

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR INDIGO TRAILS SUBDIVISION,  
A RESIDENTIAL SUBDIVISION LOCATED IN  
IVINS, UTAH

This Declaration of Covenants, Conditions and Restrictions ("CC&Rs" or "**Declaration**") is made and executed effective this 1st day of September, 2016, by Kayenta Development Inc. (hereinafter, the "**Declarant**", the "**Developer**", or "**KDI**"), Indigo Trails Owners Association (the "**Association**"), and the current owners of Indigo Trails Phase 1-A Homesites (the "**Phase 1-A Owners**", and together with Declarant and the Association, the "**Parties**").

**RECITALS**

**WHEREAS**, on April 5, 2016, Cowichan, LLC ("**Cowichan**") and Ivins City executed a Development Agreement relative to a 22.25 acre tract of land in Ivins City, Utah, known as the Indigo Trails Subdivision Project ("**Indigo Trails**"), and the Development Agreement was recorded with the Washington County Recorder on April 6, 2016, as Document No. 20160011921. A copy of the Development Agreement is attached hereto and incorporated herein by reference as Exhibit "A."

**WHEREAS**, the Development Agreement includes a "Preliminary Plan" map consisting of 46 Indigo Trails Homesites.

**WHEREAS**, since executing the Development Agreement, Cowichan, the original owner, has conveyed certain Indigo Trails Homesites to other Persons including Declarant.

**WHEREAS**, Cowichan has assigned its rights and duties under the Development Agreement to Declarant, and Declarant has accepted, or hereby accepts, said assignment.

**WHEREAS**, the first phase of the Development – which consists of 12 Indigo Trails Homesites that were purchased from Cowichan – is known as Indigo Trails Phase 1-A ("**Phase 1-A**"), and a plat map (Map #3687) for Phase 1-A (the "**Phase 1-A Plat Map**") was recorded with the Washington County Recorder's Office, on July 18, 2016, as Document No. 20160025601. A legal description of the Phase 1-A Homesites is set forth in the Phase 1-A Plat Map, which is attached hereto and incorporated herein by references as Exhibit "B".

**WHEREAS**, the Phase 1-A Plat Map contains an Owner's Dedication wherein Phase 1-A Owners agree that the Phase 1-A Homesites shall be subject to a Declaration of Covenants, Conditions and Restrictions, and the Parties hereby mutually agree that the Phase 1-A Homesites (and any subsequently annexed Homesites or Phases of Development) shall be subject to and governed by these CC&Rs.

**WHEREAS**, these CC&Rs are intended to satisfy the reference to the Declaration of Covenants, Conditions and Restrictions contained in the Owner's Dedication of the Phase 1-A Plat Map.

**WHEREAS**, these recitals shall be deemed covenants as well as recitals.

**NOW THEREFORE**, the Declarant, the Association, and the Phase I-A Owners hereby agree and declare as follows:

### **DECLARATION**

All Phase I-A Homesites and related Common Area, and any Annexable Land or Homesites that may hereafter be annexed thereto (collectively, the "Development") are subject to these CC&Rs and are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to these CC&Rs. These CC&Rs are in furtherance of a plan for the subdivision, improvement, preservation, and sale of Homesites that are subject to these CC&Rs, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of said properties and related Common Area. These CC&Rs shall be construed as covenants of equitable servitude, shall run with the land, and shall be binding on all parties having any right, title, or interest in the property that is subject to these CC&Rs, and their heirs, successors, assigns, and mortgagees, and shall inure to the benefit of each owner thereof.

The Declarant may annex into the Development Annexable Land as set forth in Article IX. When annexed into the Development, the Annexable Land shall be subject to these CC&Rs in full.

**Notice to Purchasers:** The acceptance of any deed to, or conveyance of, any Homesite in the Development ("Homesite") by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement to accept, hold, improve, use and convey said property subject to these CC&Rs. All purchasers of any Homesite are on notice that changes to these CC&Rs may have been, or may be in the future, adopted by the Declarant, or as otherwise permitted herein. By acceptance of any deed to or conveyance of any Homesite, the grantees therein named acknowledge and agree that the use, enjoyment, and marketability of any Homesite can be affected by these CC&Rs and that these CC&Rs may change from time to time.

### **ARTICLE I DEFINITIONS**

Unless otherwise expressly provided, upper-case/capitalized terms and acronyms, as used herein, shall be defined as set forth in Exhibit "C", which is incorporated herein by reference.

## **ARTICLE II USE RESTRICTIONS**

All Phase I-A Homesites and related Common Area and all Annexable Land annexed herein shall be held, used and enjoyed subject to the following limitations and restrictions, as may be subsequently amended.

**2.1. LAND USE AND BUILDING TYPE.** All Homesites shall be used only for single-family residential purposes. No professional office, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the Homesite restrictions contained in this section shall not be construed in such a manner as to prohibit an Owner or Resident from (a) maintaining a personal professional library therein; (b) keeping personal business or professional records of accounts therein; (c) handling personal, business or professional telephone calls or correspondence therefrom; or (d) maintaining a home occupation as permitted by Ivins City and by the Association, provided the home occupation does not involve regular traffic into the Development by customer/clients of the home occupation.

**2.2. HOMESITE SIZE.** Homesite sizes as described and shown on the Phase I-A Plat Map, or any subsequent plat for any annexed portion of the Annexable Land, are considered minimum Homesite sizes and no Person shall further subdivide any Homesite other than as shown on final plats of the Development. However, two contiguous Homesites can be combined into a single Homesite if they are owned by a single Owner who desires to combine the Homesites for purposes of constructing a single Dwelling Unit. An Owner who wishes to do this must give the Board written notice of his/her intent to do so, which the Board shall approve absent compelling overriding concerns related to the Development; thereafter, for purposes of Membership, assessments and voting, the two Homesites shall be consolidated and thereafter deemed to be a single Homesite.

**2.3. CARE AND MAINTENANCE OF HOMESITE.** The Owner of each Homesite shall keep the same free of rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times, and in a manner that does not detract from the appearance of the Development. Each Homesite shall be subject to an easement for access to make repairs upon adjoining Homesites and structures, provided however, that:

- a. Any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same;
- b. Any such entry shall be made only at reasonable times and with as little inconvenience as possible to the Owner of the entered Homesite; and
- c. In no event shall said easement be deemed to permit entry into the interior portion of any Dwelling Unit.

In the event any Owner fails to perform required maintenance, the Board shall have the right

but not the obligation to cause all required maintenance to be performed on the Homesite and Dwelling Unit, and the cost of said maintenance, plus interest at the reasonable rate established from time to time by the Association as part of the Association's Rules and Regulations, shall be added to and become part of the Assessment to which such Homesite is subject.

**2.4. EASEMENTS.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the Phase I-A Plat Map and any plat map related to any Annexable Land that is hereafter annexed into the Development. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, repair, or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Homesite and all improvements in it shall be maintained continuously by the Owner of the Homesite, except for those improvements for which a public authority or utility company is responsible. The titleholder of each Homesite shall, from time to time, grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

**2.5. NO HAZARDOUS ACTIVITIES.** No activities shall be conducted within the Development and no improvements shall be constructed on any Homesite that are or might be unsafe or hazardous to any portion of the Development or to any Person within the Development. Without limiting the generality of the foregoing, no firearms shall be discharged within the Development and no open fires shall be lighted or permitted within the Development except in a contained barbecue or fire pit unit while attended, or within a safe and well-designed interior fireplace.

**2.6 RENTAL OF DWELLING UNIT.** An Owner may lease or rent a Dwelling Unit provided the lease complies with Ivins City Ordinances and the Association's Governing Documents, the lease period is no shorter than month-to-month, and a copy of the lease (including the name of the parties and the terms) is provided to the Association. No Dwelling Unit shall be rented on a daily or weekly basis, or for transient, vacation rental or hotel purposes. Except for occasional overnight guests of the Owner or a Resident who do not pay for accommodations, no Dwelling Unit shall be occupied by more than one (1) Family at any time. Notwithstanding the terms of any lease agreement, the Owner shall be and remain responsible to ensure that any Resident of a Dwelling Unit fully complies with the terms of the CC&Rs, and the Owner shall be and remain liable for any violation of the CC&Rs.

**2.7. WEED CONTROL.** Each Homesite Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Homesite, and shall otherwise comply with any applicable ordinances, laws, rules or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to plants that spring up spontaneously, plants that are injurious to crops, livestock, land or the public health, plants which constitute a fire hazard, and plants that the

Board determines to be a blight to the Development.

**2.8. SPORTS APPARATUS.** No basketball backboard or other fixed or portable sports or recreational apparatus, including swings, trampolines, slides and other play apparatus, shall be constructed or maintained on any Homesite without the prior written approval of the ACC, and then only if such apparatus is located on the Owner's Homesite and is collapsible, and/or shielded from view of other Owners to the extent possible.

**2.9. SAFE CONDITION.** Without limiting any other provision of these covenants, each Owner shall maintain and keep such Owner's Homesite at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment of other owners of their respective Homesites.

**2.10. OIL AND MINING OPERATIONS.** No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon or in any Homesite, or within the Development, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or below the surface of any Homesite. No derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted within the Development.

**2.11. ANIMALS.**

2.11.1. Permitted Animals. No insects, reptiles, or animals (including without limitation, horses, cattle, chickens, sheep, goats, swine, livestock, poultry and other such farm animals) shall be raised, bred or kept on any Homesite – except that usual and ordinary domestic dogs, cats, fish, birds and other household pets may be kept on a Homesite provided: (i) they are not kept in unreasonable quantities; (ii) they are not bred or maintained for commercial purposes; (iii) they do not cause noise or odor that is offensive to neighboring Owners.

2.11.2. Unreasonable Quantities Defined. As used in this Declaration, "unreasonable quantities", with respect to dogs and cats, shall ordinarily mean more than two (2) pets per household; provided, however, that the board may determine that a reasonable number in any instance may be more or less. In any case, the Board may not approve an aggregate of more than four (4) dogs and/or cats to be kept per household, subject, in all cases, to local ordinances and regulations. The Board shall have the right to prohibit the presence or maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner.

2.11.3. Owner Liability. Animals belonging to Owners, occupants or their licensees, guests, tenants or invitees within Development must be either kept within an enclosure or on a leash being held by a person capable of controlling the animal. It shall be the duty and responsibility of each such Owner to clean up after such animals. Furthermore, any Owner shall be liable to each and all remaining Owners, their families, guests, tenants,

and invitees, for any unreasonable noise or damage to person or property caused by the Owner's animals or animals of the Owner's family members, occupants, licensees, guests, tenants, or invitees.

**2.12. GARBAGE AND REFUSE DISPOSAL.** No Homesite, Common Area or street or sidewalk within the Development shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste produced within the Development, shall be kept only in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned within the Development.

**2.13. WATER SUPPLY AND SEWAGE DISPOSAL.** No individual water supply or sewage disposal system shall be permitted on any Homesite within the Development unless such system is designed, located, constructed, and equipped in accordance with the requirements, standards, and recommendations, if any, of the ACC and of any public agency having jurisdiction over the Development, the Washington County Utah Health Department, and all other applicable governmental authorities.

**2.14. CLOTHES DRYING.** No exterior portion of any Homesite shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities be provided within the Dwelling Unit to be constructed on each Homesite.

**2.15. INSURANCE AND GOVERNMENTAL REQUIREMENTS.** No Owner shall permit or cause anything to be done or kept within the Development which may increase the rate of insurance within the Development, or result in the cancellation of such insurance. Additionally, no Owner shall, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance within the Development. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit and Homesite.

**2.16. CONSTRUCTION.** Construction of Dwelling Units shall be diligently pursued; absent extraordinary circumstances, construction of Dwelling Units shall be substantially completed within one (1) year of commencement. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or his contractor. In advance of the commencement of construction, the Owner shall pay the Association: (i) a nonrefundable construction application fee in the amount of \$500; and (ii) a refundable cash security deposit of \$2,000. The application fee shall be held by the Board and used for the purpose of funding expenses of the ACC. In the event the Owner fails to comply with the Association's Governing Documents in construction of the Owner's Dwelling Unit or landscaping of the Owner's Homesite, all or a portion of the cash security deposit may be retained by the Board, as a penalty for said violation(s). Nothing herein shall prevent the Board from imposing additional penalties for noncompliance with the Association's Governing Documents. The amount of this cash deposit may be adjusted by the Board from time to time in response to inflation and other conditions.

**2.17. NO TEMPORARY BUILDINGS.** Generally, absent the Board's prior written approval, no outbuilding, tent, shack, shed, or other temporary building or improvement of any kind (except portable outhouses and dumpsters during construction) shall be placed upon any portion of any Homesite either temporarily or permanently. The Board may consider exceptions in extenuating circumstances and when two Homesites have been consolidated into a single Homesite. This restriction shall not prevent an Owner from constructing a structure to house pool equipment if approved in advance by the ACC. Nor shall it prevent an Owner from constructing a casita if structurally attached to a Dwelling Unit and if approved in advance by the ACC.

