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Gary Christensen Washington County Recorder

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TITLE

CORRECTED CC&Rs FOR SCENIC POINTE PHASE 2 SUBDIVISION

THIS DECLARATION of Covenants Conditions and Restrictions of Scenic Point Phase 2 Subdivision (hereafter "Scenic Point") is made by Scenic Point Land Holdings, LLC., a Utah limited liability company., (hereafter "Declarant"), which affects the following described property located in Hurricane, Washington County, Utah, (the Property):

DECLARATION

Declarant hereby declares that all of the Properties described in exhibit A shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Plat recorded concurrently. This is for the purpose of protecting the value and desirability of the Properties. This Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE 1-DEFINITIONS

The following definitions control in the Declaration. These terms: though defined. are generally not capitalized in the Declaration.

Section 1.1 Owner means Scenic Point Holdings, LLC, its successors and assigns.

Section 1.2 Declarant means Scenic Point Land Holdings, LLC., and the Declarant's heirs, successors and assigns.

Section 1.3 Declaration means this instrument, and any amendments.

Section 1.4 Common Areas are dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Declarant. Common Areas are identified on the Plat. Specifically exempted from Common Areas are Lots and dedicated public streets, gutters, and sidewalks that are identified on the Plat.

Section 1.5 Lot means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes any Common Areas.

Section 1.6 Member means every person or entity which holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.7 Mortgage includes "Deed of Trust" and mortgagee includes "Trust Deed Beneficiary".

Section 1.8 Owner means the entity, person, or group of persons owning fee simple title to any Lot which is within the Properties. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner."

Section 1.9 Plat or Map means the subdivision plat recorded herewith entitled "Scenic Pointe."

Section 1.10 Property or Properties means that certain real property herein described and such annexations and additions thereto as may hereafter be subjected to this Declaration.

Section 1.11 Home means a detached single family dwelling. When the term "Home" is used it includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines indicated on the Plat.

#### ARTICLE 2-PROPERTY RIGHTS

Section 2.1 Title to the Common Areas. The Declarant will maintain the Common Areas in good repair and condition at all times and to operate the Common Areas at its own expense in accordance with high Standards.

Section 2.2 Owner's Easement of Enjoyment. Every owner has a right and easement of use and enjoyment in and to the Common Areas, except as provided in 2.3 or otherwise set forth by the Trustees. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) The right of the Declarant, with the approval of sixty-seven (67%) of the entire membership, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Areas to any private individual, corporate entity, public agency, authority, or utility.

(b) The right of the Declarant to take such steps as is reasonably necessary or desirable to protect the Common Areas against foreclosure.

Section 2.3 Delegation of Use. An Owner or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Areas and facilities to family members, tenants, or contract purchases who reside on the Lot. Damage caused to the Common Areas and facilities, including personal property owned by the "Declarant", by a Member, or by a person who has been delegated the right to use and enjoy such Common Areas and facilities by the Member, shall create a debt to the Declarant. Debts owed to the Declarant as a result of such damage to the Common Areas and facilities shall be an assessment charged to the Lot Owner.

Section 2.4 Rules. The Declarant shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties.

Section 2.5 Lot. Each Lot is owned in fee simple by the Owner.

Section 2.6 Combination of Lots. In the event two or more adjacent Lots are held in identical ownership, the Lots may be combined for use and construction purposes. The utility easements which are between the private ownership areas in each of the adjacent Lots may be occupied for construction of a single home. For example, if two lots of the original Plat map were owned by the same Owner, and the Owner desired to construct a single Home, the Home could occupy the area between the Lots which is designated on the Plat for utility easements. The Owner would be required to respect the utility easements in the other, non adjacent boundaries of the Lots.

In the event of such Home construction across Common Areas or adjacent utility easements, as designated on the Plat, all easements and rights of the Association, its Members and third-parties, such as utilities, in such area which had been exercised prior to construction of the Home would remain in place, in perpetuity. However, all easements and other rights that had not been used prior to construction of the Home could not thereafter be exercised.

In the event of such a combination of Lots, each Lot shall continue to be assessed individually with respect to the assessments provided for in Article 4 of this Declaration.

#### ARTICLE 3-MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Membership. The term "Owner" includes contract purchases but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership. Membership automatically transfers upon transfer of title by the record Owner to another person or entity.

