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L-3

DOC # 20060029893

Restrictive Page 1 of 54  
Russell Shirts Washington County Recorder  
7/7/06 4:53 PM Fee \$ 119.00 by JENKINS & JENSEN



Note to Recorder:  
Record against the real property  
located in Washington County,  
Utah described in Exhibit "A".

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS OF

THE HILLS

PREAMBLE

This Amended and Restated Declaration of Covenants Conditions and Restrictions for The Hills amends, restates and supersedes the Declaration of Covenants Conditions and Restrictions of The Hills, recorded in the records of the Washington County Recorder on January 24, 1986 as Entry No. 287996, in Book 400, at Pages 680-700, and any and all amendments or supplements thereto whether or not the same have been recorded in the records of the Washington County Recorder, **except** such Amended and Restated Declaration does not amend, supercede or replace that certain Amendment to the Declaration of Covenants, Conditions and Restrictions of The Hills (Rental Restrictions - 20% Cap) recorded in the records of the Washington County Recorder on March 16, 2006 as Entry No. 20060008578 (the "Rent Restriction Amendment").

This Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for The Hills affects the following real property, described in Exhibit "A", all located in Washington County, State of Utah:

Terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

RECITALS

A. Clark H. Spilker, as Declarant, was the original developer of the Properties.

B. Declarant previously established The Hills, a non-profit corporation, (the "Association") and assigned to the Association powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Properties, promulgating Rules and Regulations through its Board, and collecting and disbursing the assessments and charges.

C. All of the Properties shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions, and equitable servitudes, all of which are for the purpose

of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all persons having or acquiring any right, title, or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by the Association, as hereinafter defined, each owner and their respective heirs, executors and administrators, and successors and assigns.

D. This Amended and Restated Declaration is undertaken pursuant to Article XI, Section 4 of the original Declaration, and is adopted pursuant to the written consents of not less than seventy-five percent (75 %) of the Members. Further, holders of first mortgage liens were sent a copy of this Restated and Amended Declaration, together with notice advising them of the date and time of the meeting of the Members held consider this Amended and Restated Declaration.

E. Owners in the Association were also given notice of the requirements under Utah Code Ann. Section 16-6a-707 for taking action without meetings. A true and correct copy of such notice is attached hereto and incorporated herein as Exhibit "C".

F. Even though a meeting of the Membership was held to consider this Amendment, of which holders of first mortgage liens were notified, the adoption of this Amendment is governed by and evidenced by the written consents of the Members.

G. This Amendment shall take effect upon the date it is recorded in the records of the Washington County Recorder (the "Amendment Date").

H. These Recitals shall be deemed covenants as well as recitals.

## ARTICLE I

### DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1. Annual Assessment. Annual Assessment shall mean the annual charge against each Owner and his Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.2. Articles. Articles shall mean the Articles of Incorporation of the Association filed in the office of the Secretary of State of the State of Utah, as such Articles may be amended from

time to time.

1.3. Association. Association shall mean THE HILLS, a Utah non-profit corporation, its successors and assigns.

1.4. Beneficiary. Beneficiary shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

1.5. Board. Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.6. Budget. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills.

1.7. Bylaws. Bylaws shall mean the Bylaws of the Association, as adopted by the Board, as such Bylaws may be amended from time to time.

1.8. Corrective Assessments. Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association for corrective action which authorizes the Association to spend money to take corrective action.

1.9. Common Areas. Common Areas shall mean and refer to the properties shown on the Plat as Common Areas and the property described in Exhibit "B" under the terms set forth in Exhibit "B".

1.10. Common Expenses. Common Expenses shall mean those expenses for which the Association is responsible under this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and improvement of the Common Area; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, certain landscaping and improvements on or adjacent to public or Common Area, gardening, against the Properties, or portions thereof; and the costs of any, other items incurred by the Association, for the benefit of all of the Owners.

1.11. Amended and Restated Declaration. Amended and Restated Declaration shall mean this instrument as it may be amended from time to time.

1.12. Deed of Trust. Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

1.13. Limited Common Area. Limited Common Area shall mean and refer to the portion of property owned by the Association and show on the Plat as dedicated to exclusive use of the Owner of the Lot to which such Limited Common Area is appurtenant.

1.14. Lot. Lot shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership, and shall exclude the common and limited common areas.

1.15. Member, Membership. Member shall mean any Person holding a membership in the Association, as provided in this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills, and the Articles, Bylaws and Rules and Regulations. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot and shall not be separated from the Lot to which it appertains.

1.16. Mortgage, Mortgagee, Mortgagor. Mortgage shall mean any Recorded first mortgage or first deed of trust. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.17. Owner. Owner shall mean the Person or Persons, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.18. Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.19. Plat or Map. Plat or Map shall mean and refer to the Plat recorded in the records of the Washington County Recorder for Phases 1, 2 and 3 of The Hills.

1.20. Properties. Properties shall mean and refer to all real property subject to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills.

1.21. Rent Restriction Amendment. Rent Restriction Amendment shall mean the Amendment to the Declaration recorded in the records of the Washington County Recorder on

March 16, 2006 as Entry No. 20060008578.

1.22. Recreational Vehicles. Recreational Vehicles shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, off road motorcycles, all-terrain-vehicles and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, or devices similar to any of the foregoing, and trailers that carry any of the foregoing.