**2.18. SIGNS.** The Declarant, Association and Phase I-A Owners (i) desire to preserve the natural beauty and scenic vistas of the Development, (ii) find that signs detract from the overall beauty and scenic quality of the Development, and (iii) recognize that a minimal amount of signage, regulated as to time, place, location, and manner of display, is beneficial to the Owners and the Declarant. Therefore, to maintain and preserve the scenic qualities of the Development, no sign, poster, display, banner, ribbon, streamer, billboard or other advertising device, or accessory, of any kind shall be displayed to the view of the public or Owners on any portions of the Development, except for the four (4) types of signs specifically provided for below.

2.18.1. **Construction Sign.** One (1) construction sign supplied by the contractor, or Owner/builder, for each Homesite during primary construction or reconstruction of a Dwelling Unit. Such sign (i) shall be located on the Homesite facing its access Street adjacent to the construction entrance; (ii) shall contain the Homesite lot number and street address, the contractor's name and telephone number, and the Homesite Owner's name; (iii) shall extend no more than twenty-eight (28) inches above grade; (iv) shall not be larger than eighteen (18) inches by twenty-four (24) inches; (v) shall be of sage green color; and (vi) shall conform with exactness to the sample construction sign bearing the Board's stamp of approval. Construction signs shall be removed upon the completion of construction of a Dwelling Unit.

2.18.2. **Dwelling Unit For Rent/Sale Sign.** One (1) for rent or for sale sign supplied by the Owner or the Owner's agent. Such sign (i) shall be located on the Homesite facing its access Street adjacent to the driveway; (ii) may have affixed vertically to the back of the sign a sage green colored tube of not more than 3.5 inches in diameter and 11.5 inches in length for dissemination of additional information on that particular Dwelling Unit only; (iii) shall extend no more than twenty-eight (28) inches above grade; (iv) shall not be larger than eighteen (18) inches by twenty-four (24) inches; (v) shall be of sage green color; and (vi) shall conform with exactness to the sample for rent/sale sign bearing the Board's stamp of approval. All for rent or for sale signs shall be removed not later than five (5) days after a rental agreement or for sale contract (as distinguished from closing papers) has been signed.

2.18.3. **Homesite for Sale Sign.** One (1) Homesite for Sale sign supplied by the Owner or the Owner's agent. Unless otherwise approved by the Board, such sign shall be

located at the midpoint of the Homesite line facing the Homesite's access street. Such sign shall be no larger than the area of the top of the post upon which the sign shall be placed. The sign shall be covered by a plastic shield fastened to the post, and shall conform with exactness to the sample Homesite sign bearing the Board's stamp of approval. The post shall not extend more than twenty-four (24) inches above ground, and be of a sage green color. The post may have affixed to the front, the Homesite lot number of the Homesite being offered for sale. The post must conform with exactness to the sample plaque bearing the Board's stamp of approval.

2.18.4. **Special Event Signs.** The Board may approve other signs within the Development for special events, including, without limitation, weddings and wedding receptions. The Board shall approve the size, color, and location(s) of the signs, as well as the length of time the signs are permitted to stand.

**2.19. PARKING AND VEHICULAR RESTRICTIONS.**

2.19.1. **Parking Generally.** Generally, no Owner shall park Vehicles outside of his/her garages or permit Occupants of the Owner's Dwelling Unit to park Vehicles outside of the garage without prior written approval of the Board. When considering whether to grant approval to park a Vehicle outside of the garage, among other things, the Board shall consider: (i) whether all parking stalls are already being used to park Vehicles; (ii) whether the number of licensed drivers living in the Dwelling Unit exceeds the number of parking stalls in the garage; (iii) the size, appearance, cleanliness and condition of the Vehicle to be parked outside; and (iv) whether outside parking for the Owner is truly a necessity. Using one stall of a garage for storage purposes shall not be a valid reason for parking a Vehicle outside of a garage.

2.19.2. **Guest Parking.** Guests who are visiting an Owner for a period of up to 72 hours may park in the Owner's Onsite Parking, or if parking there is unavailable, in the Owner's driveway, or if parking there is unavailable, on the Street in front of the Owner's Homesite. Owners are encouraged to have Onsite Parking on their Homesite, when space allows. Street parking shall not be permitted for a period longer than 72 hours absent prior written approval of the Board. The Board reserves the right to further restrict guest parking as it, in its sole discretion, deems appropriate.

2.19.3. **Recreational Vehicles and Trailers.** Recreational Vehicles and Trailers may not be parked at (or in front of) any Homesite unless they are parked within a garage affixed to a Dwelling Unit at the Homesite. Parking of a Recreational Vehicle or Trailer within a garage is only permissible if so doing does not cause Occupants of the Dwelling Unit to park Vehicles outside of the garage. Notwithstanding the above, for a 24 hour period prior to or following a vacation trip, an Owner may park a Recreational Vehicle or Trailer in the Owner's Onsite Parking, or if parking there is unavailable, in the Owner's driveway, or if parking there is unavailable, on the Street in front of the Owner's Homesite

2.19.4. **Garages.** Each Owner shall maintain his garage in a manner which ensures that it is capable of accommodating at least three (3) Vehicles. All garage doors

must remain closed, except when necessary for ingress or egress, or temporary construction purposes.

2.19.5. Street Parking. Contractors' vehicles may be parked on Streets within the Development for a period of time not exceeding twelve (12) hours during a construction day. Street parking within the Development for purposes of private social events and home and garden tours shall be permitted for a period of time not to exceed nine (9) hours, but only after all parking spaces in the Owner's garage, Onsite Parking and driveway have been filled. Except as otherwise expressly permitted herein, there shall be no overnight street parking.

2.19.6. Community Parking Areas. Absent prior written approval of the Board, community-parking areas within the Development, if any, shall be used only for temporary parking during daylight hours or in connection with nighttime community activities.

2.19.7. Violation of Parking Requirements. If any Vehicle or Recreational Vehicle is parked in violation of the terms set forth herein, the Association shall notify the Owner of the related Homesite of the violation. If the violation is not cured within 48 hours of receipt of notice, the Owner shall be subject to fines as set forth in the Association's Governing Documents and, at the Board's discretion, without further notice to the Owner, any violating vehicle parked outside of the Dwelling Unit, including in a driveway or Onsite Parking area, may be towed out of the Development. Tow charges shall be levied on the violating Homesite as a Corrective Assessment, pursuant to Section 6.9.

**2.20. VEHICLE REPAIRS.** Generally, repair of Vehicles and Recreational Vehicles is not permitted within the Development. However, on rare occasions, to address minor repairs of vehicles of Owners and Residents, the repair may be conducted within an Owner's garage when the garage door is closed. However, no repairs may be conducted at a Homesite if doing so results in parking a Vehicle outside of the garage of a Dwelling Unit. The Board shall have the right to altogether prohibit vehicle repair activity within the Development if the Board, in its sole discretion, determines that such activity constitutes a nuisance.

**2.21. NUISANCES.** Generally, no noxious or offensive activity shall be carried on upon any Homesite, nor shall anything be done thereon which may be or may become an annoyance to other Owners within the Development. No Owner's or Resident's use of a Homesite shall endanger the health or disturb the reasonable enjoyment of any other Owner or Resident of a Dwelling Unit. Absent prior written permission by the Board, misuse of equipment and activities as described below shall be deemed a violation of this Declaration and an action in law and/or equity may be brought for damages and/or injunctive relief;

2.21.1. Tools and Equipment. Any Homesite Owner may use noise and smoke-producing tools and equipment including motorized lawn mowers, hand tools, trimmers and blowers, at his/her Homesite, at any time beginning one hour after sunrise and ending one hour before sunset. Noise or smoke-producing tools and equipment used in the construction of Dwelling Units may be operated during the periods from 6:30 am to 6:30 pm (May through

September) and from 7:30 am to 5:30 pm (October through April) on weekdays and Saturdays except Holidays. The referenced tools and equipment may not be used outside of these specified hours – unless within an enclosed Dwelling Unit where use of the tools and equipment does not conflict with the peace and quiet of surrounding neighbors – absent prior written approval of the ACC.

2.21.2. Concrete Pours. Concrete pours as part of the construction or remodel of Dwelling Units may occur during the periods from 5:30 am to 6:30 pm (May through September) and from 7:00 am to 5:30 pm (October through April) on Weekdays and Saturdays except Holidays. Concrete pours may not be conducted outside of these hours absent prior written approval of the ACC.

2.21.3. Sound Devices. Generally, absent prior written approval of the ACC, the operation of sound devices, including horns, whistles, bells, outside the exterior walls of any Dwelling Unit is prohibited. This restriction shall not apply to security devices used exclusively to protect the security of a Dwelling Unit or Vehicles at a Homesite. Nor shall it apply to audio speakers that are used outside the exterior walls of a Dwelling Unit provided use of the audio speakers is at a reasonably low volume and does not interfere with the peace and quiet of neighboring Owners and Residents.

2.21.4. Other Items. The operation of the following is prohibited: (1) smoke-producing objects including Vehicles or Recreation Vehicles which produce unreasonable amounts of smoke as to interfere with any Owner's enjoyment of his Homesite; (2) items which may unreasonably interfere with television or radio reception of an Owner within the Development; or (3) objects which create or emit noxious odors within the Development. This shall not apply to smoke or odor producing objects or vehicles used in the ordinary course of construction or necessary maintenance.

2.21.5. Emergencies. Prohibitions on the use of tools and equipment shall not apply to use for emergency purposes; however, to the extent possible, said use shall be done in a way that does not interfere with the peace and quiet of neighboring Owners and Residents.

**2.22. EXCEPTION FOR DECLARANT.** Notwithstanding the restrictions contained in this Article 2, during the Declarant Control Period, Declarant shall have the right to use any Homesite or Dwelling Unit owned or leased by it, and Common Area, in furtherance of any reasonably necessary or appropriate construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate the construction, maintenance and sale of Homesites and/or Dwelling Units owned by Declarant. Additionally, Declarant may construct Dwelling Units on any Homesites owned by Declarant without obtaining any permissions or approvals from the Board or ACC, provided Declarant in good faith believes that the Dwelling Units being constructed are consistent with the original intent of the Development.

## ARTICLE III

## OWNER RIGHTS AND DUTIES

**3.1 EASEMENT TO USE AND COMMON AREA.** 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 Homesite and in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Homesite 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 the Homesite.

**3.2. RIGHT TO VOTE.** Each Owner shall be a Class A Member of the Association and shall be entitled to cast one vote as set forth more fully in Article V.

**3.3. DUTY TO COMPLY WITH ASSOCIATION RULES.** Each Owner is obligated and required to comply with the terms of these CC&Rs, including without limitation the duty to use and maintain his/her Homesite in accordance with the terms of the Association's Governing Documents, and to timely pay required Association Assessments. The Owner's duty to maintain his/her Homesite includes, without limitation, the duty to keep it in a neat, sanitary and attractive condition and to repair, replace and restore all improvements that have fallen into disrepair or have become unsafe, unsightly, unattractive, or which otherwise violate the Association's standards as set forth in the Association's Governing Documents.

**3.4. DUTY TO PAY UTILITY AND PROPERTY TAX OBLIGATIONS.** Each Owner shall timely pay: (i) all property taxes related to the Owner's Homesite; and (ii) all bills related to utility services which are separately billed or metered to the Owner's Homesite.

**3.5. DUTY TO INSURE HOMESITE.** Each Owner shall carry blanket all-risk casualty insurance on the Owner's Homesite and structures constructed therein.

## ARTICLE IV INDIGO TRAILS OWNERS ASSOCIATION, Inc.

### 4.1. ORGANIZATION OF ASSOCIATION AND JURISDICTION

Declarant caused Indigo Trails Owners Association, Inc. (the "Association") to be organized by filing the Articles of Incorporation with State of Utah, Department of Commerce, Division of Corporations and Commercial Code, on or about July 22, 2016. The Association has been organized as a non-profit corporation to provide for the operation, maintenance, preservation and architectural control of the Development and Improvements and to administer the Common Areas of the Association. The Association shall have jurisdiction and authority over the Development, the Owners, and the Members of the Association to the full extent provided for in the Association's Governing Documents, as such documents may be modified from time to time.

**4.2. GRANT OF AUTHORITY - DUTIES AND POWERS.** Subject to any reservation of rights set forth in the Association's Governing Documents, Declarant hereby assigns to the

Association: (i) powers and authority of owning, maintaining, and administering the Common Area; (ii) powers and authority of promulgating Rules and Regulations through its Board that are consistent with the Association's Governing Documents; (iii) powers and authority to collect and disburse assessments and charges hereinafter created; and (iv) powers and authority to administer and enforce the covenants, conditions and restrictions contained in the Association's Governing Documents. Additionally, the Association shall have such additional duties and powers as set forth in the Association's Governing Documents, as such documents are duly amended from time to time.

**4.3. MEMBERSHIP.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Homesite. Membership in the Association is nontransferable and shall not be separated from the Homesite to which it appertains.

**4.4. OPERATION.** Generally, the Association shall be governed by a Board of Directors ("Board") and certain Association Officers as set forth more fully in the Association's Bylaws. During the Declarant Control Period, Board members shall be appointed (and replaced) by the Declarant. Thereafter, Members shall elect the Board members.

