

DECLARATION OF PROTECTIVE COVENANTS  
FOR  
HARPER'S LANDING SUBDIVISION

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RANAE WILDE, DAGGETT COUNTY RECORDER  
2001 MAY 2 10:07am Fee 129.00 CL  
FOR LAWNIE MAYHEW

KNOW ALL MEN BY THESE PRESENTS:

THAT the undersigned is the owner of the following described real property situated in  
Daggett County, State of Utah, to-wit:

Block 1 (Lots 1 through 10); Block 2 (Lots 1 through 16); Block 3 (Lots 1 through 16);  
Block 4 (Lots 1 through 16); Block 5 (Lots 1 through 9); Block 6 (Lots 1 through 12); Block  
7 (Lot 1); and Block 8 (Lots 1 through 8) of HARPER'S LANDING SUBDIVISION PLAT  
as recorded with the Daggett County Recorder.

In consideration of the premises and as part of the general plan for improvement of the  
property comprising HARPER'S LANDING SUBDIVISION, the undersigned does hereby declare  
the property herein above described, subject to the restrictions and covenants herein recited.

PART A

RESIDENTIAL AREA COVENANTS

1. Planned Use and Building Type.

No lot shall be used except for residential purposes and such uses as are customarily incident  
thereto. No building shall be erected, altered, placed or permitted to remain on any lot other than  
detached single family dwellings not to exceed two (2) stories in height and a private garage for at  
least one (1) vehicle. No building or structure shall contain a basement level below the ground floor.  
All buildings and structures shall be constructed from new materials, and shall meet all applicable  
HUD and FHA requirements for single family dwellings. All buildings and structures shall conform  
to applicable state and local building codes.

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2. Prohibition of Commercial Use.

(a) No lot shall be used for commercial or business activity. No lot shall be used for commercial vehicle or equipment repair. Prohibited commercial or business activity does not include temporary use of any residential structure as a model home for sale and development of the Subdivision or rental by an owner of his lot for residential uses.

(b) No lot shall contain commercial or exterior business signage or advertising, or any of the same that is visible to public view. In addition to commercial signage, no lot shall have lighted, moving or flashing signs visible to public view. Prohibited commercial signage does not include a reasonably sized vacancy or "for sale" sign.

3. Architectural Control.

(a) No building shall be erected, placed or altered on any lot until the construction plans including a site plan have been approved by the Architectural Control Committee ("ACC") as to harmony of external design, materials and colors with existing structures, and as to location in respect to topography and finish grade elevation. One set of plans must be submitted for this purpose, which will be returned to the lot owner with approval or disapproval thereof.

(b) In the event the ACC or its designated representative fails to approve or disapprove within ten (10) days after plans and specifications have been submitted, approval will not be required and the related covenants shall be deemed to have been fully complied with.

(c) No external energy producing devices, including but not limited to solar panels and generators, shall be constructed, installed or maintained on any lot without the prior written approval of the ACC.

4. Easement.

For installation of and maintenance of utilities and drainage facilities, areas are reserved as shown on the recorded plat. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, nor shall any other activity be undertaken on a lot which may interfere with use of or access to such easement. The surface areas corresponding to the easement on each lot shall be landscaped and maintained continuously by the owner of such lot.

5. Property Condition Statement.

Notice is hereby given that the above described Lots may be subject to various conditions relating to the nature, consistency, moisture content, ground water, water migration, permeability, topography, erosion potential, radon emission potential, and the like, of the surface and subsurface materials, which should be taken into account in the design, location and construction of any structures to be built upon said Lots and the related uses for said Lots; and that all Owners of the Lots should obtain appropriate professional opinions relating to such reports and relating to the design, location and construction of the foundation and structure of any buildings and appurtenances each such Owner intends to construct upon the above described Lots, which may need to include special design requirements, a radon emission control system, a perimeter drain, a permanently installed sump pump, or other protective or preventative measures, as may be recommended by such professionals. By acceptance of delivery of the Deed of Conveyance for any of the above described Lots, each Owner thereof shall be deemed to have assumed all risks related to the foregoing matters. The Declarant makes no representations or guarantees relating to the foregoing or to the specific suitability of any Lot for the purposes intended by any Owner.

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6. Nuisances.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisances to the neighborhood. No clothes line or storage of any articles which are unsightly in the opinion of the ACC will be permitted, unless in enclosed areas built and designed for such purpose. Automobiles, trailers, boats, or other vehicles are not to be stored on the streets, in front of homes or in unfenced side yards that are exposed to streets.

7. Lighting.

All exterior lighting and interior lights reflecting outside of any given lot shall not be placed in any manner which shall cause glare or excessive light spillage onto any neighboring lots.

8. Garbage and Refuse Disposal.

(a) The owner/builder is responsible during the construction of a home to see that all construction debris is contained in a dumpster and regularly removed from the building site.

(b) No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each lot and its abutting street are to be kept free of trash, weeds, and other refuse by the lot owner. No unsightly material or objects, as determined by the ACC, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container, and all such containers shall be kept on a lot within an enclosed structure or screened from public view.

9. Animals and Pets.

(a) Dogs, cats, or other household pets, may be kept as permissible within current zoning regulations provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's premises and under handlers' control. Household pets do not include livestock, birds of prey, insects, or poultry or any other animal that could not be considered a small household pet and does not unreasonably bother or constitute a nuisance to other homeowners within the subdivision. Dogs and other similar pets shall be on a leash when not otherwise confined to its owner's lot.

