed is executed. If there is a doubt as to whether an item fits within the definition of Telecommunications Facilities, the term is to be interpreted to include that item.
- d. ***Telecommunications Operator*** means Mountain Home Development Corporation (also known as the ***Master Developer***), and its successors, assigns and contracting parties who have been granted rights and/or interests as a Telecommunications Operator.
- e. ***Telecommunications Services*** are services that involve or relate to installing, constructing, operating, maintaining, enhancing, creating, repairing, expanding, replacing, relocating and removing Telecommunications Facilities on or in Telecommunications Sites.
- f. ***Telecommunications Sites*** are defined as
  - i. Any above ground or underground areas of the Property, so long as the surface area is not developed with a building, pool, walkway, driveway, or parking area set forth on the Plat Map governing the Property.
  - ii. The term "Telecommunications Sites" is to be interpreted as broadly as possible. If there is a question as to whether a location in the Property is a Telecommunications Site, the location shall be interpreted as included within the definition of "Telecommunications Site".
  - iii. The number and exact location of each Telecommunications Site and/or Telecommunications Facility is to be determined by the Telecommunications Operator, subject only to the limitation that the location is not within a building, pool, walkway, driveway, or parking area (although cabling may be located underground and/or beneath a building, pool, walkway, driveway, or parking area).

**C.2 Reservation of Easement and Other Rights.**

a. To the maximum extent allowed by law, and to the extent not waived or otherwise limited by the Telecommunications Operator in writing previously, the Telecommunications Operator has previously excepted and reserved from the Property, and retains the right to transfer and assign, exclusive and nonexclusive easements in gross for the purpose of installing, maintaining, repairing, replacing, operating and relocating Telecommunications Facilities and conducting Telecommunications Services in the Property.

b. The Telecommunications Operator has reserved, together with the right to grant and transfer all or a portion of the same, exclusive and nonexclusive easements in gross in, over, under, across and through the Property and all Improvements thereon for the purpose of access for the Telecommunications Services and to the Telecommunications Sites. These easements are intended to give the Telecommunications Operator access from a public street over the Property, into any building or other Improvement, into any rooms and other spaces to the Telecommunications Sites.

**C.3 Rights in Connection with Easements.** The Telecommunications Operator has the right to trim and remove landscaping whenever, in Telecommunications Operator's reasonable judgment, it is necessary for the convenient and safe use of the Telecommunications Easement. The Telecommunications Operator has the right to use the mechanical, electrical, HVAC, plumbing systems and any other services provided by utilities serving the Property whenever, in Telecommunications Operator's reasonable judgment, it is necessary for use of the Telecommunications Easements so long as Telecommunications Operator reimburses Grantee for the actual cost of Telecommunications Operator's use of such services. The Telecommunications Facilities will not be deemed to be affixed to or a fixture of the Property. Grantee shall not access, operate, or move the Telecommunications Facilities.

**C.4 Limits on Telecommunications Easements.**

a. Use of the Telecommunications Easement shall not unreasonably interfere with use of the Property.

b. Telecommunications Operator shall use reasonable efforts to minimize alteration, removal or damage to any landscaping caused in connection with Telecommunications Operator's exercise of the Telecommunications Easements.

c. Telecommunications Operator shall indemnify, defend and hold Grantee harmless from all liability resulting from Telecommunications Operator's use of the Telecommunications Easements.

**C.5 Limits on Grantee's Use of the Property.**

- a. No person shall have access to any Telecommunications Sites without the prior consent of the Telecommunications Operator.
- b. Without the advance written consent of Telecommunications Operator, which consent shall not be reasonably withheld, Grantee shall not dig or drill any well, plat any tree, construct any Improvement, nor store fluids or other minerals, within twenty feet (20') of any area where Telecommunications Facilities are located.
- c. Without the advance written consent of Telecommunications Operator, which consent shall not be unreasonably withheld, Grantee shall not (1) increase or decrease the ground surface elevations within twenty feet (20') of any area, where underground telecommunications Facilities are located, or (2) penetrate the ground surface to a depth in excess of eighteen inches (18").
- d. Grantee shall not grant or dedicate any easements, licenses or other rights on, across, under or over or affecting the Property that, in the opinion of the Telecommunications Operator, interfere with, compete with or conflict with the Telecommunications Easements.
- e. Grantee shall indemnify, defend and hold Telecommunications Operator harmless from use of the Property by Grantee, its employees, agents, invitees and its and invitees.
- f. Grantee shall execute and allow to be recorded against the Property such documents as Telecommunications Operator reasonably requests in connection with Telecommunications Operator's exercise or protection of its rights.

- D. Exclusive and Nonexclusive easements for access, ingress, and egress, for purposes of installing, operating, maintaining, repairing, inspecting, removing and replacing a cable television system and telecommunications and internet service lines (whether they are wireless or not) and related facilities and equipment, provided that the construction and installation of such facilities shall not unreasonably interfere with Grantee's, or Grantee's successors or assigns', development or use of the Property. All such community cable television and telecommunication lines, facilities and equipment shall remain the property of the Master Developer, its subsidiaries, successors and assigns, and any transfer of all or any portion of the Property does not imply the transfer of any such community cable television and telecommunication easement or the lines, facilities or equipment location thereon.
- E. Nonexclusive easements in gross on, over and under the Property for construction, installation, maintenance, repair and replacement of electric, gas, water, sewer, and drainage facilities, and transmission lines for any type of energy-generating facility, and for equipment storage, rights-of-way or other purposes as described in easements already of record.
- F. Permanent, nonexclusive easements in gross on, over and under all private and public streets, roads and walkways in the Property for the purpose of (i) vehicular and pedestrian ingress and egress to all portions of the adjacent property owned by the Master Developer or its successors or assigns ("*Adjacent Property*") and (ii) the construction, installation (including the right to connect to existing facilities), maintenance and use of electric, gas, cable, telephone, water, sewer, drainage and other utility facilities serving the *Adjacent Property*; provided, however, that the construction, installation and maintenance of such facilities

shall not unreasonably interfere with Grantee's development or use of the Property.