Section 3.2 Voting Rights. All members are entitled to one vote for each Lot owned. The Declarant and his assigns are entitled to three votes for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

#### ARTICLE 4-SPECIAL ASSESSMENTS

Section 4.1 Home Owner Fees. Neither the Declarant nor the members shall have authority to levy annual home owner fees without the written approval of 67% of the members.

Section 4.2 Special Assessments for Capital Improvements. The Declarant may levy in any assessment year a special assessment, applicable to that year only. Special assessments are applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Areas structures, fixtures and personal property related thereto. Special assessments must have the assent of sixty-seven percent (67%) of the votes of the entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 4.3 Additional Assessments. In addition to assessments for capital improvements, the Declarant shall levy such additional assessments as may be necessary from the time to time for the purpose of repairing and restoring the damage or disruption resulting to Common Areas.

Section 4.4 Notice and Quorum for Any Action Authorized Under Sections 4.1 and 4.2. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.2 and 4.3 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.5 Emergency Assessments. Notwithstanding anything contained in this Article 4, the Declarant, without membership approval, may increase any other possible assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one in which the Board finds one of the following:

- (a) An expense necessary to repair or maintain the Property or any part of it for which the Members are responsible where a threat to personal safety on the Property is discovered: or
- (b) An expense required by an order of a court.

Section 4.6 Effect of Non-Payment of Assessment remedies. Any assessment or installment thereof not paid within thirty (30) days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment that shall not exceed twenty-five percent (25%) of the installment.

The Trustees may, in the name of the Declarant, undertake one or more of the following:

- (a) Bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment;
- (b) may foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law: and/or
- (c) May restrict, limit or totally terminate any or all services performed by the Association in behalf of the delinquent Member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association. Under the power of sale the Lot of an Owner may be, sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed to trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

Section 4.7 Non-Use and Abandonment. No owner may waive or otherwise escape liability for any of the assessments provided for herein by non-use of the Common Areas or by abandonment of the Lot.

Section 4.8 Exempt Property. The following property subject to this declaration is exempt from the assessment created herein: (1) All property dedicated to and accepted by any local public authority; (b) All common areas; (c) unsold lots owned by the Declarant.

Section 4.9 Working Capital Funds. The Declarant may maintain a Working Capital Fund in segregated accounts for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis, to meet unforeseen expenditures, unbudgeted maintenance or repairs or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund shall not be refundable.

Section 4.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

#### ARTICLE 6-ARCHITECTURAL CONTROL COMMITTEE ("ACC")

The Declarant shall not be required to comply with the provisions of this Article in the initial construction of the Properties. The Declarant, or an Architectural Control Committee appointed by the Declarant, shall fulfill all functions of the Architectural Control Committee under this Declaration until the Declarant expressly surrenders this right by written instrument, or until each Lot in the Subdivision has a Home constructed thereon.

No structure, building, fence, out building, accessory structure, wall, or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or Home be made until the plans and specification showing the nature, kind, shape, height (not to exceed 28 feet, see section 8.4), materials (synthetic stucco with rock accents to be the minimum required), colors (to blend with the surrounding homes and natural landscape of the area) and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or, if such a committee is in existence, by an Architectural Control Committee composed of no less than three (3) representatives appointed by the Trustees. In seeking approval, an Owner shall submit the plans and specifications to a standing member of the Architectural Control Committee who, upon receipt thereof, shall provide the Owner with a written, dated acknowledgement of receipt. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been made.

#### ARTICLE 7-EXTERIOR MAINTENANCE

Section 7.1 Exterior Maintenance by Owner. Each Owner shall be responsible for maintenance to the exterior of the Home, including the front, sides and rear yard landscaping. The trustees shall, however, in the event of default by the Owner to perform such maintenance, and after a two-thirds (2/3) vote of the Trustees, and after ten (10) days written notice to the Owner of such Default (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior and/or yard maintenance upon an Owner's Home and Lot, whereon Default of the duties hereunder has occurred. The cost of such maintenance shall be assessed against the Owner of such Lot and/or Home.