**4.5 DUTIES OF THE ASSOCIATION.** Without limiting any other duties which may be imposed upon the Association by its Governing Documents, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Development:

- a. The Association shall accept all Owners as members of the Association.
- b. The Association shall accept title to all Common Areas conveyed to it by Declarant, by separate deed(s) or by virtue of such Common Areas being identified on any final recorded plat maps related to the Development (including Annexable Land).
- c. The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, plants, grass, rocks, and other Common Area improvements. The Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Homesite or any other landscaping installed by an Owner.

In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the occupants, family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and

become part of the Corrective Assessment (as set forth in Section 6.9) to which such Homesite is subject.

- d. To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- e. The Association shall obtain and maintain in force the policies of insurance required by the provisions of the Association's Governing Documents and Utah law.
- f. The Association may (but is not required to) employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be in writing and shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. The Managing Agent, if any, shall be an independent contractor and not an agent or employee of the Association.
- g. The Association shall prepare a budget and shall assess and collect assessments from the Owners, as set forth in the Association's Governing Documents, for purposes of fulfilling its duties, including but not limited to the maintenance and expenses associated with the Common Areas, property taxes, professional fees, enforcement of CC&Rs, and applicable insurance.
- h. The Association shall enforce the CC&Rs for the purposes set forth herein, including the purposes of enhancing and protecting the value, desirability, and attractiveness of the Development.

#### **4.6. ASSOCIATION RULES.**

4.6.1. The Board's Rights to Adopt Association Rules and Regulations and Architectural Guidelines. The Board from time to time and subject to the provisions of these CC&Rs, may adopt, amend, repeal and enforce Rules and Regulations governing, among other things:

- a. the use of the Common Areas;
- b. the use of any roads or utility facilities owned by the Association;

- c. the collection and disposal of refuse;
- d. the types of animals permitted and the maintenance of permitted animals on the Property;
- e. the use of homes for business or rental purposes;
- f. the collection of Assessments;
- g. enforcement of these CC&Rs, including enforcement procedures and fines/penalties for violating the CC&Rs; and
- h. other matters concerning the use and environment of the Development and the conduct of Owners.

The Board may also adopt additional Architectural Guidelines, in addition to those adopted by the Declarant and the ACC, for the construction of Dwelling Units.

**4.6.2. Declarant's Rights to Adopt Association Rules and Regulations and Architectural Guidelines.** During the Declarant Control Period, Declarant shall have the unilateral right to amend or modify the Association's Rules and Regulations, and Architectural Guidelines, or to reject any Rules and Regulations or Architectural Guidelines proposed or adopted by the Board.

**4.7 LIMITATION OF LIABILITY.** No member of the Board or officer of the Association, acting in good faith, shall be personally liable to any Owner, guest, lessee, invitee, or any other person for any error or omission of the Association, its representatives and employees, the Board, or the Managing Agent.

**4.8. INSURANCE.** The Association shall secure and at all times maintain insurance coverage including the following insurance coverage:

- a. Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to "Indigo Trails Owners Association, Inc. for the use and benefit of the individual Homesite Owners and Mortgagees, as their interests may appear."
- b. A comprehensive policy or policies insuring the Owners, the Association, and its Board, offices, agents, and employees against any liability incident to the Ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants within the Development. Such policies shall be issued on a comprehensive liability basis

and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

- c. Such other insurance as may be required as required under Utah Code Ann. 57-8a-403, or such other insurance as the Board and Declarant shall deem necessary to protect the Association, Board and Development against liability risks.

## **ARTICLE V VOTING RIGHTS**

**5.1. VOTE DISTRIBUTION.** The Association shall have the following two classes of voting membership:

(a) **Class A** Class A Membership shall be held by each Owner of a Homesite, with one vote per Homesite Owner. While a Homesite may be owned by multiple Persons, only one Class A vote exists with respect to each Homesite.

(b) **Class B** Class B Membership shall be held by Declarant. All Homesites held by Declarant shall be entitled to three votes for each Homesite. Upon conveyance of one of Declarant's Homesites, the Class B Membership status for that Homesite shall change to Class A Membership.

**5.2. MULTIPLE OWNERSHIP.** In the event there is more than one Owner of a particular Homesite, the vote relating to such Homesite 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 Homesite concerned, unless an objection is immediately made by another Owner of the same Homesite. 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 VI COVENANT FOR ASSESSMENTS**

**6.1. PREPARATION OF BUDGET.** The Board shall prepare a Budget to be presented to the Members at the annual meetings of the Members held as provided in the Bylaws. The Budget shall set forth an estimate of Association expenses over the coming year.

**6.2. RESERVE FUND.** The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate amount to cover the annual Budget, as well as an appropriate reserve fund, including cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

**6.3. ASSESSMENT OBLIGATION.** Declarant, the Phase I-A Owners, and each subsequent Owner of any Homesite of the Development – by acceptance of a deed or otherwise acquiring title to the Homesite, whether or not it shall be so expressed in any such deed or other conveyance – covenants and agrees to pay the Assessments imposed by the Association and interest thereon including, without limitation, costs of collection and a reasonable attorney's fee, as provided in this Declaration. Assessments shall consist of Annual Assessments, Special Assessments, and Corrective Assessments, which Assessments shall be established and collected as provided in these CC&Rs. All such Assessments, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Homesite and its Owner, and shall be a continuing lien upon the Homesite against which such assessment is made. Each such Assessment, together with interest, costs and reasonable attorney's fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such Homesite at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Homesite or by an offer to waive use of the Common Area.

**6.4. PURPOSE OF ANNUAL AND SPECIAL ASSESSMENTS.** Collection of Assessments by the Association is necessary in order to carry out the purposes set forth herein and in the Association's Bylaws. 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 to desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under these CC&Rs and other governing documents of the Association.

**6.5. ANNUAL ASSESSMENTS.** Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws, and an appropriate reserve fund.

**6.6. SPECIAL ASSESSMENTS.** In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

- (a) **Approved by Board.** Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:
  - (i) An extraordinary expense required by an order of a court;
  - (ii) Enforcement of these CC&Rs, including legal action or collection efforts against an Owner or third party;
  - (iii) An extraordinary expense necessary to repair or maintain the Common Area of any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a

resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment; and

(iv) Taxes payable to Washington County as described in Section 7.3 of this Declaration

(b) Approved by Association. Special Assessments for any purposes not stated in Section 6.6(a) shall only be enforceable if they are approved by a majority vote of the Members of the Association constituting a quorum at a duly scheduled and noticed Member meeting. Before any such Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by this Section shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

While this list is not exhaustive, if approved by the Members constituting a majority of a quorum at a duly scheduled and noticed Member meeting, Special Assessments may be imposed to cover the following expenses.

(i) The replacement or improvement of the Common Area of Improvement thereon; and

(ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible attributable to fire, flood or hazards of any kind.

**6.7. UNIFORM RATE OF ASSESSMENTS.** Annual Assessments and Special Assessments imposed pursuant to these CC&Rs shall be assessed equally and uniformly against all Owners and their Homesites. All installments of Annual Assessments shall be collected in advance on a semiannual basis by the Board.

**6.8. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS.** The Board shall authorize and levy the amount of the Annual Assessment upon each Homesite, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Homesites in a Phase of Development on the first day of the first calendar month following the Close of Escrow for the sale of a Homesite in such Phase of Development. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. The Board shall fix the amount of the Annual Assessment against each Homesite at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment

shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Homesite have been paid. A properly executed certificate of the Association as to the status of assessments against a Homesite is binding upon the Association as of the date of its issuance.

**6.9. CORRECTIVE ASSESSMENTS.** In addition to the Annual Assessment and any Special Assessments, the Board, on behalf of the Association, may levy Corrective Assessments against a particular Owner and his Homesite 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 Declaration, plus interest and other charges on such Corrective Assessments. The Board shall deliver a Notice of Noncompliance by the Board and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

**6.10. EXEMPT PROPERTY.** The following property subject to this Declaration shall be exempt from the Assessments herein:

- (a) All portions of the Development dedicated to and accepted by a local public authority; and
- (b) The Common Area owned by the Association in fee.
- (c) All Homesites owned by Declarant or Declarant's successor or assigns, with the exception of Homesites where construction of a Dwelling Unit has been completed. With respect to Homesites owned by the Declarant, where there is a completed Dwelling Unit, Assessment obligations shall commence on the first day of the first calendar month following issuance of a certificate of occupancy.

## **ARTICLE VII** **NONPAYMENT OF ASSESSMENTS AND OTHER VIOLATIONS; REMEDIES**

**7.1. 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 related Homesite provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first or second position Mortgage on the Homesite recorded prior to recordation of a notice of lien by or on behalf of the association, per Utah Code 57-8a-301. Notwithstanding, the Association's lien shall be superior to all other liens (including liens of first or second position Mortgagees) to the extent permitted under Utah law. 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 the rate of eighteen percent (18%) per annum plus a late payment service charge equal to five percent (5%) of each delinquent amount due, and the Association may, in its discretion, bring an action to foreclose the lien against the Homesite and/or an action directly against the Owner. 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.

**7.2. CC&R VIOLATIONS AND ABATEMENT.** Every act or omission whereby any restriction, covenant or condition in these CC&Rs is violated in whole or in part, is declared to be and shall constitute a nuisance and may be abated by appropriate legal action by the Declarant, the Association, or a Homesite Owner. The remedies provided for hereunder shall be deemed cumulative and not exclusive. The failure of the Declarant, the Association or the Owners to enforce any provision of these CC&Rs shall not constitute a waiver of the right to enforce the same thereafter.

**7.3. WASHINGTON COUNTY TAX COLLECTION.** It is recognized in these CC&Rs that the Association shall own the Common Area and that, as owner, it may be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Homesite is a Member of the Association and as part of his assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in these CC&Rs, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes related to the Common Area directly from each Owner by inclusion of said share with the tax levied on each Homesite. To the extent allowable, Washington County is hereby directed to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

**7.4. FORECLOSURE SALE.** The Board may elect to file a claim of lien against the Homesite of a 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 Homesite 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 by a 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. 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 Homesite 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 Homesite, and the defaulting Owner shall be required to pay the reasonable rental value of such Homesite during any period of continued occupancy following the foreclosure sale.

**7.5. 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 with the County Recorder 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 Homesite 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.

**7.6. 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 or otherwise, including a suit to recover a money judgment for unpaid assessments, as above provided.

**7.6. PRIORITY OF ASSESSMENT LIEN.** The lien of the assessments, including interest and costs (including attorneys' fees and collection costs), provided for herein shall be subordinate to the lien or equivalent security interest of any first or second position Mortgage on the Homesite recorded prior to recordation of a Notice of Lien by or on behalf of the association, per Utah Code 57-8a-301. Notwithstanding, the Association's lien shall be superior to all other liens (including liens of first or second position Mortgagees) to the extent permitted under Utah law. When a Person obtains title to a Homesite pursuant to a judicial or non-judicial foreclosure of the first Mortgage which was recorded prior to the date of these CC&Rs (or deed given in lieu of foreclosure of a first Mortgage), such person, his successors and assigns, shall not be liable for Association expenses and assessments chargeable to that Homesite prior to the foreclosure sale date. Rather, the foreclosure sale shall result in extinguishment of the lien of delinquent Association assessments for that Homesite which became due prior to the foreclosure sale date. However, the purchaser shall be obligated to pay Assessments accruing subsequent to the date of obtaining title to the Homesite. Notwithstanding, the former Owner shall remain personally liable for any unpaid assessments prior to the foreclosure sale date.

## ARTICLE VIII ARCHITECTURAL CONTROL

**8.1. MEMBERS OF COMMITTEE.** The Architectural Control Committee ("ACC") shall consist of three (3) to seven (7) members. During the Declarant Control Period, the Declarant and the Board shall appoint all members of the ACC. Upon expiration of the Declarant Control Period, the Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC need not be Members of the Association. If the ACC is not appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members.

**8.2. ACC GENERAL POWERS.** The ACC shall have the right and duty to review

and approve Plans submitted within the Development, to ensure that the Plans comply with Basic ACC Standards contained in Section 8.4 (see Exhibit "D"), and the ACC Rules and Regulations that may hereafter be adopted. Among other things, when reviewing Plan applications, the ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar architectural features, to ensure conformity with the Basic ACC Standards and the ACC Rules and Regulations.

### **8.3. REVIEW OF PLANS AND SPECIFICATIONS.**

8.3.1. The ACC Must Approve Plans Before Commencement of Construction. The ACC shall consider and act upon any and all Plans and specifications, submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and specifications approved by the ACC. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, external decoration or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, within the Development shall be commenced or maintained, until the Plans and specifications thereof showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC.

8.3.2. Where To Submit Proposed Plans. Until changed by the Board, the address for submission of such Plans and specifications shall be the principal office of the Association, or at an alternate address as designated by the Board.