1.23. Townhouse. Townhouse shall mean and refer to a Single Family Dwelling with or without walls or roofs in common with other Single Family Dwelling Units, and shall include fee title to the real property lying directly beneath.

1.24. Vehicle. Vehicle shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects -- or are designed to be transported on wheels, skids, skis or tracks--, including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, Recreational Vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

## ARTICLE II

### OWNERS' PROPERTY RIGHTS

2.1. Owners' Easements of Enjoyment. Each Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each such Lot and in no event shall be separated therefrom. Any Owner may grant the use and enjoyment described herein to any tenant, lessee, guest, or family member, and to a contract purchaser who resides on such Lot. All such rights are subject to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills.

2.2. 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:

All of Lot \_\_\_\_\_ of THE HILLS, [Phase \_\_\_\_ ] according to the official plat thereof, subject to the Amended and Restated Declaration of Conditions, Covenants and Restrictions, all on file in the office of the Washington County Recorder.

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

2.3. Transfer of Title. Declarant was required to convey to the Association title to all Common Area.

2.4. Limitations on Common Area Easement. Every owner shall have a right and easement of use and enjoyment in and to the common area which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common area.
- (b) The right of the Association to limit the number of guests of members using the Common Area.
- (c) The right of the Association to suspend the voting rights of a member for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) With the approval of all first mortgagees on Lots and two-thirds (2/3) of the Owners, the right of the Association to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of the next preceding clause, and shall not require the prior written assent of the first mortgagees but shall require the written assent of two-thirds (2/3) of each class of members.
- (e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.
- (f) The right of each individual unit owner to the exclusive use of the limited Common Area adjacent and appurtenant to his respective Lot, and the right of each Owner to exclusive use of the parking area, if any, designated with his Lot number on the Plat.

2.5. Easements for Public Utilities and Service Use. In addition to the foregoing easements over the Common Area, there shall be easements for public utilities and services of the City of St. George in which the Properties are located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.6. Easement for Encroachments. If any portion of a Townhouse encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

2.7. Limited Common Area. Ownership of each Lot shall entitle the owner thereof to the exclusive use of the Limited Common Area adjacent and appurtenant thereto, subject to the Rules and Regulations of the Association.

2.8. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity.

3.2. Voting Rights. Every person or entity who is a member of the Association is entitled to one (1) vote for each Lot owned.

3.3. Multiple Ownership. 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.

### ARTICLE IV

#### COVENANT FOR ASSESSMENTS

4.1. Creation of Assessment Obligation. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, and (3) Corrective Assessments; such assessments to be established and collected as provided in this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills. The Association shall not levy or collect any Annual Assessment, Special Assessment or Corrective Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied.

All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be charged on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments liability shall not pass to any new Owner ("Purchaser") successors in title unless expressly assumed by such Purchaser.

4.2. Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills or its Articles.

4.3. Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The maximum Annual Assessment shall be increased automatically by the Directors without vote, by an amount equal to increases in the amounts payable for taxes, services, State and City charges, insurance, maintenance and the reserve account. Annual assessments are due in twelve monthly installment payments on the first day of each month.

4.4. Special Assessment. In addition to the annual assessment, the Directors may call for a Special Assessment, applicable to that year only, for the purpose of covering the cost of any construction or reconstruction, repair or replacement of fixtures, structures, provided that such assessment has the approval by two-thirds (2/3) of the members authorized to vote, in person or by proxy, at a meeting called for that purpose. Written notice shall be sent to all members at least thirty (30) days in advance for the purpose of the meeting.

4.5. Uniform Rate of Assessments. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots. This method shall not be changed. Both Annual and Special Assessments shall be collected on a monthly basis.

4.6. Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Lot to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills, plus interest and other charges on such Corrective Assessments.



The Board shall deliver a Notice of Intent to take corrective action and right to request a hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Board Decision and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

4.7. Exempt Property. The following property subject to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills shall be exempt from the assessments herein:

- (a) All portions of the Properties dedicated to and accepted by a local public authority; and;
- (b) The Common Area owned by the Association in fee.

4.8. Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

## ARTICLE V

### NONPAYMENT OF ASSESSMENTS; REMEDIES

5.1. Nonpayment of Assessments; 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 Lot provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot recorded prior to the date any such assessments become due. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at annual percentage rate of 21.90%. The Board by resolution may also establish a late charge from time to time not to exceed twenty-five percent (25%) of the monthly assessments. The Board of Directors will be able to increase or decrease the rate without Membership approval. The Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorneys' fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

5.2. Foreclosure Sale. The Board may elect to file a claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly

authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. The lien shall be prior to any other lien arising thereafter, except for liens which, by law, are deemed prior to liens of a nature similar to such assessment liens. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or deed of trust lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

5.3. Curing of Default. Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Board shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

5.4. Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

5.5. Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article, nor any breach of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to this Amended and Restated Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

5.6. Priority of Assessment Lien. The lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a

first Mortgage, or conveyance of a deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. When the Beneficiary of a first Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or non-judicial foreclosure of the first Mortgage (or deed given in lieu of foreclosure) , such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person.

## ARTICLE VI

### PARTY WALLS

6.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

6.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

6.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

6.4. Weatherproofing. Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

6.5. Right to Contribution Runs with Land. The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors-in-title.

6.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Trustees of the Association shall select an arbitrator for the refusing party.