Section 7.2 Exterior Maintenance by the Declarant. The Association shall be responsible for maintenance upon the Common Areas. The cost of such maintenance shall be a common expense. A Lot Owner is responsible for providing a continuous supply of water and power to the front yard and rear yard irrigation systems such that the streetscape is maintained in a pristine, desirable state; access to watering systems and clocks shall be available to the Declarant in order to administer watchful care during periods of an Owner's absence. Owners shall not turn off their water and or power during periods in which they are not occupying the home.

Section 7.3 Access at Reasonable Hours. The Declarant or its authorized agents, shall have a right of access onto an Owner's Lot for the purpose of assuring proper watering of landscaping during periods of the Owner's extended absence from the Home.

#### ARTICLE 8-USE RESTRICTIONS

Section 8.1 Construction, Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the sale of lots in Scenic Pointe and, if so elected, in the construction of homes on said Lots. As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Areas and facilities thereon, if any without charge during the sales and construction (if so elected) period to aid in its marketing activities.

Section 8.2 Building type: Commercial Operations Prohibited. In addition to those items specified in section 8.21 [Land Use and Building Type), the following will apply. No use of a Lot shall endanger the health or disturb the reasonable enjoyment of any other Owner or resident. The building or structure permitted to be erected, placed or permitted to be located on any Lot within the project shall be a detached single family dwelling, with an enclosed private garage for not less than two (2), nor more than four (4) automobiles and/or passenger trucks. The height of the garage header shall be limited to the height of the roof line of the house and shall not in any event exceed ten (10) feet except that more allowed if so elected, on a case by case review. No carport or other outdoor or partially enclosed parking facility shall be permitted except as provided herein. All construction shall be of new materials erected in full on the Lot and in conformance with the building and subdivision ordinances of the City of Hurricane. All structures shall be constructed in accordance with the zoning, land use and building ordinances of Hurricane City.

Section 8.3 Building Location. No Building shall be located on any Lot nearer to the front lot line than twenty (20) feet measured to the foundation of such building; nor nearer than twenty (20) feet to the rear Lot line; side yards are to conform to existing ordinances of not less than (7) feet on each side, except for corner lots which shall be offset as required by Hurricane City. For the purpose of this covenant, eaves, steps and open porches shall not be considered as part of a building for the purpose of determining such distances, provided, however, that this shall not be construed to permit any portion of a building, including such eaves, steps of open porches, to encroach upon another Lot.

Section 8.4 Residence/Minimum Square Footage and Building Height.

All single level homes shall have a total square footage of living area on the main level above ground and located within the area of a foundation for any residential dwelling constructed on any Lot of not less than 1400 square feet, exclusive of porches, balconies, patios, decks and garages, shall be not less than as follows:

This minimum standards as set forth above may be changed by the Trustees in the future; but in no case shall the minimum be set to less than 1400 square feet. Building height shall be measured from the top of the foundation to the highest point of the roof line of a home. No two story or higher buildings shall be constructed with a fully enclosed first floor area of less the 1400 square feet (making a total of not less than 2000 square feet between the combined stories). No one and one-half story building shall be constructed with a fully enclosed first floor area of less than 1400 square feet (making a total of not less than 2000 square feet between the combined stories). Maximum roof height measured vertically from

natural grade shall not exceed 28 feet height (determined by topography from licensed surveyor or civil engineer). Additional allowance may be made by the ACC to allow for walk-out basements.

Section 8.5 Construction Materials. In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are applicable to the Property:

(a) Home style, design, alterations, and additions will be approved by Declarant or 67% of voting members. Styles, colors, combinations, materials, proportions, examples may be furnished by the ACC to help owners plan/design to meet the intent of the architectural style of Scenic Pointe,

(b) Exterior construction materials will be limited to synthetic stucco with stone veneer or other materials approved for use by the ACC from time to time, and shall be colors and of materials indigenous to the area and as otherwise approved by the ACC. Aluminum siding material may be used in the finishing of soffit and fascia.