8.3.3. Plan Approval. The ACC shall approve Plans and specifications submitted for its approval only if the ACC determines that:

- (i) The construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance, beauty, wholesomeness and attractiveness of the surrounding area or the Development as a whole;
- (ii) The Plans and specifications comply with the Basic ACC Standards and ACC Rules and Regulations, or a variance to those standards has been granted.
- (iii) The appearance of any structure contemplated in the Plan will be in harmony with the surrounding structures; and
- (iv) The Improvements proposed in the Plan – including upkeep and maintenance – will not unreasonably impair the rights of other Association Members or become a burden on the Association.

Additionally, the ACC may condition its approval of any Improvement upon such changes, alterations or modifications of such Improvement as it deems appropriate and may

require submission of additional Plans and specifications or other information prior to approving or disapproving material submitted. Such conditions may also include a requirement that the applicant complete the proposed Improvement within a stated period of time.

The ACC may require such detail in Plans and specifications submitted for its review as it deems proper, including, without limitation, landscape plans, floor plans, as they relate to exterior appearance, site plans, exterior lighting plans and interior lighting plans as they relate to exterior illumination, drainage plans, elevation drawings and description or samples of exterior materials and colors.

**8.3.4. ACC Decision/Response.** Within forty-five (45) days after receipt of the application, the ACC shall communicate a response to the applicant, by transmitting the response to the applicant at the address set forth in the application for approval.

**8.4. BASIC ACC STANDARDS.** In exercising its powers set forth in this Article VIII, the ACC shall insure that all improvements on Homesites in the Development conform to and harmonize with existing surroundings and structures and with the Basic ACC Standards set forth in Exhibit "D".

**8.4.1. The ACC May Adopt ACC Rules and Regulations.** The ACC may formulate ACC Rules and Regulations for the purpose of interpreting such ACC Basic Standards and adding such other supplemental standards, not contrary to such ACC Basic Standards, as the ACC may deem appropriate. The failure of any Owner to adhere to the ACC Rules and Regulations shall constitute and be deemed a failure to meet such Basic ACC Standards.

**8.4.2. Declarant's Rights to Establish or Revise Architectural Standards.** During the Declarant Control Period, Declarant may unilaterally adopt ACC Rules and Regulations or amend or reject Rules and Regulations adopted by the ACC. Declarant may also unilaterally amend Basic ACC Standards. Any exercise of these Declarant rights must be done with a good faith belief that it is in the best interest of the Development and consistent with original intent related to the Development.

**8.5. MEETINGS OF THE ACC.** The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC shall be sufficient to enact resolutions or motions of the ACC. The attendance of at least three (3) ACC members at any meeting shall constitute a quorum.

**8.6. NO WAIVER OF FUTURE APPROVALS.** The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted for approval or consent.

**8.7. COMPENSATION OF ACC MEMBERS.** The members of the ACC shall

receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

**8.8. INSPECTION OF WORK; COST OF CORRECTION.** Inspection of work and correction of defects therein shall proceed as follows:

(a) The ACC or its duly authorized representative may inspect during reasonable daylight hours, any work for which approval of Plans is required under this Article VIII. However, the ACC's right of inspection of Improvements for which Plans have been submitted and approved shall terminate sixty (60) days after the Improvement has been completed and the respective Owner has given written notice to the ACC of its completion. The ACC's rights of inspection shall not terminate pursuant to this paragraph if Plans for the Improvement have not previously been submitted to and approved by the ACC. If, as a result of such inspection, the ACC finds that the Improvement was constructed without obtaining approval of the Plans therefor or was not done in substantial compliance with the Plans approved by the ACC, it shall deliver to the Owner a Notice of Noncompliance by the ACC within five (5) days from the inspection. The ACC shall have the authority to demand that the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If upon the expiration of thirty (30) days from the date of delivery of the Notice of Noncompliance by the ACC as provided for above, the Owner has failed to remedy the noncompliance, the ACC shall notify the Board in writing of such failure. The Board shall then deliver to such Owner a Notice of Noncompliance by the Board and Right to Hearing. At hearing the Board shall determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from delivery of Notice of Board Adjudication to the Owner. If the Owner does not comply with the Board determination within that period, the Board may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance. In addition, the Board may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Corrective Assessment against the Owner for a reimbursement as provided against the Owner for reimbursement as provided in these CC&Rs. The right of the Association to remove a noncomplying improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in these CC&Rs.

**8.9. LIMITED SCOPE OF REVIEW.** While the ACC has the authority and responsibility to review and approve Plans to ensure compliance with Basic ACC Standards and ACC Rules and Regulations, its approvals relate to aesthetics of the Development and in no way relate to issues such as structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying fully with all federal, state, and municipal requirements, codes, and standards, with respect to the implementation of such Plans.

**8.10. VARIANCE.** An Owner may apply for a variance to the Basic ACC Standards and ACC Rules and Regulations as set forth below. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met. All variances must be approved by the ACC, by the Board, and by the Declarant; failure to obtain approval from any one of the foregoing shall constitute denial of the variance request. The approval of a variance must be in writing and shall state the terms of the variance. When granted, variances run with the land. The granting of such a variance shall not operate to waive any of the terms and provisions of these CC&Rs for any purpose except as to the particular Homesite and particular provisions hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Dwelling Unit or Improvement.

(a) Factors. A variance may be granted only if one of the requirements of (i)-(iv) and the requirement in (v) are met:

- (i) literal enforcement of the Basic ACC Standards and the ACC Rules and Regulations would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the Basic ACC Standards and the ACC Rules and Regulations; or
- (ii) there are special circumstances attached to the Homesite that do not generally apply to the other Homesites in the Development; or
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other Homesite Owners in the Development; or
- (iv) the variance will not substantially violate or undermine the Basic ACC Standards and the ACC Rules and Regulations and will not be contrary to the interest of the Members of the Associations; and
- (v) the spirit of the Basic ACC Standards and the ACC Rules and Regulations is observed and substantial justice done.

(b) Unreasonable Hardship Determination. In determining whether or not enforcement of the Basic ACC Standards and ACC Rules and Regulations would cause unreasonable hardship under Section 8.10 (a) (i) the ACC, the Board, and the Declarant may not find an unreasonable hardship unless the alleged hardship:

- (i) Is located on or associated with the Homesite or Improvement for which the variance is sought;
- (ii) Comes from circumstances peculiar to the Homesite or Improvement, not from conditions that are general to the Development; and

(iii) Is not self-imposed or merely economic.

(c) Special Circumstance Determination. In determining whether or not there are special circumstances attached to a Homesite or Improvement under Section 8.10 (a) (ii), the ACC, the Board, and the Declarant may find that special circumstances exist only if the special circumstances:

(i) Relate to the hardship complained of; and

(ii) Deprive the Owner of the Homesite or Improvement of privileges granted in relation to other Homesites or Improvements in the Development.

(d) Additional Requirements May Be Imposed If Variance Is Granted. In granting a variance, the ACC, the Board, and the Declarant may collectively impose additional requirements on the applicant that will:

(ii) Mitigate any harmful effects of the variance; or

(ii) Serve the purpose of the standard or requirement that is waived or modified.

**8.11. DISCLAIMERS OF LIABILITY.** The Declarant, the ACC, the Board and any member thereof, if acting in good faith, shall not be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or rejections of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests (ii) the construction or performance of any work, whether or not pursuant to approved Plans, (iii) the development or manner of development or construction on any Homesite, or (iv) any engineering or other defect in approved Plans, drawings, and specifications.

## ARTICLE IX EXPANSION OF DEVELOPMENT

**9.1. DECLARANT'S RIGHT TO ANNEX ANNEXABLE LAND.** Declarant may expand the real property subject to these CC&Rs by the annexation of Annexable Land. Annexation may be accomplished in one or more annexations or Phases of Development without limitation as to size or location within the Annexable Land. When annexation becomes effective, said real property shall be subject to and restricted by these CC&Rs, and subject to the functions, powers, and jurisdiction of the Association, and thereafter all of the Owners of Homesites in the land annexed into the Development shall automatically become Members of the Association.

**9.2. ANNEXATION PROCEDURE.** Annexation shall become effective and extend this Declaration to such real property upon the Recordation of a Supplementary Declaration

or similar instrument which:

- (a) Describes the real property to be annexed or incorporated by reference;
- (b) Declares that the annexed real property is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Development subject to these CC&Rs; and
- (c) Sets forth such additional limitation, restrictions, covenants, conditions complementary additions to the covenants, conditions and restrictions contained in these CC&Rs as are not inconsistent with these CC&Rs and which do not create a character different than exists in the Development and is intended by this Declaration.

**9.3 LIMITATIONS RELATED TO ANNEXATION.** Declarant's right to annex Annexable Land into the Development shall be subject to the following limitations, conditions and rights granted to the Declarant:

- (a) Only Annexable Land can be annexed into the Development. This includes any real property contiguous to the Development or real property with a boundary line that is within 3,000 feet of the Development.
- (b) Declarant shall not effectuate any annexation of real property which would cause the total number of Dwelling Units existing on, or planned for, the Development to exceed 1000 total Homesites.
- (c) All Homesites added to the Development shall be for residential purposes, except as otherwise provided for in these CC&Rs.
- (d) Declarant reserves unto itself and its assigns the right to create Common Area, and Improvements thereon, within any portion of the annexed real property. Declarant makes no assurances that such Common Areas or Improvements will be established.
- (e) The configuration of annexed land as to Homesite size, Common Areas and the type of Improvements is reserved to the Declarant.

## **ARTICLE X GENERAL PROVISIONS**

**10.1. INTERPRETATION.** The provisions of these CC&Rs shall be liberally construed to effectuate the purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area and enhancing and protecting the value, desirability and attractiveness of the Development. 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.

**10.2. SEVERABILITY.** Invalidation of any provision of these CC&Rs by Judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**10.3. TERM.** Unless terminated earlier as permitted herein or by applicable law, the covenants, conditions and restrictions of these CC&Rs shall be perpetual and run with and bind the Development and each Homesite therein, and shall inure to the benefit of and be enforceable by the Declarant, the Association, and its Members.

**10.4. AMENDMENT.**

10.4.1. Generally. Any amendment to these CC&Rs shall require the affirmation of at least two-thirds (2/3) of the votes of Members appearing at a duly noticed Member Meeting where a quorum is present. Thirty (30) days prior to the Member Meeting, the Board shall cause to be delivered to all Members a Notice of Member Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership shall constitute a quorum. If a quorum is not present at the meeting, another Member Meeting may be called by the Board. Notice of this second Member Meeting shall be delivered to Association Members at least ten (10) days prior to the scheduled meeting. At the second Member Meeting, a quorum shall exist if at least fifty percent (50%) of all of the votes of the Membership are present. The second Member Meeting may only be held if done within forty-five (45) days following the initial Member Meeting. Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument, an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred.

10.4.2. Declarant's Right to Amend. Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable for all purposes, including but not limited to the following purposes:

- (i) To adjust the boundaries of the Homesites, including adding or deleting common areas (by filing an appropriate amended Plat) to accommodate design changes or adjustment to lot configuration;
- (ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information.
- (iii) to better insure, in light of existing circumstances or information, workability of the arrangement which is contemplated by the Declaration;
- (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development;

- (v) to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing;
- (vi) to change or assign the rights of Declarant to a third party or successor; or
- (vii) to change the assessment provisions or provisions related to the Board, the Bylaws, or the ACC.

**10.5. CONSENT IN LIEU OF VOTE.** In any case in which these CC&Rs require the authorization or approval of a transaction, or the assent or affirmative vote of a stated percentage the Members represented in person or by proxy at a meeting of the Members, such requirement may be fully satisfied by obtaining, with or without a meeting, written consents from the same percentage of Members as is required to authorize the transaction if a meeting of the Members was held and votes taken.

**10.6. CONFLICT BETWEEN TERMS OF GOVERNING DOCUMENTS.** In the event a provision of one of the Governing Documents conflicts with the provision of another of the Governing Documents, the provisions shall be harmonized to the extent possible; however, to the extent the provisions cannot be fully harmonized, the provision of the higher priority document shall govern. Unless Utah law mandates otherwise, the Governing Documents are prioritized as follows:

1. Articles
2. Declaration/CC&Rs
3. Bylaws
4. Rules and Regulations
5. ACC Rules and Regulations

**10.6. DECLARANT CONTROL.** Declarant's rights herein are assignable and transferable, and shall continue until the Declarant no longer has any ownership interest in the Development or any Annexable Land. Upon expiration of the Declarant Control Period, any approval previously required by Declarant shall be satisfied by obtaining approval of the Board.

**10.7. NOTICES.** Any notice, including, without limitation, Notice of Noncompliance by the ACC, Notice of Noncompliance by the Board and Right to Hearing, and Notice of Board Adjudication, permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

**10.6. DECLARANT CONTROL.** Declarant's rights herein are assignable and transferrable, and shall continue until the Declarant no longer has any ownership interest in the Development or any Annexable Land. Upon expiration of the Declarant Control Period, any approval previously required by Declarant shall be satisfied by obtaining approval of the Board.