## ARTICLE VII

### ARCHITECTURAL CONTROL

7.1. Architectural Control. The Board of Directors will appoint three (3) members to an Architectural Control Committee ("ACC") to control the harmony of the external structures.

7.2. ACC General Powers. No building, fence, wall or other structure shall be erected upon the properties, nor any exterior additions, alterations, changes will be made until: plans and specifications showing the nature, kind, shape, height, materials, colors and location have been submitted in writing to the Committee for approval or disapproval of the plans within thirty (30) days after being submitted.

7.3. Review of Plans and Specifications. Notwithstanding the foregoing, without the prior written approval of at least two-thirds (2/3) of the owners or first mortgagees, neither the Association nor the Architectural Control Committee shall, by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of units, the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

## ARTICLE VIII

### MAINTENANCE AND REPAIR OBLIGATIONS

8.1. Exterior Maintenance. In addition to maintenance upon the Common Area and Limited Common Area, the Association shall provide exterior maintenance upon each Lot, including, but not limited to the following: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, street signs, lights, mailboxes, trees, shrubs, grass, walks, driveways and other exterior improvements. Notwithstanding the foregoing, each owner shall be solely responsible for maintenance to glass, doors and screens on his Lot.

8.2. Assessment of Cost. The cost of such exterior maintenance shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the annual maintenance assessment or charge to which such Lot is subject Under Article IV hereof and, as part of such annual assessment or charge, it shall be a lien and obligation of the Owner and shall become due and payable in all respects as provided in Article IV hereof, provided that the Directors, when establishing the annual assessment against each Lot for any assessment year as required under Article IV hereof, may add thereto the estimated cost of the exterior maintenance for that year but shall, thereafter, make such adjustment with the Owner as is necessary to reflect the actual cost thereof.

8.3. Access at Reasonable Hours. For the purpose solely of performing the exterior maintenance required by this Article, the Association, through its duly authorized agents or

employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

8.4. Damage to Dwelling Units - Reconstruction. If all or any portion of any Lot or Townhouse is damaged or destroyed by fire or other casualty, the Owner of such Lot shall, at the Owner's election, either rebuild, repair or reconstruct the Lot and Townhouse on such Lot in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ACC or restore the Lot by removing from the Properties all damaged or destroyed building materials. The Owner of any damaged Lot or Townhouse and the ACC shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Townhouse shall commence and complete reconstruction of the Townhouse or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction of the Townhouse or restoration of the Lot in less than thirty (30) days from the date such transferee acquired title to the Lot.

## ARTICLE IX

### USE RESTRICTIONS

9.1. General Restrictions. All of the properties which are the subject of this Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Hills are restricted to residential dwellings only, no trailers, tents, campers, shacks or barns shall be placed or used on any lot at any time.

9.2. Signs and Commercial Activity. Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, (2' x 2½') no advertising signs, billboards shall be placed or permitted to remain on any lot or any portion of the properties.

9.3. Quiet Environment. No noise or offensive activity shall be carried on any part of the properties, Limited Common Areas or Common Areas that may become an annoyance or nuisance to the neighborhood.

9.4. Animals. No animals of any kind shall be kept in any limited common area, except for small dogs, cats or other household pets, two or less in total number, and all the pets shall be kept inside of the property without causing an annoyance or are obnoxious, by noise or smell, all the pets shall be kept on a leash when they are outside.

9.5. Use of Common Areas. Except for the rights of ingress and egress, owners are

prohibited and restricted from using any common areas. It is expressly agreed by all parties concerned that this restriction is for the mutual benefit of the property owners, and is necessary for the protection of the common areas.

9.6. Planting and Gardening. No planting or gardening shall be done, and no fences, hedges or walls shall be erected upon any property, except for the ones that are installed in accordance with the initial construction of the buildings, planting and gardening may be done in the Limited Common Area adjacent to each Lot.

9.7. External Equipment. No Lot Owner shall be permitted to install anything, including awnings, canopies, shutters, TV or radio antennas on the exterior walls, windows, doors or roof.

9.8. Interior Utilities. All utility lines, fixtures and equipment installed within a Lot and enter the boundaries of a Lot, shall be maintained and repaired by the owner of the Lot.

9.9. Rent or Leases. Any renting or leasing of a Townhouse shall be governed by the Rental Restriction Amendment.

## ARTICLE X

### DAMAGE AND CONDEMNATION

10.1. Damage or Destruction. In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition. Unless at least seventy-five percent (75%) of the owners or first mortgagees have given their prior written approval, the Association shall not be entitled to use insurance proceeds for other than any repair, replacement or reconstruction of the damaged or destroyed property. In the event damage to the Common Area exceeds Ten Thousand Dollars (\$10,000.00) the Association shall forthwith notify all first mortgagees in writing. In the event damage to a townhome exceeds One Thousand Dollars (\$1,000.00) the Association shall notify the first mortgagee. In the event the insurance proceeds are insufficient to pay all the costs of repairing, restoring or rebuilding, the Directors shall be empowered to levy a special assessment against all owners of damaged townhomes or owners with damaged adjacent Common Area in such proportion as the Directors deem equitable to make up any deficiency for repair of townhomes or Limited Common Area, and the Directors shall further be empowered to levy a special assessment against all owners to make up any deficiency for repair or rebuilding of the Common Area or Limited Common Area.