(c) Roofing material shall be of concrete or slate or bar tile. All roofing material must be noncombustible. Color of roofing material shall be harmonious with the structure and blend with adjacent natural surroundings. Tile surfaces shall not be reflective such as glazed tile or of a primary or bright color such as red, white, black and/or blue. Roof tops vents must be painted in same color as the roof materials. Sand should be added to the paint to reduce glare. Where possible, roof top vents, flashings, vents and flues are to be placed on the rear side of the roof thereby hiding/obstructing view from the streets or roads,

(d) Roof-mounted air-conditioning equipment, Including evaporative coolers, may be permitted by Declarant or Trustees. Galvanized sheet metal work should be kept clean and simple with a minimum of exposed metal and shall be painted with the same color as the roof. No evaporative coolers shall be allowed.

(e) Roof gutters shall be constructed into the roof structure with down spouts being run with the wall. Exposed gutters, down spouts, or scuppers shall be permitted if accentuated as part of the architectural detailing.

(g) Pastels or high gloss finishes may not be used, Complementary accent colors can be used on window trim, shutters and doors.

(h) Dome structures, Log Homes, Re-Located Homes, Manufactured homes and Earth or Berm homes of any type are not allowed.

(ii) Air conditioning equipment, utility pipes, satellite antennas and utility equipment shall be placed as discreetly as possible and screened with landscaping or fence materials. Roof mount heating or air conditioning equipment will not be allowed.

(J) Maintenance of Lot during construction. As relates to construction of improvements submitted to and approved by the ACC and in accordance with this Article, contractors or subcontractors as Owner's builders, must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean worksite during construction. Dirt or mud from the construction site or elsewhere, dispersed, directly or indirectly, on the public streets within the Project must be cleaned up within twenty- four (24) hours by the contractor or subcontractor, as Owner's builders. Contractors or subcontractors, as Owner's builders, shall be responsible for replacement of any concrete cracked anywhere within the Project as a result of Construction activities. The Declarant or Trustees may levy a Five Hundred Dollar (\$500) fine



against a violator of this provision. The fine shall be a charge against the Owner and shall be a continuing lien on the Lot as provided in Article IV.

{kl} Lateral and subjacent support and drainage: an owner's activities which affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent landowners.

Section 8.6 Driveways. Driveways shall be constructed out of concrete, or other hard materials as approved by the ACC. Driveways consisting of cinders, sand, gravel, asphalt, or dirt shall not be permitted on any Lot. There shall be sufficient driveway parking, of not less than two (2) vehicles per Lot parked side-by-side. Notwithstanding, the driveways shall not be intended or used as a primary parking place of the Owner's private vehicles; the purpose of a driveway shall be to allow ease of access to the Owner's garage, wherein the Owner's vehicles shall be parked. That is to say, garages shall not be used to store furniture and other household items such that parking of the Owner's vehicles is denied, being forced to be parked outside the garage. Such instance shall be a violation of the intent hereof and the Owner found parking personal vehicles outside of the garage on a regular, extended basis may be fined, at the election of the Trustees, who may set the extent of the fine as well as conditions further defining such infraction. It is the intent of this provision that streetscapes be unencumbered by the storage of such vehicles leaving driveways for the temporary, short term parking of guest vehicles.

Section 8.7 Recreational and Other Vehicles. No recreational or other utility vehicles may be parked within the Common Area, if any, or upon the driveways of any Lot for longer than a forty-eight (48) hour period in any given week period. In no event shall any recreational vehicle, boat camper, trailer, tent trailer, utility trailer, or tent be used for camping or for overnight accommodations by the Lot Owner or by the Lot Owner's guests in a Common Area of the Project or on the driveways of a Lot. Other than as provided above, recreational and other utility vehicles must be parked behind the front foundation line of a home on concrete pad in the side yard, which pad and recreational vehicle parking area shall be screened from street view with an ACC approved gate enclosure. The gate cannot block access to the electric meter. No awning(s), lean-to(s), tarp or other covering device shall be permitted. Notwithstanding that an Owner may temporarily store the above referenced items in the side-yard behind the front side-yard setback; the intent of this item is to maintain an attractive streetscape in Scenic Pointe. No owner shall park recreational and other utility vehicles on the streets.

Section 8.8 Signs, Commercial Activity. Except for one "For Sale" sign of not more than four (4) feet square, no advertising signs, billboards, objects or unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the Properties. "For Rent" signs shall not be allowed or permitted to be set on any Lot, Common Area, or public right-a-way within Scenic Pointe. A "For Rent" sign not to exceed 12 x 18 inches may be placed in a window inside a home.