SUBJECT TO:

1. **Exceptions.** The exceptions shown in Exhibit B attached hereto and, in addition, all of the other exceptions described herein.
2. **Taxes and Assessments.** General and special real property taxes and assessments and supplemental assessments, if any, for the current fiscal year.
3. **Master Declaration.** That Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Traverse Mountain, recorded on August 31, 2001, as Instrument No. 88405:2001, of Official Records for the County, and any amendments thereto ("***Mater Declaration***").
4. **Other Restrictions.** All other declarations, covenants, conditions, restrictions, reservations, rights, rights-of-way, dedications, offers of dedication and easements of record.
5. **Future Development.** Grantor may seek amendments to any specific or area plan, general plan, zoning, or other existing entitlements for the Project, as defined in the Development Declaration. Grantee agrees that it will not oppose the development of the Project in accordance with the existing development entitlements for the Project, nor will Grantee oppose any such amendments and will support and cooperate with Grantor in obtaining approval of such amendments. Any Governmental Authority, as defined in the Development Declaration, may elect to form additional Community Facilities, as defined in the Development Declaration, or assessment districts with jurisdiction over the Property to fund construction of fire protection facilities, street and traffic signal improvements, school facilities, parks, recreational facilities and other improvements. Any such assessment district and any future Community Facilities districts or assessment districts (collectively "**Districts**") will require the assessment of liens, taxes and assessments against the Property. Grantee agrees not to oppose the formation of the Districts or the levying of assessments and taxes through the Districts. Grantee shall consent to, or if an election is called, cast its votes in favor of all Districts in the levying of assessments and taxes through such Districts. Grantee shall not take any action which would in any way interfere with the operation of the Districts, or decisions made, or actions taken by any Governmental Authority or Grantor, with respect to the Districts, or the bond financing related thereto, including the timing of commencement of assessments or special taxes, the amount of assessments or special taxes, the spreading of assessments or special taxes and the use of the assessments or special taxes so collected by the Districts. Each covenant and restriction contained in this Paragraph 6 (whether affirmative or negative in nature) shall (a) constitute a covenant running with the land, (b) benefit and bind every person having any fee, leasehold, mortgage lien or other interest in any portion of the Property, and (c) benefit and bind any successor in interest of Grantee whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means. Grantee and each successor in interest to Grantee, by acceptance of title to the Property, does hereby expressly waive any and all rights that Grantee has or may have, whether arising by statute, common law or otherwise, to take action in contravention of the covenants not to oppose set forth herein.

*[Signatures on the following page.]*

IN WITNESS WHEREOF, the Grantor has executed and delivered this Special Warranty Deed to the Grantee on the date set forth below, to be effective as of the date of its recordation.

**GRANTOR:**

J. Ballard Homes, LLC, a Utah limited liability company aka J. Ballard Homes, Inc., a Utah Corporation

Russell E. Larson  
By: Russell E. Larson

By: Russell E. Larson

STATE OF UTAH }  
COUNTY OF UTAH }

On the 15 day of September, 2006, personally appeared before me Russell E. Larson, and that within the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said Russell E. Larson duly acknowledged to me that said corporation executed the same.

Notary Public  
Residing In: Utah  
Commission Expires: 4-11-08



**EXHIBIT A**

**Lots 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, and 220, WINTER HAVEN, PHASE 1, AMENDED SUBDIVISION, according to the official plat thereof, on file in the office of the Utah County Recorder.**

**EXHIBIT B**

1. 2005 taxes have been paid. **Tax Serial No. 55-605-0100 thru 0133, and 55-605-0136 thru 55-605-0164, and 55-605-0166 thru 55-605-0193, and 55-605-0195 thru 55-605-0220.**
2. Said property is included within the boundaries of Lehi City (801)768-7100 and is subject to charges and assessments thereof.
3. Public Utility, Sewer, Storm Drain and T.M. Utility Easements as delineated and/or dedicated on the recorded plat for the purpose of Public Utilities and Incidental Purposes affecting property as shown on recorded plat.
4. Notes, as shown on the recorded plat for said subdivision.

5. Declaration of Covenants, Conditions, Restriction and Reservation of Easements, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, marital status, ancestry, disability, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 U.S.C 3604(c) or California Government Code 12955 contained in instrument:

Recorded: July 15, 2004

Entry No.: 81670:2004

Supplemental Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Traverse Mountain, Winter Haven Phase 1, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, marital status, ancestry, disability, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 U.S.C. 3604(c) or California Government Code 12955 contained in instrument:

Recorded: July 15, 2004

Entry No.: 81671:2004

6. Notice of Continuing Obligation

Filed By: Traverse Mountain Master Association

Purpose: future Homeowner's Association dues not yet due and payable

Dated: June 17, 2004

Recorded: July 2, 2004

Entry No.: 76500:2004