## ARTICLE XI

### INSURANCE

11.1. Insurance and Insurance Assessments. The Directors of the Association, or their duly authorized agents, shall have the authority to, and shall obtain and continue in effect:

(a) a "master" or "blanket" policy of property insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of the Lots, Common Area, Limited Common Area, and improvements thereon including an agreed amount endorsement or its equivalent, if available, or an inflation guard endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and such other risks as are customarily covered in similar projects. In the alternative to the obtaining of the insurance specified in this subparagraph (a), the Association may:

(i) require each Owner to obtain a policy of insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of his lot and improvements thereon, or its equivalent, if available, or an inflation guard endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as are customarily covered in similar projects with an endorsement listing the "Association, for the use and benefit of the unit owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association.

(ii) obtain a policy of insurance equal to full replacement value (exclusive of land, foundation, excavation and other like items) of the Common Area, Limited Common Areas and improvements thereon, or its equivalent, if available, or an inflation guard endorsement, affording protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as are customarily covered in similar projects with an endorsement listing the "Association, for the use and benefit of the unit owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association.

(b) a comprehensive policy of public liability insurance covering all of the Common and Limited Common Property for at least \$1,000,000.00 per occurrence for personal injury and/or property damage. Such liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association.

(c) maintain fidelity coverage against dishonest acts on the part of managers, directors, officers, employees or volunteers responsible for handling funds held and collected for the benefit of the Owners or members. Said fidelity insurance shall (1) name the Association as beneficiary, and (2) be written in an amount not less than 150% of the annual operating expenses and reserves of the Association, and (3) contain waivers of any defense bases on the exclusion of persons who serve without compensation from any definition of "employee."

Any insurance obtained pursuant to subparagraphs (a), (b) or (c) above shall provide that:

(a) the named insured under any such policies shall be the Association, as a trustee for the Lot Owners and shall have standard mortgagee clauses;

(b) insurance coverage may not be brought into contribution with insurance purchased by the Lot Owners or their mortgagees;

(c) coverage must not be prejudiced by (i) any act or neglect of the Lot Owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(d) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to any and all insureds, including holders of first mortgages;

(e) the insurer shall waive subrogation as to any and all claims against the Association, the Owner of any Lots and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of the insured;

(f) any provisions that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

Premiums for insurance obtained by the Directors pursuant to this section shall be a common expense of the Association and shall be collectable from members of the Association as part of the annual assessments.

Each Owner shall insure his own personal property and may insure his real property for his own benefit.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirement for Planned Unit Development projects established by Federal National



Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a Lot within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Governmental National Mortgage Association.

## ARTICLE XII

### GENERAL PROVISIONS

12.1. Enforcement. This Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills may be enforced by the Association and any Owner as follows:

(a) Breach of any of the provisions contained in the Amended and Restated Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner and by the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the provisions contained in this Amended and Restated Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner and by the Association.

(c) The remedies herein provided for breach of the provisions contained in this Amended and Restated Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the provisions contained in this Amended and Restated Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(e) Any breach or amendment of the provisions contained in this Amended and Restated Declaration, the Articles, Rules and Regulations or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Amended and Restated Declaration, Articles, Rules and Regulations and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

12.2. Severability. Invalidation of any provision of this Amended and Restated Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full

force and effect.

12.3. Duration. The covenants and restrictions of this Amended and Restated Declaration run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Amended and Restated Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Amended and Restated Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

12.4. Interpretation. The provisions of this Amended and Restated Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

12.5. Amendment. The covenants, conditions and restrictions of this Amended and Restated Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the owners. Amendments affecting the rights of first mortgagees shall require their written approval. Prior to making any material amendment thirty (30) days written notice must be given to all holders of liens of first priority, setting forth the nature of the amendment and the date of the members' meeting to vote thereon. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

12.6. Notices. Any notice required to be sent under the provisions of this Amended and Restated Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

12.7. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

12.8. Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Lots, Common Areas and Limited Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof.

12.9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

12.10. Waivers. No provision contained in this Amended and Restated Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

12.11. Topical Headings. The topical headings contained in this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills are for convenience only and do not define, limit or construe the contents of said Declaration.

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions of The Hills is undertaken pursuant to Article XI, Section 4 of the original Declaration, and was approved pursuant to the written consents of not less than seventy-five percent (75 %) of the Members of the Association.

THE HILLS HOMEOWNERS ASSOCIATION

*Ann Schneider*

By: Ann Schneider  
Its: President

STATE OF UTAH,        )  
  :SS.  
County of Washington. )

On this 15<sup>th</sup> day of June, 2006, before me personally appeared Ann Schneider, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed) did say that she is the President of The Hills Homeowners Association, a Utah nonprofit corporation, and that the foregoing document was signed by him on behalf of the Association by authority of its Bylaws, Declaration, or resolution of the Board, and he acknowledged before me that he executed the document on behalf of the Association and for its stated purpose.