Section 8.9 Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

Section 8.10 Household Pets, Animals, Livestock, Poultry, Agriculture. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, or part or portion of the Property, or in the common areas, except that dogs, cats or other recognized domesticated household pets, not to exceed four (4) in total number may be kept in a residence constructed on a Lot, provided that they are not kept, bred, or maintained for any commercial purposes. Such animals as are permitted shall be strictly controlled

and kept pursuant to all applicable laws and ordinances, and shall be on a leash or inside a fence when outside the Owner's residence. Animal owners shall not allow their pets to defecate or urinate on Common Area, public areas, or Lots belonging to others. Pet owners shall immediately clean up after their pets,

Section 8.11 Use of Common Areas. Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any Common Areas, other than as permitted in this Declaration or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Areas.

Section 8.12 Parking. No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 48 hours shall be subject to removal by the Trustees, at the Owner's expense. Driveways in front of each garage shall be used for parking of motor vehicles actually used by the Owner or occupant of the Home or their immediate family or guests, for personal use and not for commercial use as specified in section 8.6 (Driveways). Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association and in accordance with Section 8.7 (Recreational & Other Vehicles).

Section 8.13 External Apparatus. No Lot Owner shall cause or permit anything (including without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the ACC. Solar panels are exempt from this restriction.

Section 8.14 Exterior Television or Other Antennas. No exterior radio or other antennas, except one television/cable/satellite antenna, to the extent not prohibited by law, which shall not exceed twenty inches (20") in diameter, per Lot shall be placed, allowed or maintained upon any Lot or upon any structure or portion of the improvements situated and located upon the Properties without prior written approval of the ACC.

Section 8.15 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage shall be placed in proper, City authorized containers. Such container(s) shall not be stored or placed in the front or side yards which would render the container(s) visible from the street except when placed for collection.

Section 8.16 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in the Properties. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties.

Section 8.17 Interior Utilities. All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement which will adversely affect the other Lots or Owners.

Section 8.18 Lease occupancy or Other Temporary Occupancy. No owner shall lease a Home for transient or hotel purposes. Timeshare is prohibited. No Home shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Home rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of years.

By operation of law, an Owner may rent or lease the Owner's Home to another individuals(s). Any Owner so doing shall comply with the following provisions of this Section 8.18:

(a) Any temporary or other occupancy, other than by the titled Owner, the Owner's family, friends, and invited guests, must be for a period of at least six (6) months. No Owner may designate a tenant as family, friends or invited guests in order to avoid the intent of this Section 8.18.

(b) Each such occupancy shall be established between the parties by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board of Trustees, or appointee, together with a signed copy of the Temporary Occupancy Notification Form (available from the Trustees).

(c) Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, and all rules and regulations enacted by the Trustees. The lease agreement must further provide that any failure by lessee/renter to comply with the terms of such documents and rules and regulations shall be default under the lease.

(d) The Temporary Occupancy Notification Form may require the following information: (a) that the Owner has conducted credit and reference checks and concluded, thereby, that the lessee/renter will be a responsible, qualified renter; and (b) that the lessee has read this Declaration, the rules and regulations, and such other documents as published by the Declarant from time to time, and by signature of the lessee/renter, agrees to abide by same. The Temporary Occupancy Notification Form shall also bear the signature of the Owner, indicating thereby that the Owner has performed all of the above. Failure of the Owner to provide a copy of a properly referenced lease/rental agreement and Lease Notification Form to the Association shall result in the Association imposing on the Owner a fine of two-hundred fifty dollars (\$250.00), which shall be a lien upon such Owner's Lot. A modified version of the Notification Form may be used in cases of family, friends and guests occupying the Home for a period longer than two (2) consecutive weeks.

Section 8.19 Violation Constitutes a Nuisance. Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violated in whole or in part is declared to be and shall constitute a nuisance and may be abated by Declarant or affected property Owners and such remedy shall be deemed to be cumulative and not exclusive.

Section 8.20 Front and Rear Yard Landscaping. Within one planting season, not to exceed twelve (12) months after the completion of the construction of any home upon the property, the Owner must have the front yard completed, including a timed sprinkler system. No later than 2 planting seasons, not to exceed two (2) years following the date of occupancy, the Owner must have completed the side and rear lot landscaping including a timed sprinkler system.