**10.7. NOTICES.** Any notice, including, without limitation, Notice of Noncompliance by the ACC, Notice of Noncompliance by the Board and Right to Hearing, and Notice of Board Adjudication, permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

These CC&Rs and any amendment thereof shall take effect upon the CC&Rs being filed of record in the office of the County Recorder of Washington County, State of Utah.

Each of the undersigned hereby: (i) executes these CC&Rs; (ii) acknowledges that s/he has had the opportunity to consult with legal counsel prior to executing these CC&Rs; (iii) fully understands and consents to the terms of these CC&Rs; (iv) witnesses that s/he has read these CC&Rs and understands its terms; and (v) represents that s/he is authorized to execute this document on behalf of the person or entity for whom s/he is signing.

**DEVELOPER**

KAYENTA DEVELOPMENT, INC

By:   
Lance Anderson, President

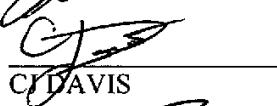
**ASSOCIATION**

INDIGO TRAILS OWNERS ASSOCIATION

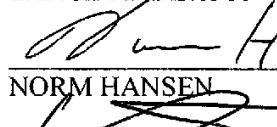
By:   
Lance Anderson, President

**LANDOWNERS**

  
JEFF ANDERSON

  
CINDY DAVIS

  
LANCE ANDERSON

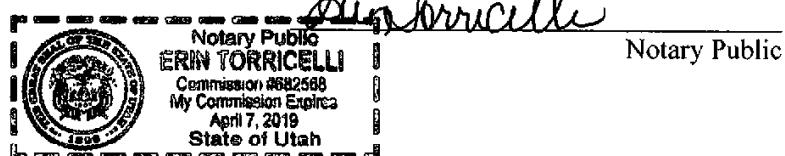
  
NORM HANSEN

  
KAYENTA DEVELOPMENT, INC.

By: Lance Anderson  
Its: President

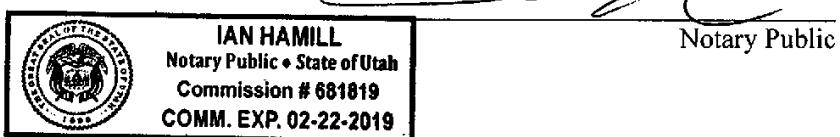
STATE OF UTAH  
County of Washington

On this 6<sup>th</sup> day of September, 2016, before me personally appeared Lance Anderson, whose identity is personally known to or proved to me on the basis of satisfactory evident, and who being by me duly sworn (of affirmed), did say that he is the President of Kayenta Development, Inc. and of Indigo Trails Owners Association, and that the foregoing document was signed by him personally and on behalf of the Corporation and Association and he acknowledged before me that he executed the document on behalf of the Corporation and Association and for the stated purposes herein.



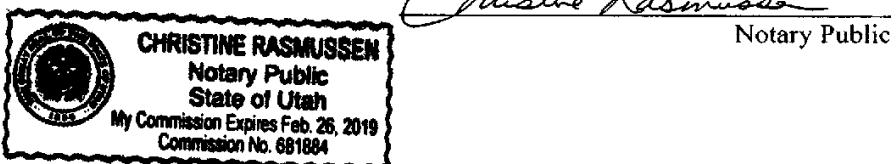
STATE OF UTAH  
County of Washington

On this 2<sup>nd</sup> day of August, 2016, before me, a notary public, personally appeared Jeffrey Anderson, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.



STATE OF UTAH  
County of Washington

On this 24<sup>th</sup> day of August, 2016, before me, a notary public, personally appeared CJ Davis, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.



STATE OF UTAH  
County of Washington

On this 8<sup>th</sup> day of August, 2016, before me, a notary public, personally appeared Norm Hansen, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.



**EXHIBIT "A"**

WHEN RECORDED, MAIL TO:

KARI JIMENEZ  
IVINS CITY  
55 NORTH MAIN  
IVINS, UT 84738

DOC # 20160011921

Agreement Page 1 of 10  
Russell Shirts Washington County Recorder  
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By IVINS CITY



APN: I-SB-53; I-SB-54-E; I-SB-52-A-1; I-SB-48-A

**DEVELOPMENT AGREEMENT  
FOR THE INDIGO TRAILS SUBDIVISION PROJECT  
IVINS CITY, WASHINGTON COUNTY, UTAH**

This Development Agreement ("Agreement") is entered into as of this 5th day of April, 2016, by and between COWICHAN, LLC, a Utah Limited Liability Company ("Owner / Developer"), the developer and owner of certain real property located in Ivins City, Washington County, Utah, on which they propose to develop a project known as the Indigo Trails Subdivision (the "Project"), and IVINS CITY, a municipality and political subdivision of the State of Utah, by and through its City Council ("City").

**R E C I T A L S**

- A. Developer is the owner of approximately 22.25 acres of real property located in Ivins City, Washington County, Utah, the legal description of which is set forth on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), on which it proposes the development of a certain subdivision known as the Indigo Trails Subdivision consisting of 46 single family residential lots, as more fully reflected on Exhibit "B" attached hereto and incorporated herein.
- B. The Project shall be developed in multiple phases, with each phase to begin shortly after receipt of Final Plat approval. Phasing for the Project is set forth herein.
- C. Developer acknowledges that it must comply with all City development standards and ordinances, including applicable zoning and subdivision ordinances, fencing regulations, design guidelines, and design & construction standards, as well as the standards and specifications set forth and/or incorporated herein.
- D. This Development Agreement is intended to set forth the entire agreement between the Developer and the City regarding the development of the Project.

E. Ivins City is acting pursuant to authority under The Municipal Land Use, Development, and Management Act (U.C.A. §§10-9a-101 et. seq., as amended from time to time, hereinafter the "Act"), and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations.

**A G R E E M E N T**

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, Developer and Ivins City hereby agree as follows:

- (1) Recitals; Findings. The foregoing recitals are incorporated and made an integral part of this Agreement by this reference. The City finds that the development of the Property

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pursuant to this Agreement and applicable City ordinances will result in meaningful planning and economic benefits to, and shall further the health, safety and welfare of, the City and its residents by, among other things: (i) requiring development of the Property in a manner consistent with the applicable rules, regulations and policies of the City; (ii) providing for the dedication of infrastructure improvements to be completed as set forth herein and/or as consistent with current State or City regulations; and (iii) preserving the natural beauty and view of the surrounding environment through agreed upon construction materials and building height limitations. The City is entering into and approving this Agreement pursuant to its authority under the Act and City ordinances, policies and regulations and has made certain determinations with respect to the Property and, in the exercise of its legislative discretion, has elected to approve this Agreement as an agreement, compromise, and settlement as to the matters covered by this Agreement.

(2) Project Phasing. The development of the multiple phases of the Project shall be governed as follows:

- (a) Lots within the approved Preliminary Plan for Indigo Trails may be grouped together into phases and recorded on a Final Plat so long as the lots are contiguous and there are fire access roads that comply with City Code as required by this Agreement.
- (b) The Final Plat for the first Subdivision Phase Final Plat must be recorded within one (1) year from the approval date of this Development Agreement; Final Plats for subsequent phases shall be recorded within two (2) years from the approval date of this Development Agreement.
- (c) Before a Final Plat for any Subdivision Phase can be recorded, paved fire access roads that comply with City Code, shall either be fully installed or bonded for before the first Certificate of Occupancy can be issued.
- (d) Also for any Subdivision Phase through which there is a right-of-way that is to be vacated, the statutory process for vacating the right-of-way must be completed before that Subdivision Phase can be recorded.

(3) Project Plans: Development Pursuant to this Agreement.

- (a) Project Plans. The Project Preliminary Plan previously approved and the Final Plats to be approved, as well as any exhibits attached hereto (collectively the "Project Plans"), are integral parts of this Agreement. The City's approval of the Project is based upon the City's reliance that the Project will be developed in accordance with the standard and quality of improvements, unit densities, dedication of easements, roadways, and other improvements, as represented in the Project Plans and this Agreement.
- (b) Development Guidelines. The following development guidelines shall be part of the Project Plans:
  - (i) Exterior materials shall only be stucco, stone, brick, exposed concrete or concrete block;
  - (ii) All exterior colors shall be limited to subdued earth tones;
  - (iii) No metal or vinyl siding shall be allowed, however metal detailing and accent may be on a case by case basis, i.e. copper, rusted steel patina;

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- (iv) All reflective exterior surfaces or materials shall be treated to reduce reflective glare;
- (v) All exterior lighting shall be shielded and low level;
- (vi) All fencing within or around the Project shall be constructed of colored masonry, rock, stucco, and/o exposed colored concrete throughout the Project; and
- (vii) All roofing material shall be in compliance with City Code.

(c) Development. Upon execution of this Agreement by the City, the Developer is authorized to develop the Property as set forth in this Agreement and in accordance with the types, densities and intents of the land uses set forth in the Project Plans and this Agreement.

(4) Construction Standards on Project. All improvements in the Project shall be installed in accordance and consistent with the Project Preliminary Plan, approved Final Plats, approved construction drawings, exhibits referred to herein, and with Ivins City Design and Construction Standards and all other governmental and regulatory standards. All fencing in the Project must comply with the City fencing ordinances and regulations. Lighting in the Project shall be in accordance with current City lighting ordinances and regulations or with the lighting plan included with the Project Plans, whichever is more strict.

(5) Developer Provided Municipal/Public Improvements.

- (a) Improvements. The Developer shall install, construct, and complete the following municipal/public improvements as set forth in and contemplated by the Project Plans (the "Developer's Municipal Improvements"), all such improvements to be constructed in a good and workmanlike manner and in accordance with applicable regulations and governmental standards and within the time periods for development set forth herein or as otherwise agreed to by the City:
  - (i) Water Distribution System. All pipes, valves, fittings, pressure reducing valve stations, air release valves, and other distribution facilities within the Property for the purpose of distributing water within the Property. Pumps shall be installed as necessary to ensure compliance with all applicable codes.
  - (ii) Sewer System. A gravity sewer system shall be installed to service all lots within the subdivision and sized to accommodate potential future sewer flows from adjacent properties.
  - (iii) Water Drainage. Developer shall install all necessary water drainage improvements per drainage study. Roadside treatments must be armored unless drainage study shows low erosive conditions (velocities less than 2f.p.s.) in a 10 year flood event.
  - (iv) Roads. Developer shall install roads per approved plans in accordance with the City's current Transportation Master Plan. Developer shall be allowed to cut roads to grade and then submit construction plans for approval prior to construction. Developer shall have the flexibility to build roads after approval of construction plans but prior to Final Plat approval so long as: a) the road alignments have been determined by an approved Preliminary Plan; and b) an approved Development Agreement allows this flexibility. After twenty-five (25) certificates of occupancy have been issued for homes in the subdivision,

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Developer shall install a six foot (6') paved shoulder on along the south side of Highway 91 abutting the subdivision, as well as installing a right turn lane and a left turn lane on Highway 91 at the entrance to the subdivision.

- (v) **Highway 91 Trail.** In lieu of a concrete sidewalk along the portion of Highway 91 abutting the Project, Developer will install a ten foot (10') wide asphalt trail instead, without bollard lighting.
- (vi) **Landscaping.** Landscaping within the Highway 91 landscape buffer area shall be consistent with the type described in the City's Highway 91 Corridor Plan.

(vii) **Erosion Controls.** Developer shall not start grading roads without a storm water pollution prevention plan including the site specific erosion control plan as required by federal, state, and local laws. Developer shall also procure a Notice of Intent to discharge storm water associated with construction activities under the UPDES General Permit No. UTR300000. Developer shall satisfy all requirements of the permit including performance of documented periodic inspections. The permit shall remain open and renewed on an annual basis until the project site is stabilized.

(b) **Warranty Period.** Pursuant to Section 16.05.906 of the Ivins City Subdivision Ordinance, the warranty period for public improvements shall commence on the date that all city required improvements associated with the development have been completed to the satisfaction of the City and a final inspection thereof has been made approving the same. The warranty period shall commence at that date and shall continue for one (1) year thereafter for all improvements. If any deficiencies are found by the City during the warranty period in materials or workmanship, the developer shall promptly resolve such defects or deficiencies and request the City Engineer to re-inspect the improvements. If the defective or deficient improvements are not corrected, the City will give notice to the developer of the action to file on the security agreement for completion of the improvements. At the end of the one (1) year period, as applicable, the developer shall request the City staff to make a final warranty period inspection of all improvements. If the City Engineer verifies that the improvements are acceptable, the remaining security posted by the developer under the security agreement shall be released.

(c) **Costs Associated with the Developer's Municipal/Public Improvements.**

(i) **Construction Costs.** The Developer will pay all costs and all associated expenses to install, construct, and complete the Developer's Municipal/Public Improvements. If this Agreement makes no provisions for the City to provide, pay or reimburse Developer for any Municipal Improvements installed by Developer as anticipated in the construction drawings or in this Agreement, the City is not responsible for any such costs and Developer specifically waives any claims against the City therefor.

(ii) **Maintenance Costs.** Until such time as a particular component of Developer's Municipal/Public Improvements is dedicated to and accepted by the City, and standard maintenance thereof is assumed by the City, the Developer shall maintain, at its cost, such component of Developer's Municipal/Public Improvements.