*Rebecca R Collet*

Notary Public

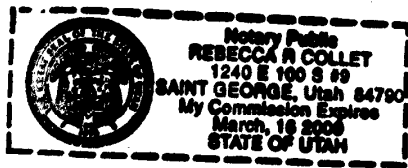


EXHIBIT "A"

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Hills affects the following real property, all located in Washington County, State of Utah:

All of the lots according to the Official Plat for The Hills, Phase 1, filed in the records of the Washington County Recorder on January 24, 1986, as Entry No. 287997, in Book 400, at Page 701; (Affecting parcel nos.: SG-HLLS-1-1 through SG-HLLS-1-12);

All of the lots according to the Official Plat for The Hills, Phase 2, filed in the records of the Washington County Recorder on July 10, 1990, as Entry No. 367970, in Book 566, at Page 346; (Affecting parcel nos.: SG-HLLS-2-13 through SG-HLLS-2-18 and SG-HLLS-2-23 through SG-HLLS-2-31);

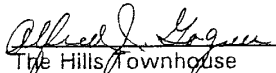
All of the lots according to the Official Plat for The Hills, Phase 3, filed in the records of the Washington County Recorder on July 10, 1990, as Entry No. 367969, in Book 566, at Page 345; (Affecting parcel nos.: SG-HLLS-3-19 through SG-HLLS-3-22 and SG-HLLS-3-32 through SG-HLLS-3-34.

EXHIBIT "B"


EAGLE'S LANDING - ENTRY  
LEGAL DESCRIPTION  
SCHEDULE I

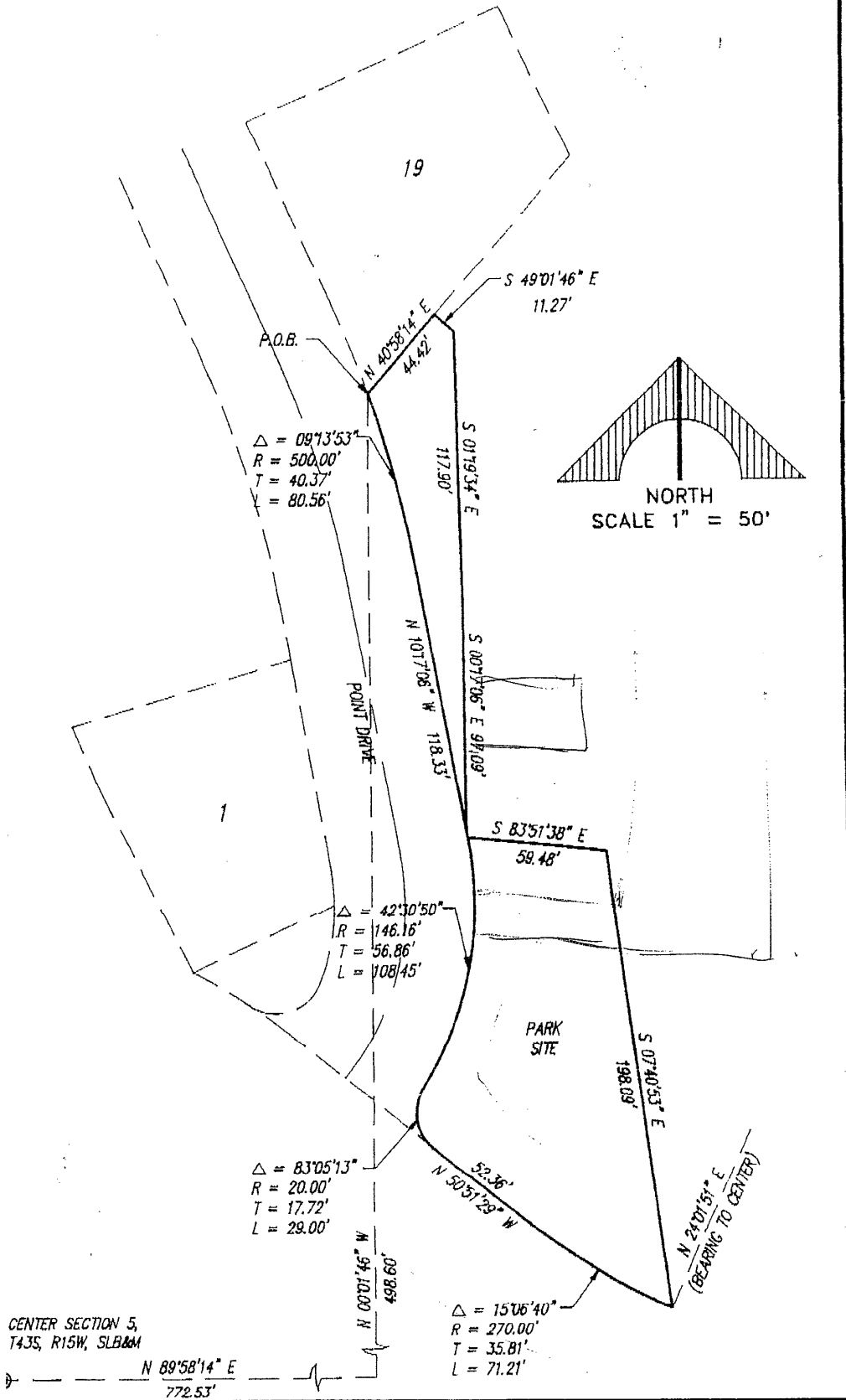
Beginning at the southwest corner of Lot 19, Eagle's Landing No. 1-B Subdivision as recorded in the Washington County Recorder's Office, said corner is N 89-58-14 E 772.53 ft. and N 00-01-46 W 498.60 ft from the center of Section 5, T43S, R15W, SLB&M and traversing thence along the south property line of said Lot 19 N 40-58-14 E 44.42 ft.; thence leaving said property line S 49-01-46 E 11.27 ft.; thence S 01-19-34 E 117.90 ft.; thence S 00-17-06 E 97.06 ft. to a point on the east right-of-way line of Point Drive; thence N 10-17-06 W 3.22 ft.; thence leaving said right-of-way S 83-51-38 E 59.48 ft.; thence S 07-40-53 E 198.09 ft. to a point on the north right-of-way of Fort Pierce Drive said point also being a 270.00 ft. non-tangent radius curve; thence along said right-of-way line a distance of 71.21 ft. (bearing to center N 24-01-51 E Delta = 15-06-40); thence N 50-51-29 W 52.36 ft. to the point on the east right-of way line of Point Drive said point also being a 20.00 ft radius curve to the right; thence leaving said Fort Pierce Drive and continuing along said Point Drive, a distance of 29.00 ft. (Delta = 83-05-13) to the point of reverse curvature; thence along said curve a distance of 108.45 ft., a radius of 146.16 t. (Delta = 42-30-50); thence N 10-17-06 W 118.33 ft. to a point on a 500.00 ft. radius curve to the left; thence along said curve 80.56 ft. (Delta = 09-13-53) to the point of beginning.