Section 8.21 Land Use and Building Type. All Lots shall be used only for detached single family residential purposes. No professional, business or commercial use shall be made of the same or any portion thereof; provided, however that the Lot restrictions contained in this Article shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining a personal library therein; (b) keeping personal business or professional records or accounts therein; (c) handling personal, business or professional telephone calls or correspondence therefore; or (d) establishing a valid home occupation approved by the City of Hurricane, provided that there shall be no retail sales conducted at the Lot, nor customers or clients driving/parking in or about the subdivision therefore creating a nuisance, offensive or noxious activity which would remove the quiet enjoyment of the neighborhood.

"Family" is defined as any one of the following who occupy a dwelling unit:

- A. One (1) person living alone.
- B. Two (2) or more persons related by blood, marriage, adoption, or other legal relationship living together as a single housekeeping unit; and up to two (2) other unrelated persons residing on the same premises where the housekeeping unit is located.
- C. Two (2) unrelated persons and the children of either of them.
- D. Three (3) unrelated individuals living together as a single housekeeping unit.

Section 8.22 Lot Size. Lot sizes as described on the recorded plat of subdivision are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the recorded plat of said subdivision. As previously indicated, Lots may be combined for construction of a single residence. In the event of such combination of adjacent Lots, all easements and right of the Lot owners and third parties, such as utilities, in the boundary area between such Lots which has been exercised prior to construction of the home on the Lot would remain in place, in perpetuity. In such instance, no permanent structure or amenity may be constructed or placed over said easements as identified on the Official Plat. However, all easements and other rights in the boundary area between such Lots which had not been used prior to construction of the home could not thereafter be exercised. In the event of such a combination of Lots, the combined Lots shall be assessed as one Lot.

The ACC requires that the Lot owner obtain a soils test and recommendation(s) on foundation(s) prior to the approval of any proposed home design. The ACC may condition final approval following said recommendation. The lots within this subdivision shall require pad compliance prior to issuance of a building permit. Pad compliance shall be required if there is an elevation difference of four (4) feet or more to any adjoining pad. Pad compliance shall include showing engineered retaining walls and drainage plan.

Section 8.23 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. 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 or replacement of utilities, or which may change the direction of flow of drainage channels in the easement. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each Lot shall from time to time as may be reasonably required 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.

Section 8.24 No Hazardous Activities. No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 8.25 Motorbikes. All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only on established streets and parking areas and are specifically prohibited from all other portions of the Property, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational purposes anywhere within the project.

Section 8.26 Weed Control. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize weed, fire and other hazards to surrounding Lots, living units, the landscape easements, and surrounding properties, 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 those plants, which are injurious to crops, livestock, land or the public health.

Section 8.27 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood. Outdoor clothes drying shall be allowed on a rotary line screened from the street. No storage of any unused, temporary or seasonal items, which are visible from any public street or neighboring lot shall be permitted. No clutter, debris, or other such materials or items shall be permitted which are visible from any public street. No resident's use of a Lot shall endanger the health or disturb the reasonable enjoyment of any other owner or resident.

Section 8.28 Safe Condition. Without limiting any other provision of these covenants, each owner shall maintain and keep such owner's Lot 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 safety or reasonable enjoyment of other owners of their respective Lots.

Section 8.29 Business and Sales. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for the Developer, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Developer may be reasonably required, convenient or incidental to the construction of homes and sale of Lot during the Development Phase, and upon such portion of the Property including Lots or common area, if any, as Developer deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Developer shall have the right of use of any Lots or any common area and facilities thereon, including any landscape easement, community buildings, without charge during the sales and construction period to aid in its marketing activities.

#### ARTICLE 9-WALLS

Section 9.1 Separation Walls (also "Fences and Walls"). Each owner may construct block landscaping walls which provide borders to the Lot and separate same from other developments, public rights-of-way, and adjacent Lots. Such walls shall be deemed Separation Walls. It is the intent of this document that Separation Walls, if any, be owned and maintained by the individual Lot Owner or Lot Owners sharing a property/lot line. Separation Walls shall also include other yard/privacy walls and fences constructed by the Owner as part of the individual Home construction, pool construction, gazebo construction, etc.. as approved by the ACC. It is the intent of this provision that a Separation Wall shall be built down the center of a shared property line. It is the further intent that Lot Owners sharing a property line share in the cost of building the Separation Wall if both agree to the construction of such a wall.