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(d) **Inspection and Dedication of Developer's Municipal/Public Improvements.** Upon completion of the Developer's Municipal/Public Improvements ("Offered Improvements"), the City shall inspect the Offered Improvements within a reasonable time after receipt of written notice from the Developer that such Offered Improvements are complete. The City shall approve and accept for dedication the Offered Improvements so long as they are constructed in accordance with the City's adopted standards therefor, as verified by the City's inspection. Following completion of the Offered Improvements, and the City's inspection and acceptance thereof, the City shall thereafter own, operate and maintain the Offered Improvements without charge or cost to the Developer, excepting that usual warranty bonding shall be provided to the City by the Developer.

(e) **Other Utilities.** The Developer shall install, construct and complete, without cost to the City, all other utilities required by the City or by regulation, ordinance or law to be installed. The Developer will pay all costs and all associated expenses to install, construct, and complete such other utilities, unless otherwise specifically provided herein for improvements which the City has specifically required of Developer, which Developer and the City specifically agree herein shall be paid (or reimbursed) to Developer by the City. If this Agreement makes no provisions for the City to provide, pay or reimburse Developer for any such other utilities installed by Developer, the City is not responsible for any such costs and Developer specifically waives any claims against the City there for.

(f) **Fencing and Lighting.** All fencing in the Project must comply with City fencing ordinances and regulations. Lighting in the Project shall be in accordance with current City lighting ordinances and regulations or with the lighting plan included with the Project Plans, whichever is more strict.

(g) **Documentation Supporting Provisions Herein.** If the City determines that any provision of this Agreement requires a separate (recordable or otherwise) document/agreement to protect or clarify the City's rights pursuant to the intent of the parties under this Agreement, both parties shall cooperate in preparing and completing such documents.

(6) **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power by Ivins City in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement.

(7) **Subdivision Plat Approvals and Compliance with City Design and Construction Standards.** Developer expressly acknowledges and agrees that nothing in this Development Agreement shall be deemed to relieve Developer from the obligation to comply with all applicable requirements of Ivins City necessary for approval and recordation of subdivision plats for the Project, including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of Ivins City, including but not limited to, the Ivins City Subdivision Ordinance and Standards and Specifications for Design and Construction.

(8) **Bonding for Improvements.** Developer shall comply with all bonding for completion, restoration and guarantee of improvements requirements of Ivins City. Specifically, as a condition of recording of any Final Plat for the Project, Developer shall provide the following bonds, or equivalent security as allowed by Ivins City ordinances:

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- (a) Completion of all Improvements or Completion Security. If the Developer does not complete all improvements prior to recordation of the Final Plat for any phase of the Project, a completion bond shall be provided to the City as required by the Ivins City Subdivision Ordinance. Such completion bond will be in the amount of 110% of the City engineer's estimated cost for applicable construction costs of the improvements. The security must be in a form acceptable to the City.
- (b) Restoration Bond. If the Developer intends to install improvements rather than provide a completion bond, the Developer must provide a restoration bond to the City as required by the Ivins City Subdivision Ordinance. (If a completion bond is not provided, plat recording may not occur until all improvements are installed and approved by the City.)
- (c) Warranty Security. At the completion of the improvements for which completion security is required, Developer shall provide the City with a warranty bond or other form of security, as required by the Ivins City Subdivision Ordinance, in the amount of 10% of the estimated construction costs referred to above. The security must be in a form acceptable to the City.
- (d) Application. In case of any discrepancy between the bonding/security provisions in this Agreement and the City's subdivision ordinance provisions regarding bonding/security, the provision providing greater protection to the City (as such is determined by the City) shall be applicable.
- (9) Agreement to Run with the Land. This Agreement shall be recorded against the Property described in Exhibit "A" attached hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of Developer in the ownership or development of any portion of the Property. Additionally, Developer shall provide appropriate notes upon the Final Plat prior to recordation giving notice of the primary provisions of this Agreement.
- (10) Assignment. Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent signed by the Mayor with the approval of the City Council, which consent shall not be unreasonably withheld.
- (11) Binding Effect. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. However, in the event Developer fails to proceed in a timely fashion resulting in the revocation or loss of Final Plat or Preliminary Plan approvals for the Project, the City may terminate this Agreement and require a new Development Agreement as part of any future approval process.
- (12) No Joint Venture, Partnership or Third Party Rights. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.
- (13) Integration. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of

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whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

(14) **Severability.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

(15) **Previous Agreements.** Except as otherwise expressly provided herein, this Agreement is the exclusive agreement of the parties and replaces and supersedes all prior agreements between the parties pertaining to this Project.

(16) **Miscellaneous.**

(a) **Legal Fees.** Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

(b) **Survival.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

(c) **Headings.** The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

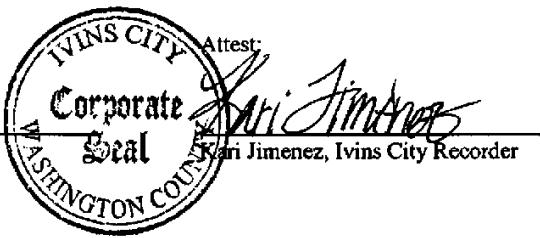
(d) **Plat Notes.** Primary provisions of this Agreement, as determined by the City, shall be included as notes on any Final Plat of the Project, as well as incorporated into the Project Restrictive Covenants documents.

IN WITNESS WHEREOF, the parties have executed this Development Agreement the day and year first above written.

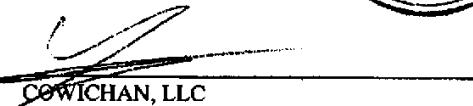
IVINS CITY:

By:

Chris Hart, Mayor



DEVELOPER/OWNER:

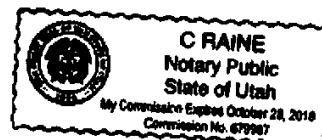
  
COWICHAN, LLC

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STATE OF UTAH )  
ss.  
COUNTY OF WASHINGTON )

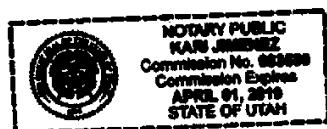
On this 5th day of April, 2016, before me personally appeared CHRIS HART and KARI JIMENEZ whose identities are personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that they are respectively the Mayor and Recorder of Ivins City, and that the foregoing document was signed by them by authority, and they acknowledged before me that Ivins City executed the document and the document was the act of Ivins City for its stated purpose.

C Raine  
Notary Public



STATE OF UTAH )  
ss.  
COUNTY OF WASHINGTON )

On the 5th day of April, 2016, personally appeared before me LANCE ANDERSON, MANAGING MEMBER OF COWICHAN, LLC, 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 COWICHAN, LLC is the Owner/Developer of the Indigo Trails Subdivisions and that the foregoing document was signed by him by authority, and he acknowledged before me that he executed the document for its stated purpose.



Kari Jimenez  
Notary Public

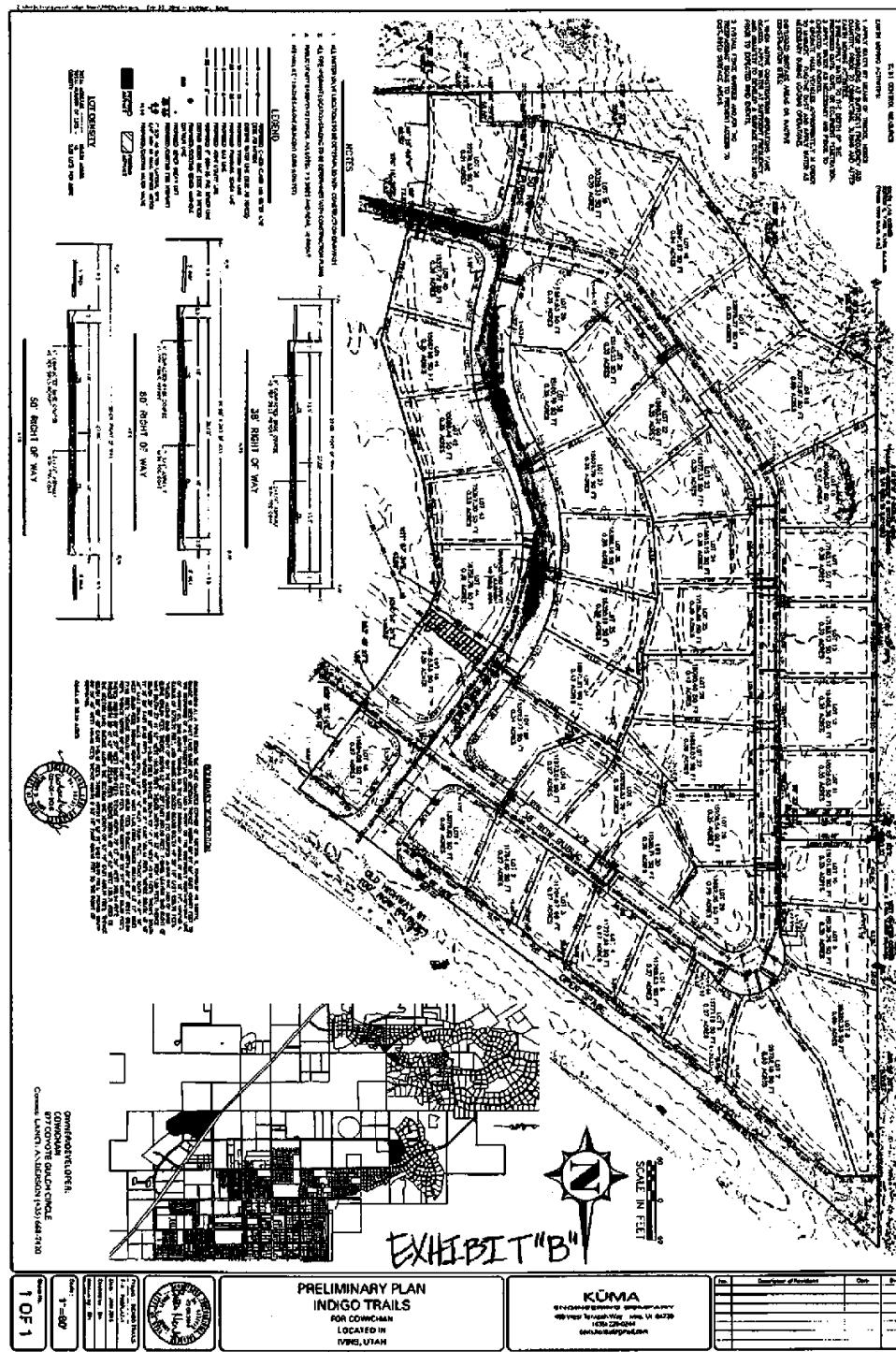
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**EXHIBIT "A"**

**Legal Description for the Property**

Beginning at a point being the West Quarter corner of Section 6, Township 42 South, Range 16 West, Salt Lake Base and Meridian, thence North 00°51'55" East 430.07 feet to the beginning of an on-tangential curve and a point on the Southerly Right of Way line of Highway 91, said curve turning to the left through an angle of 06°12'24", having a radius of 5779.70 feet, and whose long chord bears South 49°26'18" East 625.79 feet; thence along said Right of Way the following two (2) courses: along the arc of said curve 626.09 feet; thence South 52°32'30" East 567.02 feet; thence leaving said Right of Way South 37°41'52" West 190.78 feet; thence North 52°32'49" West 1.98 feet; thence South 35°29'59" West 149.55 feet; thence South 23°14'12" West 43.52 feet; thence South 11°35'36" East 61.03 feet; thence South 06°15'21" East 100.44 feet; thence South 16°15'38" East 221.95 feet; thence 15°01'18" West 172.91 feet; thence South 15°01'18" West 38.00 feet; thence North 74°58'42" West 14.22 feet; thence South 08°13'17" West 77.92 feet; thence South 00°02'25" East 96.59 feet; thence North 89°22'57" West 80.04 feet; thence North 00°00'12" East 42.00 feet; thence North 89°22'57" West 55.00 feet; thence North 89°22'57" West 50.00 feet; thence North 72°27'59" West 209.24 feet; thence North 35°41'42" West 322.50 feet; thence North 60°49'03" West 125.71 feet to the Section Line; thence along the Section Line North 00°53'15" East 685.19 feet; thence South 89°06'45" East 149.42 feet; thence North 0°53'15" East 38.00 feet; thence South 89°06'45" West 149.42 feet; thence North 0°53'15" East 190.10 feet to the Point of Beginning.