Contains 0.39 acres more or less.

  
The Hills Townhouse  
Association  
By: Alfred J. Goguen  
Its: President

10-21-99  
Date

  
Leucadia Financial Corp.  
By: Lawrence W. Pinnock  
Its: Vice President



Recorded at Request of \_\_\_\_\_  
at \_\_\_\_\_ M. Fee Paid \$ \_\_\_\_\_  
by \_\_\_\_\_ Dep. Book \_\_\_\_\_ Page \_\_\_\_\_ Ref.: \_\_\_\_\_  
c/o Alfred J. Goguen, 1365 E. Ft Pierce  
Mail tax notice to The Hills Townhouse Assn. Address: Drive, St. George, UT 84770

# QUIT-CLAIM DEED

[CORPORATE FORM]

LEUCADIA FINANCIAL CORPORATION, \_\_\_\_\_, a corporation  
organized and existing under the laws of the State of Utah, with its principal office at  
SALT LAKE CITY \_\_\_\_\_, of County of SALT LAKE \_\_\_\_\_, State of Utah,  
grantor, hereby QUIT CLAIMS to  
THE HILLS TOWNHOUSE ASSOCIATION, 1365 EAST FORT PIERCE DRIVE,  
ST. GEORGE, UTAH 84770

of \_\_\_\_\_ grantee  
TEN \_\_\_\_\_ for the sum of  
DOLLARS,

the following described tract of land in WASHINGTON County,  
State of Utah:

(SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS SCHEDULE I)

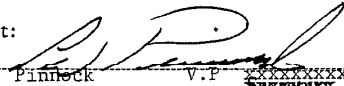
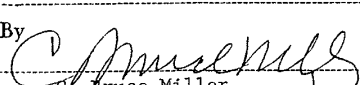
THIS DEED AND THE CONVEYANCE MADE HEREBY IS MADE SUBJECT TO ALL OF THE COVENANTS,  
CONDITIONS AND RESTRICTIONS SET FORTH IN EXHIBIT A ATTACHED HERETO AND MADE A  
PART HEREOF.

00419163 BR0690 Pg0547

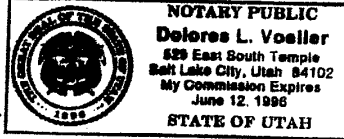
RUSSELL SHIRTS \* WASHINGTON CO RECORDER  
1992 NOV 09 09:34 AM FEE \$9.00 BY CB  
FOR: SOUTHERN UTAH TITLE CO

The officers who sign this deed hereby certify that this deed and the transfer represented  
thereby was duly authorized under a resolution duly adopted by the board of directors of the  
grantor at a lawful meeting duly held and attended by a quorum.

In witness whereof, the grantor has caused its corporate name and seal to be hereunto affixed  
by its duly authorized officers this 3rd day of November, A. D. 1992.

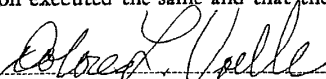
Attest:  } LEUCADIA FINANCIAL CORPORATION  
L.W. Pinnock V.P. Secretary. } Company  
By  }  
C. Bruce Miller } President.

[CORPORATE SEAL]



STATE OF UTAH,  
County of SALT LAKE

On the 3rd day of November, A. D. 1992  
personally appeared before me L.W. Pinnock and C. Bruce Miller  
who being by me duly sworn did say, each for himself, that he, the said C. Bruce Miller  
is the president, and he, the said L.W. Pinnock is Vice President and Secretary  
of LEUCADIA FINANCIAL CORPORATION Company, and that the within and foregoing  
instrument was signed in behalf of said corporation by authority of a resolution of its board of  
directors and said PRESIDENT and VICE PRESIDENT  
each duly acknowledged to me that said corporation executed the same and that the seal affixed  
is the seal of said corporation.

  
DOLORES L. VOELLER Notary Public.