Separation Walls shall be block with synthetic finish overall. All walls must receive approval as to type, construction, color, etc. from the ACC prior to construction. No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangle area formed by the street property lines and a line connecting them at points forty (40) feet from the intersection of the street, or in the case of a rounded property corner from the intersection of the street property lines extended unless permission given by Declarant. The same sight line limitations shall apply on any Lot within 12 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines. No fence, wall, hedge, shrub or foliage shall be planted, kept or maintained in such manner as, in

the opinion of the ACC, shall create a serious potential hazard or an aesthetically unpleasant appearance to the other residents of the area.

Fences, walls and other barriers shall be approved by the ACC and constructed of an approved block material and color. No fence shall be constructed in the front setback areas.

Section 9.2 Retaining Walls. Retaining walls are restricted to a maximum height as allowed by Hurricane City or twelve (12) feet, whichever is less, unless otherwise approved by the ACC. In the event approval is given for a retaining wall higher than twelve (12) feet, the retaining wall must be tiered and landscaping must be installed to hide the retaining wall and its tiers, with properly designed and engineered drainage systems.

Section 9.3 General Rules of Law To Apply. To the extent not inconsistent with the provisions of this Article, general rules of law regarding Separation Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 9.4 Repair and Maintenance. In the event a wall needs general maintenance, each Owner sharing a wall will be responsible for the maintenance of the wall side facing each Owner's Lot, and the cost thereof. The top of a wall requiring maintenance shall be shared equally by the sharing Owners. In the event damage is caused to a wall by a specific Owner, that Owner, solely, shall bear the cost of repairing the damaged wall, no matter where the repair needs to take place. No changes or alterations shall be made to Separation Walls by Lot Owners without prior written approval of the ACC.

Section 9.5 Decorations. No owner shall paint, construct addition to, color or otherwise decorate the interior or exterior surface of a Separation Wall. Any owner found in violation hereof shall bear the whole cost of refurbishing and restoring the affected wall to its original condition, consistent with other portions of the Separation Walls.

Section 9.6 Arbitration. The Board of Trustees may elect to serve as an Arbitration Board in settling disputes arising over a Separation Wall. In such instance, the Board's decision shall be final and the Owner's in dispute shall abide the Board's decision.

#### ARTICLE JO-EASEMENTS

Section 10.1 Encroachments. Each Lot and the property included in the Common Areas is subject to an easement for encroachments created by construction, settling and overhangs, as designed. A valid easement for said encroachments and for the maintenance of same shall and does exist, so long as they stand.

Section 10.2 Utilities. There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Areas. In the initial exercise of easement rights under this section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations.

Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Trustees shall have the right to grant such easement on said Property without conflicting with the terms hereof.

Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Properties. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or owners the right to use Common Areas and Common facilities, including (without limitation) recreational facilities.

Section 10.3 Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common Areas in the performance of their duties.

Section 10.4 Maintenance by Trustees. An easement is hereby granted to the Trustees, its officers, agents, employees and to any maintenance company selected by the Declarant or Trustees to enter in or to cross over the Common Areas and Owner's Lots in the furtherance of its duties set forth herein.

Section 10.5 Easement for Declarant. The Declarant shall have a transferable easement over and on the Common Areas and facilities and utilities for the purpose of making improvements on the Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same.

Section 10.6 Other Easements. The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE 11-EXPANSION

Declarant reserves the right, at its sole election, to expand the Properties to include additional property more particularly described below by unilateral action of Declarant, without the consent of Owners. The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY PREVIOUSLY DESCRIBED HEREIN, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT, Expansion shall occur by the Declarant filing:

1. An additional subdivision plat or plats creating additional Phases on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation; and
2. A Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing Homes, similar to the Homes already constructed, constructed out of similar materials, with similar Lot size. The Declarant shall have the sole discretion as to

development of the Common Areas in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the members.

#### ARTICLE 12-GENERAL PROVISIONS

Section 12.1 Enforcement. The Trustees, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Declarant, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Trustees or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Declarant or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Declarant or enforcing Owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 12.2 Severability. All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if anyone of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired: and the Declarant, Trustees and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section subsection, paragraph, sentence, clause or phrase.