20160011921 04/06/2016 03:08:05 PM  
Page 10 of 10 Washington County



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**EXHIBIT "B"**

DOC # 20160025601

Map (Conveying Property) Page 1 of 3  
Russell Shirls Washington County Recorder  
09/09/2016 09:14:07 PM Fee \$ 75.00  
By DIXIE TITLE CO



MAP

NAME: INDIGO TRAILS PHASE 1-A

LOTS: 12 MAP #3687

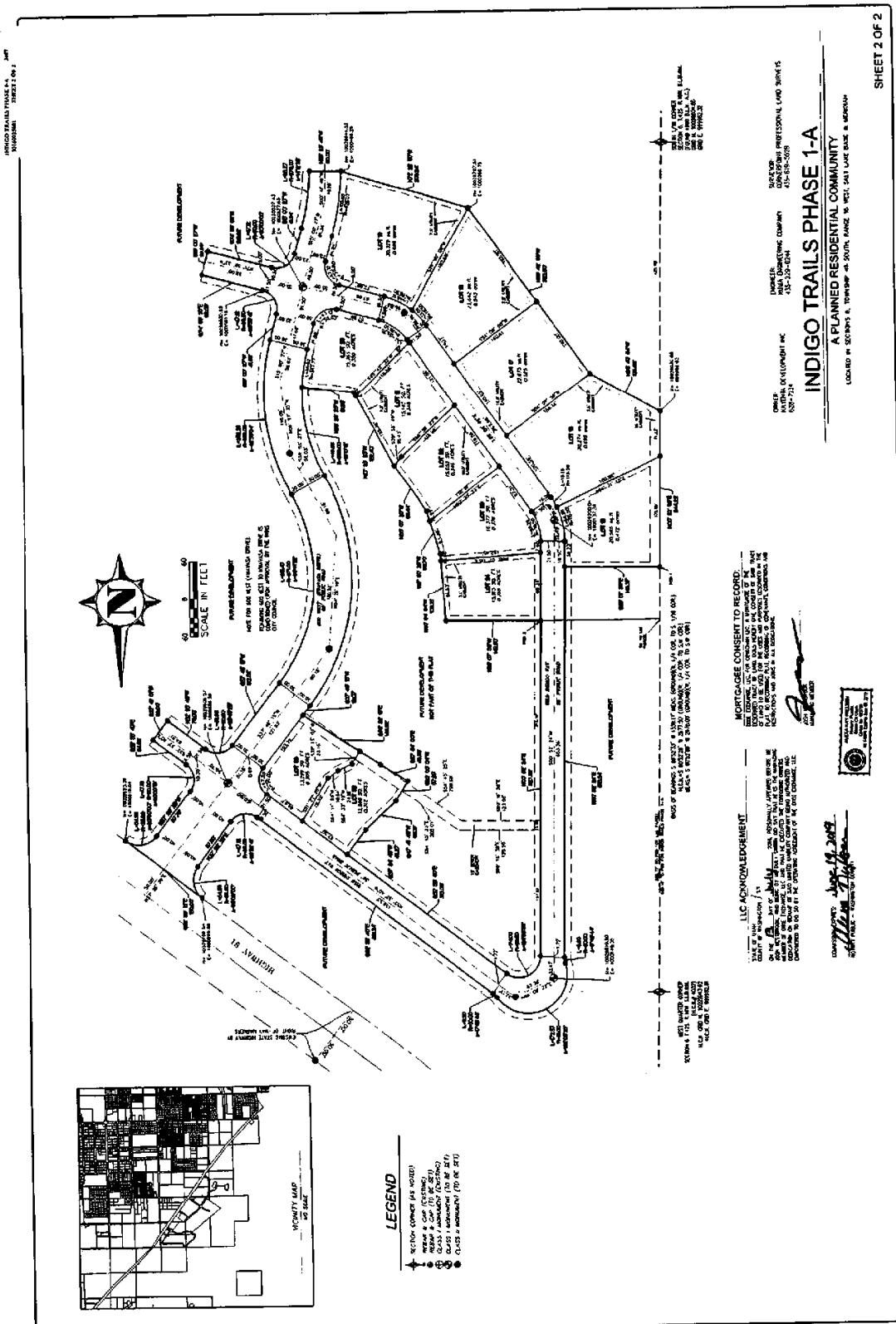
PARCEL: I-SB-52-A-1 I-SB-54-E I-SB-53 I-SB-80  
I-SB-81-A I-SB-82 THRU I-SB-84  
I-SB-48-A

KAYENTA DEVELOPMENT, INC  
LANCE ANDERSON JEFFREY VANCE ANDERSON  
CAMERON JAY DAVIS NORMAN J. HANSEN

BEGINNING AT A POINT BEING SOUTH 00° 52' 33" WEST 689.16 FEET ALONG THE SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 6, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 89° 07' 36" EAST 149.37 FEET; THENCE NORTH 00° 52' 24" EAST 615.34 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH 17° 45' 44", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS NORTH 08° 00' 28" WEST 9.26 FEET; THENCE ALONG THE ARC OF SAID CURVE 9.30 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH 162° 05' 23", HAVING A RADIUS OF 61.00 FEET, AND WHOSE LONG CHORD BEARS NORTH 66° 09' 22" EAST 120.51 FEET; THENCE ALONG THE ARC OF SAID CURVE 172.57 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 17° 45' 44", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 43° 40' 48" EAST 9.26 FEET; THENCE ALONG THE ARC OF SAID CURVE 9.30 FEET; THENCE SOUTH 52° 33' 40" EAST 461.24 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 89° 59' 41", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS NORTH 82° 26' 29" EAST 42.42 FEET; THENCE ALONG THE ARC OF SAID CURVE 47.12 FEET; THENCE NORTH 37° 26' 39" EAST 87.80 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 90° 00' 00", HAVING A RADIUS OF 35.00 FEET, AND WHOSE LONG CHORD BEARS NORTH 07° 33' 21" WEST 49.50 FEET; THENCE ALONG THE ARC OF SAID CURVE 54.98 FEET; THENCE SOUTH 52° 33' 21" EAST 150.00 FEET TO THE BEGINNING OF A NON-TANGENTIAL CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 90° 00' 00", HAVING A RADIUS OF 35.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 82° 26' 39" WEST 49.50 FEET; THENCE ALONG THE ARC OF SAID CURVE 54.98 FEET; THENCE SOUTH 37° 26' 39" WEST 87.79 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 89° 00' 19", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 07° 33' 31" EAST 42.43 FEET; THENCE ALONG THE ARC OF SAID CURVE 47.13 FEET; THENCE SOUTH 52° 33' 40" EAST 64.88 FEET; THENCE SOUTH 37° 47' 01" WEST 38.00 FEET; THENCE NORTH 52° 33' 40" WEST 75.02 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 89° 40' 23", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 82° 36' 08" WEST 42.31 FEET; THENCE ALONG THE ARC OF SAID CURVE 46.95 FEET; THENCE SOUTH 37° 46' 15" WEST 122.54 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH 66° 41' 52", HAVING A RADIUS OF 27.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 04° 25' 19" WEST 297.96 FEET; THENCE ALONG THE ARC OF SAID CURVE 315.47 FEET TO THE BEGINNING OF A CURVE; SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 43° 56' 04", HAVING A RADIUS OF 329.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 06° 57' 38" EAST 246.14 FEET; THENCE ALONG THE ARC OF SAID CURVE 252.28 FEET; THENCE SOUTH 15° 00' 27" WEST 41.68 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 89° 59' 40", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 29° 59' 43" EAST 42.42 FEET; THENCE ALONG THE ARC OF SAID CURVE 47.12 FEET; THENCE SOUTH 74° 59' 33" EAST 98.08 FEET; THENCE SOUTH 15° 00' 27" WEST 38.00 FEET; THENCE NORTH 74° 59' 33" WEST 103.08 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 90° 00' 00", HAVING A RADIUS OF 30.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 60° 00' 27" WEST 42.43 FEET; THENCE ALONG THE ARC OF SAID CURVE 47.12 FEET; THENCE NORTH 15° 00' 27" WEST 41.34 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH AN ANGLE OF 14° 12' 38", HAVING A RADIUS OF 376.07 FEET, AND WHOSE LONG CHORD BEARS SOUTH 07° 54' 08" WEST 93.04 FEET; THENCE ALONG THE ARC OF SAID CURVE 93.27 FEET; THENCE NORTH 89° 23' 48" WEST 50.00 FEET; THENCE NORTH 72° 26' 50" WEST 209.24 FEET; THENCE NORTH 35° 42' 33" WEST 322.50 FEET; THENCE NORTH 60° 49' 54" WEST 125.66 FEET; THENCE NORTH 00° 52' 33" EAST 244.22 FEET; TO THE POINT OF BEGINNING.  
LESS AND EXCEPTING:

BEGINNING AT A POINT BEING SOUTH 00° 52' 33" WEST 585.77 FEET ALONG THE SECTION LINE AND NORTH 90100'00" EAST 187.39 FEET FROM THE WEST QUARTER CORNER OF SECTION 6, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 00° 52' 24" EAST 527.38 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 126° 33' 56", HAVING A RADIUS OF 33.50 FEET, AND WHOSE LONG CHORD BEARS NORTH 64° 09' 22" EAST 59.85 FEET; THENCE ALONG THE ARC OF SAID CURVE 74.00 FEET; THENCE SOUTH 52° 33' 40" EAST 312.05 FEET; THENCE SOUTH 37° 34' 43" WEST 48.27 FEET; THENCE SOUTH 47° 41' 46" WEST 65.19 FEET; THENCE SOUTH 56° 52' 18" EAST 145.22 FEET; THENCE SOUTH 37° 46' 15" WEST 18.07 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE LEFT THROUGH 66° 41' 52", HAVING A RADIUS OF 331.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 04° 25' 19" WEST 363.93 FEET; THENCE ALONG THE ARC OF SAID CURVE 385.32 FEET TO THE BEGINNING OF A CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 31° 10' 18", HAVING A RADIUS OF 269.00 FEET, AND WHOSE LONG CHORD BEARS SOUTH 13° 20' NORTH 83° 26' 25" WEST 81.95 FEET; THENCE NORTH 27° 33' 23" WEST 132.40 FEET; THENCE NORTH 35° 07' 20" WEST 88.44 FEET; THENCE NORTH 17° 30' 25" WEST 69.70 FEET; THENCE NORTH 03° 34' 34" WEST 106.21 FEET; THENCE NORTH 89° 07' 36" WEST 149.50 FEET TO THE POINT OF BEGINNING.

CONTAINS 8.917 TOTAL ACRES





**EXHIBIT "C"**  
**DEFINITIONS**

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

**ACC.** ACC shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

**ACC RULES AND REGULATIONS.** ACC Rules and Regulations shall mean such rules and regulations as may be adopted and promulgated by the ACC pursuant to Sections 8.2 and 8.4 hereof as such rules and regulations may be amended from time to time.

**ANNEXABLE LAND.** Annexable Land means real property contiguous to the 22.25-acre tract of land in Ivins City, Utah known as Indigo Trails, or any real property with a boundary line that is within 3,000 feet of the Development.

**ANNUAL ASSESSMENT.** Annual Assessment shall mean the annual charge against each Owner and his Homesite, 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.

**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.

**ASSESSMENTS.** Assessments shall consist of Annual Assessments, Special Assessments, and Corrective Assessments, which Assessments shall be established and collected as provided in these CC&Rs and the Association's Governing Documents.

**ASSOCIATION.** Association shall mean INDIGO TRAILS OWNER ASSOCIATION, Inc., a corporation formed under the Nonprofit Corporation Law of the State of Utah, its successors and assigns.

**BASIC ACC STANDARDS.** Basic ACC Standards shall mean the standards set forth in Exhibit "D" and incorporated into these CC&Rs by this reference.

**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.

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

**BUDGET.** Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under these CC&Rs. It is estimated that the Board will prepare this Budget on an annual basis.

**BYLAWS.** Bylaws shall mean the Bylaws of the Association as adopted by the Board as such Bylaws may be amended by the Board and Declarant from time to time.

**CC&Rs or DECLARATION.** The CC&Rs or Declaration shall mean that certain Declaration of Covenants, Conditions, and Restrictions for Indigo Trails Subdivision Located in Ivins, Utah, as may be amended or supplemented from time to time.

**CORRECTIVE ASSESSMENTS.** Corrective Assessments shall mean a charge against a particular Owner and his Homesite representing the costs to the Association for taking corrective action as permitted herein. This term is further described in Section 6.9 of the Declaration.

**COMMON AREA.** Common Area shall mean and refer to any areas identified on any final plat maps of the Development, including without limitation clustered mailboxes, drainage structures/areas and all other portions of the Development which are not included within the Homesites and not otherwise owned by, or dedicated to, Ivins City.

**COMMON EXPENSES.** Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual estimated costs of: maintenance, management, operation, repair, replacement and improvement of 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, trash pickup and other services benefiting the Common Area; costs of maintaining clustered mailboxes including turn-arounds and access to such mailboxes; the costs of fire, casualty and liability insurance, worker's compensation insurance, and other insurance; the costs of bonding the members of the Board and the ACC; taxes, if any, paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against properties within the Development, or portions thereof; and the costs of any other item incurred by the Association for any reason whatsoever in connection with the Development, for the benefit of all of the Owners.

**DECLARANT.** Declarant shall mean KAYENTA DEVELOPMENT, INC., a Utah corporation, its successors and assigns.

**DECLARANT CONTROL PERIOD.** Declarant Control period shall mean the period during which the Declarant's rights shall exist. The Declarant's rights under this Declaration shall exist until Declarant no longer has any ownership interest in the Development or any Annexable Land.