My commission expires JUNE 12, 1996 My residence is 529 EAST SOUTH TEMPLE, SALT LAKE

**Covenants, Conditions and Restrictions  
Attached To And Made A Part Of That  
Certain Quitclaim Deed Dated October 12, 1992, from  
Leucadia Financial Corporation ("Grantor") to  
The Hills Townhouse Association ("Grantee")**

The land described in this deed is conveyed subject to all of the following covenants, conditions and restrictions:

1. From and after the date hereof, the land conveyed hereby (sometimes referred to herein as the "Land") shall be used solely as an open space area consistent with the provisions of this deed. Subject to the provisions of Paragraph 2 below, no above ground improvement of any kind or description, including, without limitation, any building, sign, structure, parking area or utility line, pole or facility, temporary or permanent, shall be located on or constructed upon all or any portion of the Land at any time.

2. Notwithstanding anything to the contrary set forth in Paragraph 1 above, the following improvements shall be permitted to be located and maintained upon the Land: (a) the existing concrete sign for the Eagles' Landing Subdivision (the "Sign") and all repairs to and replacements of the Sign; (b) trees, lawns, shrubs and other landscaping and related improvements conducive to a park-like area; (c) the existing decorative lighting for the Sign and all repairs and replacements thereto; (d) an in-ground sprinkler system and all repairs and replacements thereto; and (e) at the election of Grantee and subject to the issuance of all necessary approvals, if any, by applicable governmental authorities, a driveway for the benefit of Grantee and its members and their respective invitees.

3. Grantee shall have and hereby assumes the obligation to maintain the Sign in a first-class state of repair and all other normal ownership responsibilities with respect to the Land, including, without limitation, maintenance, repair and replacement of the landscaping and other improvements on the Land. Grantee shall do all of the foregoing at its own cost and expense and shall have sole discretion regarding methods, products and fulfillment of its obligations hereunder. Grantor shall have no further obligation whatsoever with respect thereto. Grantee shall not suffer or permit the view of the Sign from adjacent public rights of way to be obstructed.

4. These covenants, conditions and restrictions shall be binding upon Grantee, its successors and assigns, and shall run with the Land and shall be for the benefit of the owners from time to time of Eagles' Landing No. 1-A Subdivision and Eagles' Landing No. 1-B Subdivision, Washington County, Utah. Grantee agrees to be bound by the restrictions herein contained.

5. If and to the extent any of the provisions of the covenants, conditions or restrictions contained herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities, (b) the rule restricting restraints on alienation, or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitations upon the time for which such covenants, conditions or restrictions may be valid, then the applicable provision shall continue and endure only until the expiration of twenty-one (21) years after the death of the last to survive the class of persons consisting of all of the lawful descendants of George Bush, President of the United States, or Norman Bangarter, Governor of the State of Utah, living at the date of the recording of this deed.

00419163 BR0690 Pg0549

The Hills Homeowners Association

Leucadia Financial Corp.

By: Alfred J. Goguen  
Alfred J. Goguen, President

By: C. Bruce Miller  
C. Bruce Miller, President



EXHIBIT C

**LEGAL NOTICE  
FOR TAKING WRITTEN CONSENTS  
WITHOUT A MEETING TO APPROVE THAT CERTAIN  
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF THE HILLS**

The original Declaration of Covenants, Conditions, and Restrictions of The Hills (the "Declaration") requires the taking of written consents of at least seventy-five percent (75%) of all members to amend the Declaration and to adopt the Amended and Restated Declaration of Covenants, Conditions and Restrictions of the Hills (the "Amendment").

Utah Code Ann. Section 16-6a-707 allows for the taking of written consents without a meeting of the members, provided the following are met:

1. The consents are signed by the number of members required to take the action if a meeting were held; in this instance seventy-five percent (75%) of the members.

2. Unless 100% of the members sign a written consent, seventy-five percent (75%) of the written consents must be obtained within a sixty (60) day period commencing on the date the first consent is executed.

3. The effective date of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Hills will be the date the Amendment is recorded in the records of the Washington County Recorder.

4. Consents once given may only be revoked in a writing signed by the member(s) that references the Amendment, that states the member's prior written consent is revoked; and that is received by the Association prior to the expiration of the sixty (60) day period.

You are hereby given notice that if at least seventy-five percent (75%) of the members consent in writing to the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Hills within the sixty (60) day period, that the Hills, through its Board, will cause the Amended and Restated Declaration of Covenants Conditions and Restrictions of The Hills to be recorded in the records of the Washington County Recorder thirteen (13) business days after notice is given to the members and the required number of consents have been obtained and the Amendment has passed.

A copy of this Legal Notice has been attached as Exhibit C to said Amended and Restated Declaration.

**CONSENT**

I/We being the Owner(s) of Lot(s) 1 in THE HILLS hereby  
 **DO** |  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 14 day of June, 2006  
Colleen Wagner  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 3 in THE HILLS hereby  
 DO  DO NOT (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 22 day of May, 2006.

  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 4 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 17 day of May, 2006.

William Potter  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) #5 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 29<sup>th</sup> day of April, 2006.

Denise T. Cluff  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 6 in THE HILLS hereby  
 DO  DO NOT (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 29 day of April, 2006.

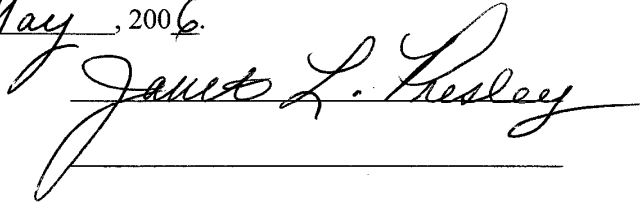
Jaël Schumacher  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) # 7 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 30<sup>th</sup> day of May, 2006.