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

Section 12.4 Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 12.5 Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12.6 Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 12.7 Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.



ARTICLES 13-AMENDMENT

Section 13.1 Declarant's Right to Amend. Until all portions Of "Scenic Pointe Phase 2" are developed, or until the right to enlarge the Properties through the addition of tracts of land or subdivisions terminates, which ever event first occurs, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration and/or the Plat, or allow a lot line adjustment according to law, as may be reasonably necessary or desirable at the sole discretion of Declarant.

Section 13.2 Lot Owners Right to Amend. Subject to other provisions herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Entire Membership, and thereafter, by an instrument signed by not less than sixty percent (60%) of the Entire Membership, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to the Declaration under this Section 13.2, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

ARTICLE 14-ASSIGNMENT OF POWERS

ANY AND ALL RIGHTS AND POWERS OF Declarant herein contained may be delegated, transferred or assigned.

ARTICLE 15-WASHINGTON COUNTY WATER CONSERVANCE DISTRICT RESTRICTION

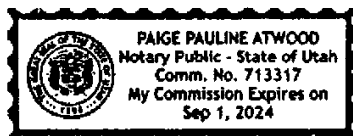
NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, ALL LANDSCAPE AREAS WITHIN THE PROJECT, PRIVATE AND COMMON, SHALL MEET ALL REQUIREMENTS OF THE WASHINGTON COUNTY WATER CONSERVANCY DISTRICT (WCWCD), AS APPLICABLE, SET FORTH, AND REQUIRED, AT THE TIME OF ANY SUCH LANDSCAPE INSTALLATION, OWNERS ARE UNDER OBLIGATION TO CONTACT WCWCD TO DETERMINE CURRENT GOVERNING PROVISIONS FOR COMPLIANCE.


Scenic Point Land Holdings, LLC

  
Austin Overman, Manager      3-23-23  
date

STATE OF Utah )  
COUNTY OF Salt Lake ) :ss

On the 23<sup>rd</sup> day of March, \_\_\_\_\_, personally appeared before me AUSTIN OVERMAN, who being duly sworn, did say, each for himself, that he said he is a Manager of SCENIC POINT LAND HOLDINGS, LLC, and that the within and foregoing instrument was signed in behalf of said Limited Liability Company and said Manager, duly acknowledge to me that said Limited Liability Company executed the same.



  
Notary Public  
My Commission Expires: 9-1-2024  
Residing at: Utah County

**Exhibit "A"**

ALL OF LOTS 1 THRU 50, SCENIC POINTE SUBDIVISION, PHASE 2, ACCORDING TO  
THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE RECORDER OF  
WASHINGTON COUNTY, STATE OF UTAH

**TAX PARCEL NUMBERS:** H-SCPE-2-1, H-SCPE-2-2, H-SCPE-2-3, H-SCPE-2-4,  
H-SCPE-2-5, H-SCPE-2-6, H-SCPE-2-7, H-SCPE-2-8, H-SCPE-2-9, H-SCPE-2-10,  
H-SCPE-2-11, H-SCPE-2-12, H-SCPE-2-13, H-SCPE-2-14, H-SCPE-2-15, H-SCPE-2-16,  
H-SCPE-2-17, H-SCPE-2-18, H-SCPE-2-19, H-SCPE-2-20, H-SCPE-2-21, H-SCPE-2-22,  
H-SCPE-2-23, H-SCPE-2-24, H-SCPE-2-25, H-SCPE-2-26, H-SCPE-2-27, H-SCPE-2-28,  
H-SCPE-2-29, H-SCPE-2-30, H-SCPE-2-31, H-SCPE-2-32, H-SCPE-2-33, H-SCPE-2-34,  
H-SCPE-2-35, H-SCPE-2-36, H-SCPE-2-37, H-SCPE-2-38, H-SCPE-2-39, H-SCPE-2-40,  
H-SCPE-2-41, H-SCPE-2-42, H-SCPE-2-43, H-SCPE-2-44, H-SCPE-2-45, H-SCPE-2-46,  
H-SCPE-2-47, H-SCPE-2-48, H-SCPE-2-49, H-SCPE-2-50