**DEED OF TRUST.** Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

**DEVELOPMENT.** Development shall mean (a) Phase I-A as described in the Phase I-A Plat Map, attached hereto as Exhibit A, and (b) each Phase of Development as described in a Supplemental Declaration and annexed into the existing Development, as allowed under the terms of the CC&Rs.

**DEVELOPMENT AGREEMENT.** Development Agreement shall refer to the Development Agreement executed by Cowichan, LLC and Ivins City on April 5, 2016, which was Recorded on April 6, 2016, as Document No. 20160011921.

**DIRECTOR.** Director shall mean a member of the Association's Board of directors.

**DWELLING UNIT.** Dwelling Unit shall mean a detached building located on a Homesite designed and intended for use and occupancy as a residence by a single family, together with all Improvements located on the Homesite which are used in conjunction with such residence

**FISCAL YEAR.** Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

**GOVERNING DOCUMENTS.** Governing Documents shall mean each of the documents governing the Association and its Members and the Development including without limitation the Articles, Bylaws, CC&Rs, the Association's Rules and Regulations and the ACC Rules and Regulations.

**HOMESITE.** Homesite shall mean any residential lot or parcel of land for residential construction shown upon any Recorded subdivision map or Recorded parcel map of the Development, including the Phase I-A Plat Map, with the exception of the Common Area and any land owned by, or dedicated to, Ivins City.

**HOLIDAYS.** Holidays shall mean Christmas, Thanksgiving and New Year's Day, and such other holidays as the Board may designate from time to time.

**IMPROVEMENT.** Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to Dwelling Units and other buildings, walkways, sprinkler pipes, swimming pools, athletic fields or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water softening fixtures or equipment.

**MANAGING AGENT OR MANAGER.** Managing Agent or Manager shall mean a Person the Association appoints to act as agent and/or delegatee of the Association to perform certain duties, powers or functions of the Association. This term is further described in paragraph 4.5 of the CC&Rs.

**MEMBER, MEMBERSHIP.** Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Homesite, and every Owner shall be a Member of the Association. 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 the Association's Governing Documents.

**MORTGAGE, MORTGAGEE, MORTGAGOR.** Mortgage shall mean any Recorded mortgage or 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 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 Homesite 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."

**NOTICE.** Notice shall generally mean any notice that is or may be required under the Association's Governing Documents.

**NOTICE OF BOARD ADJUSTMENT.** Notice of Board Adjudication shall mean notice of the decision of the Board, delivered in person or in writing by mail or personal service, of its decision rendered at a hearing held pursuant to a Notice of Noncompliance by the Board and Right to Hearing.

**NOTICE OF MEMBER MEETING.** Notice of Member Meeting shall mean the notice that must be sent to Association Members to hold a Member Meeting. Notice of such meetings may be delivered either personally or by mail. Notice(s) of Member Meeting shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members.

**NOTICE OF COMPLIANCE BY ACC.** Notice of Noncompliance by the ACC shall mean a notice from the ACC directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with the Basic ACC standards or ACC Rules and Regulations.

**NOTICE OF NONCOMPLIANCE BY BOARD AND RIGHT TO HEARING.** Notice of Noncompliance by the Board and Right to Hearing shall mean a notice from the Board directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with any provisions of this Declaration and the opportunity for the Owner to have a hearing before the Board as provided for in the Rules and Regulations.

**OCCUPANT / RESIDENT.** Occupant or Resident shall mean any person who is occupying or residing at a Dwelling Unit within the Development. The Owner of the Dwelling Unit is responsible and liable with respect to the actions or omissions of his/her/its Occupants/Residents.

**ONSITE PARKING.** Onsite Parking shall mean parking stalls/area on a Homesite other than the main driveway, which is/are not directly in front of the garage of the Dwelling Unit.

**OWNER.** Owner shall mean the Person, including Declarant, 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 Homesite. 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.

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

**PHASE I-A.** Phase I -A is the first phase of the Development and consists of 12 Indigo Trails Homesites, and is known as Indigo Trails Phase 1-A, located in Ivins City, Utah.

**PHASE I-A PLAT MAP.** Phase I-A Plat Map shall mean the plat map (Map #3687) for Phase I-A which was Recorded on July 18, 2016 as Document No. 20160025601.

**PHASE OF DEVELOPMENT.** Phase of Development shall mean (a) Phase I-A, or (b) a subsequent phase or phases consisting of real property that can be annexed into the Development through means of a Supplemental Declaration recorded pursuant to Article IX of this Declaration.

**PLAN(S).** Plans shall mean plans and specifications that an Owner may submit to the ACC, Board and/or Declarant for approval of proposed Improvements to a Homesite.

**RECORD, RECORDED, RECORDABLE.** Record, Recorded, Filed or Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Washington County, Utah.

**RULES AND REGULATIONS.** Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and these CC&Rs, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Development is maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members, their occupants, guest, invitees, and licensees thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

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

**SPECIAL ASSESSMENTS.** Special Assessments shall mean a charge against each Owner and his Homesite, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI. This term is further described/defined in Sections 6.4 and 6.6 of the CC&Rs.

**STREETS.** Streets shall mean both public and private streets and thoroughfares within the Development except as they may be specifically identified otherwise.

**SUPPLEMENTAL DECLARATION.** Supplemental Declaration shall mean any supplemental declaration of covenants, conditions, and restrictions and reservations of easements, or similar instrument, which extends the provisions of these CC&Rs to all or any duly annexed portions

of the Annexable Land and may contain such complementary or amended provisions for such additional land as are herein authorized by these CC&Rs.

**TRAILER.** Trailer shall mean any trailer pulled behind a Vehicle that is used for hauling purposes.

**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 mixers trucks, gas trucks, delivery trucks, buses, aircraft, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

## EXHIBIT "D"

### BASIC ACC STANDARDS

#### 8.4 (a) Garage and Parking Area

All Dwelling Units shall have, as a minimum, a three-car enclosed garage of the dimensions of at least 10 feet x 20 feet per car. Also, to the extent possible given the size of the respective Homesite, each Dwelling Unit shall have an Onsite Parking area, not including the driveway, sufficient to accommodate at least two Vehicles.

#### 8.4 (b) Height

All Dwelling Units within the Development shall be low profile. Unless otherwise approved in advance in writing by the ACC and the Declarant, the maximum height of any Improvement – from the natural state of the ground directly below to the top of the roofline (exclusive of chimney projections) – shall be thirteen (13) feet. If a Homesite contains a natural slope, the height restriction generally follows the slope. Thus, the top of a Dwelling Unit may be five feet higher in the back than in the front if the natural slope of the lot where the Dwelling Unit is being constructed is five feet higher in the back than in the front. Notwithstanding the above, the maximum height of any portion of any Dwelling Unit shall not exceed thirteen (13) feet above the natural state of the ground below any two points on the perimeter of the Dwelling Unit. At the sole discretion of Declarant, height limitations may be adjusted in future phases. Any such adjustment shall be expressed in the supplementary declaration for the affected phase.

#### 8.4 (c) Exterior Surfaces

(i) *Material:* Exterior wall surfaces shall be predominantly smooth or sand finished plaster. Other surface finishes – including smooth and textured concrete, stone, tile, adobe, slate and brick with a cement wash – are allowed as a secondary surface if approved by the ACC. The intent is to ensure that exterior surfaces of a Dwelling Unit complement each other and are generally consistent with: (i) the architectural design of the Dwelling Unit; (ii) surrounding Dwelling Units; and (iii) the Developer's original intentions related to the Development.

(ii) *Color:* A pallet of approved colors and combinations thereof shall be established by the Declarant for use within the Development. The color of the exterior materials shall conform harmoniously with the plaster colors approved for use within the Development. Material samples, texture samples and color samples shall be prepared by Declarant and made available to Owners to more clearly define surface finishes and treatments, which are allowed within the Development. Wall color, texture and finish material may be further expanded and or restricted at the sole discretion of the Declarant.

#### 8.4 (d) Driveways

All driveways shall be paved or graveled. The color and material thereof shall be in a color that blends with the exterior of the Dwelling Unit located at the Homesite. The color and material of any driveways must be approved in advance by the ACC.

#### 8.4 (e) Courtyard and Patio Deck Surfaces, Walls, and Fences

All Courtyard surfaces, walls and fences shall be made of materials approved by the ACC, and the construction of these things must also be approved by the ACC and must be consistent with any ACC Rules and Regulations, these Basic ACC Standards and any related instructions or design restrictions from the Declarant.

**8.4 (f) Roofs, Roof Surfaces**

Dwelling Units within the Development shall generally have "flat roofs" with parapets around the perimeter of the roof. Flat roofs may have a maximum pitch of  $\frac{1}{4}$  inch per foot. With prior written approval of the ACC and Declarant, a small portion of the roof of a Dwelling Unit may consist of a low pitch roof (maximum pitch of  $2\frac{1}{2}$  x 12). Design details/restrictions regarding parapets, overhang projections, fascia treatment and other roofing specifications shall be established in architectural guidelines, which shall be provided and supplemented by Declarant from time to time. The Declarant shall establish roof color restrictions. The purpose of a roof color restriction is to render the roof as unobtrusive in appearance as possible when viewed from elevated vantage points of neighboring properties or common areas. Pantone Roof color matching code 412 CP or darker is the color to be used for roofing material unless another low reflective color, on a case-by-case basis, is approved by Declarant.

**8.4 (g) Landscaping**

A landscaping plan shall be submitted for ACC written approval prior to substantial completion of each Dwelling Unit. Landscaping shall emphasize and reflect the existing natural vegetation of the area and insure that existing natural vegetation remains preserved and undisturbed. Accordingly, the natural vegetation shall be preserved by removing it only where required to do so for the building site. Lawn areas shall be shielded from view and shall be limited to use areas defined by walls, structures, or elevation changes. Landscaping shall be accomplished in accordance with such requirements as may be promulgated from time to time by the ACC, including landscape guidelines established for that purpose. Each Owner is required to maintain the exterior of his/her Dwelling Unit in accordance with the approved landscape plan for the Owner's Homesite.

**8.4 (h) Homesite Coverage**

Declarant shall establish Homesite coverage area on a case-by-case, site-by-site, basis.

**8.4 (i) Site Construction Parameters**

Declarant shall (1) establish building setback requirements specific to each Homesite, and shall provide same to Owner and ACC upon request. (Establishing setback requirements shall mean establishing setback line locations beyond which the actual dwelling unit and associated garage or other buildings shall not be placed or constructed, but shall not be a limit for the construction of courtyard walls); (2) allow for variation in the placement of the Dwelling Unit with respect to said setback requirements; (3) further restrict or allow a relaxation of the amount of improved area on a given lot as established in 8.4 (h). If Declarant fails to provide setback specifications within 30 days of an Owner's written request, the setback determination shall be made by the ACC and shall be generally consistent with setback requirements for similar Homesites in the Development, and any setback information that the ACC can glean from looking at relevant plat maps.

**8.4 (j) Outside Installations**

No exterior radio antenna, shortwave or "C.B." antenna, television antenna, satellite dish or other antenna of any type shall be erected or maintained at any Homesite within the Development, unless shielded from view to the extent practicable and approved in advance and in writing by the ACC. No other projections of any type shall be placed or permitted to remain above the roof of any Dwelling Unit of Improvement within the Development, except pipes, vents, ventilators, chimneys or other similar devices commonly located on rooftops. No patio cover, wiring, or air conditioning fixture, water cooler, water softeners, or other devices shall be installed on the exterior of a Dwelling Unit or Improvement or be allowed to protrude through the walls or roof of the Dwelling Unit or Improvement unless the prior written approval of the ACC is obtained. Any outside installation shall be painted a color that is approved by the ACC, which shall generally match the color(s) of that portion of the Dwelling Unit adjacent to the outside installation. The intent is that any approved outside installation be as inconspicuous as possible.

**8.4 (k) View Obstructions**

No other improvement or obstruction shall be constructed, planted or maintained upon any Homesite in such location or of such height as to unreasonably obstruct the view from any other Homesite in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Homesite, the dispute shall be submitted to the Declarant, whose decision in such matters shall be conclusive and binding. Any item or vegetation maintained upon any Homesite which item or vegetation is exposed to the view of any Owner, shall be removed or otherwise considered altered to the satisfaction of the Declarant, if it determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The Board shall ensure that the vegetation on the Common Area, to the extent such is maintained by the Association, is pruned at such intervals so that the view of any Owner is not unreasonably obstructed.

**8.4 (l) Solar Energy Systems**

Each Owner may install a solar energy system on his Homesite which serves his Dwelling Unit so long as the design and location thereof receives the prior written approval of the ACC.

**8.4 (m) Lighting**

No exterior lights of a high intensity nature including, without limitation, mercury vapor, sodium vapor, metal halide, and florescent, shall be used within the Development. All exterior lighting sources shall be shielded from direct view to provide indirect or reflected light. All exterior lighting shall be approved in advance by the ACC. The direct point source of all interior lighting shall be shielded from view from the exterior of the Dwelling Unit from which the light originates.