  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 8 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 10 day of May, 2006.

Kent B. Sanders  
Mona Sanders



**CONSENT**

I/We being the Owner(s) of Lot(s) 9 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 14th day of June, 2006.

*Meredith Kelus*  
*[Signature]*

**CONSENT**

I/We being the Owner(s) of Lot(s) # 10 # 29 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 6 day of June, 2006

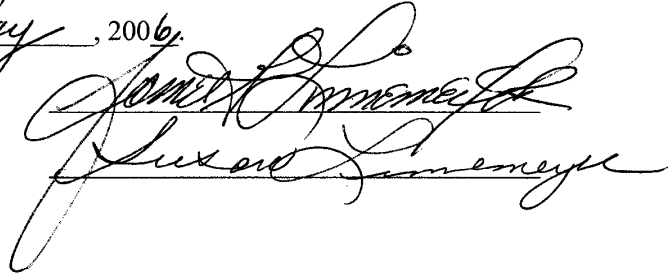
*Paul Thompson*  
*[Signature]*

**CONSENT**

I/We being the Owner(s) of Lot(s) 11 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 25<sup>th</sup> day of May, 2006 by



**CONSENT**

I/We being the Owner(s) of Lot(s) 12 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 6 day of May, 2006

E. M. Spielker  
Joyce D. Spielker

**CONSENT**

I/We being the Owner(s) of Lot(s) 14 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 9 day of May, 2006

Michael P. Smith  
Cynthia Smith

**CONSENT**

I/We being the Owner(s) of Lot(s) ~~#~~ 1.5 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 12<sup>th</sup> day of May, 2006.

John R. Poulton  
Nancy R. Poulton

**CONSENT**

I/We being the Owner(s) of Lot(s) # 17 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 9<sup>th</sup> day of MAY, 2006.

Awayne Meikle  
Sharon H. Meikle

**CONSENT**

I/We being the Owner(s) of Lot(s) 18 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 29 day of April, 2006.

Ann Schneider

\_\_\_\_\_

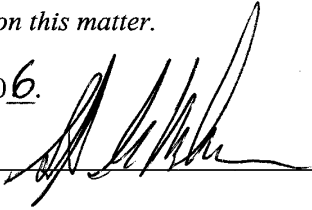


CONSENT

I/We being the Owner(s) of Lot(s) 19 in THE HILLS hereby  
 DO  DO NOT (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 29 day of APRIL, 2006.

  
\_\_\_\_\_  
\_\_\_\_\_

FAX 435-674-9006

**CONSENT**

I/We being the Owner(s) of Lot(s) 20 in THE HILLS hereby  
 DO  DO NOT (**CHECK ONE**) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 6<sup>th</sup> day of June, 2006.

Connie W. WORTHEN TRUST.  
Connie W. Worthen

**CONSENT**

I/We being the Owner(s) of Lot(s) 21 in THE HILLS hereby  
 DO  DO NOT (**CHECK ONE**) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 6 day of MAY, 2006


  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 22 in THE HILLS hereby  
 DO  DO NOT (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 8 day of MAY, 2006.

  
\_\_\_\_\_  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 23 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 10 day of May, 2006.

Spencer J. Reber  
Josephine J. Reber

**CONSENT**

I/We being the Owner(s) of Lot(s) 24 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 21~~st~~ day of APRIL, 2006

Ray Padrazz  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 25 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 5 day of May, 2006.

Jaye O. Kellogg

DD

CONSENT

DO  DO NOT (CHECK ONE)

We being the Owner(s) of Lot(s) 26 in THE HILLS hereby  
approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 11 day of May, 2006.

Diane L. Dolson  
\_\_\_\_\_



**CONSENT**

I/~~We~~ being the Owner(s) of Lot(s) 27 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 1 day of JUNE, 2006.

Alfred Goguen  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 28 in THE HILLS hereby  
 **DO**  **DO NOT** (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 9 day of May, 2006

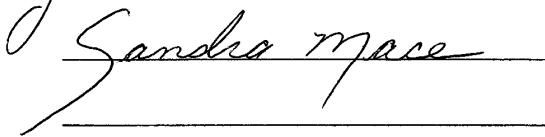
  
\_\_\_\_\_

**CONSENT**

I/We being the Owner(s) of Lot(s) 30 in THE HILLS hereby  
 DO  DO NOT (**CHECK ONE**) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 15 day of May, 2006.

  
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**CONSENT**

I/We being the Owner(s) of Lot(s) #31 in THE HILLS hereby  
 DO  DO NOT (*CHECK ONE*) approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 11 day of May 2006  
Washington

**CONSENT**

I/We being the Owner(s) of Lot(s) 33 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 5 day of May, 2006

Boyd Nethercott  
Dorothy Nethercott

**CONSENT**

I/We being the Owner(s) of Lot(s) #34 in THE HILLS hereby  
 **DO**  **DO NOT (CHECK ONE)** approve, agree to be bound by, and consent to the  
recording in the records of the Washington County Recorder of that certain **AMENDED AND  
RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE HILLS.**

*This Consent supercedes any prior Consents on this matter.*

DATED this 6<sup>th</sup> day of June, 2006.

Rank Roberts  
Jim H. Roberts