(b) If, in the opinion of the ACC, or the Harper's Landing Homeowners Association ("the Association"), any of the aforementioned pets become an annoyance, nuisance or obnoxious to other owners throughout the subdivision, the ACC may require a reduction in the number of pets permitted or removal of any such pet considered dangerous, unsafe or a nuisance to the neighborhood.

10. Landscaping.

Each lot (front and side yards) is to be landscaped within 6 (six) months from the date the home receives final inspection approval (weather conditions permitting). Trees, lawns, shrubs, or other plantings provided by the owner of each respective lot shall be properly nurtured, and maintained continuously or replaced at the property owner's expense upon request of the ACC.

11. Maintenance.

(a) Each owner of a lot shall maintain all improvements located thereon in good and sufficient repair and shall keep the same painted or stained, with windows unbroken, rubbish and debris removed, and otherwise maintain the same in a neat and aesthetically pleasing condition. All damage to any improvements shall be repaired as promptly as is reasonably possible.

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(b) Each owner of a lot shall have the responsibility for all upkeep and maintenance of their lot up to the lip of the curb, whether sidewalks have been constructed or not.

(c) A building which is vacant for any reason shall be kept locked in order to prevent entrance by vandals.

(d) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a lot in open or otherwise exposed to public view.

(e) Any event or condition on a lot which the ACC may determine creates an unsightly, blighting, dangerous, or unsafe influence shall, in a manner to be determined by the ACC, be corrected, removed, or screened from public view by the owner of the lot. In the event an owner of a lot fails to correct or remove such condition, the Association, upon fifteen (15) days prior notice to the owner of the lot, shall have the right to correct such condition, and to enter upon said lot and into any building or structure thereon, if necessary, for the purpose of correcting, repairing, or removing the same, and the owner of the same shall promptly reimburse the Association, within ten (10) days of any written demand, for the cost thereof. The owner of the lot shall be liable for such costs, and his lot may be subject to a mechanics lien in the amount of such costs and any expenses associated with collecting such costs. At the option of the Association, such costs may be levied as a limited assessment against the lot in question.

(f) The foregoing provisions shall not apply to lots in a pre-development status.

12. Parking and Storage of Vehicles and Equipment.

Trucks larger than standard pickups, boats, tractors, campers, garden or other maintenance equipment and vehicles other than automobiles, when not in actual use, shall be kept at all times in an enclosed structure or in a paved sideyard area next to the garage, and at no time shall any of said

vehicles or equipment be parked or stored on a public or private right-of-way within the Subdivision. The parking or storage of commercial vehicles or equipment, trailers, mobile homes or temporary or transient living structures or quarters is prohibited, as is residence in or occupancy of the same on a lot. Parking on a lawn of a lot for other than temporary purposes, is prohibited. No inoperative vehicle shall be parked or stored at any time on a lot unless wholly within an enclosed structure. A minimum of two (2) off-street parking spaces for automobiles shall be provided to each lot in addition to garage spaces, exclusive of space directly in front of the garage.

13. Garage Doors.

Garage doors shall be kept closed except when open for a temporary purpose.

14. Subdivision of Lots.

No owner of any lot within the subdivision shall at any time be permitted to subdivide his lot into two or more sub-lots. No easement less than the whole as presently recorded shall be conveyed without the prior written consent of the ACC. The conveyance of incidental portion of a lot to another abutting lot for the purpose of correcting a common boundary or other similar purpose shall not be deemed a subdivision.

15. Fences

All fences, walls, hedges, high plantings, obstructions or other visual or privacy barriers shall be constructed and installed in compliance with applicable County and/or municipal ordinances, and in accordance with any fencing standards or specifications to be promulgated by the ACC.

16. Assessments

(a) Each owner hereby, and by acceptance of a deed to a lot, covenants and agrees to pay when due all regular, special and limited assessments or charges levied by the Association. All such

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assessments, together with interest, costs and reasonable attorneys fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the lot against which each such assessment is levied, and shall also be the personal obligation of the owner of such lot at the time when the assessment becomes due and payable, provided, however, that all such assessments shall be junior and subordinate to the lien of a first mortgage or first deed of trust encumbering the lot. The personal obligation for delinquent assessments shall not pass to an owner's successors in title unless expressly assumed by them. No owner may waive or otherwise avoid liability for any assessment by abandonment of his lot.

(b) Regular assessments shall be levied in conformance with the following:

(i) Regular assessments shall be assessed on a calendar year basis unless otherwise determined by the Association.

(ii) Regular assessments shall be based upon advance estimates of annual cash requirements as determined by the Association for the performance by the Association of its duties and responsibilities, including the maintenance and operation of any property owned by the Association and all easement areas controlled by the Association.

(iii) The initial annual regular assessment due and payable for that calendar year during which this Declaration is executed shall be in the amount of:

(A) \$15 per lot per year for developed lots without homes completed. A lot will be considered "developed" when the lot is eligible for building permit and the lot has been conveyed by the undersigned to an individual or builder.

(B) \$20 per lot per year for a completed home.



(iv) Regular assessments against each lot shall commence on the date title to said lot is conveyed to the owner.

(c) In addition to regular assessments, the Association may levy at any time a special assessment payable over such period as the Association may deem appropriate for the following purposes:

(i) To cure a deficit in the common and ordinary expenses of the Association for which regular assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Association.

(d) In addition to regular and special assessments, owners shall pay limited assessments as follows:

(i) The Association shall have the power to incur expenses for maintenance and repair of any lot or any improvements on a lot, if such maintenance and repair is necessary, in the opinion of the Association or the ACC, if the owner of said lot has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity thereof has been delivered by the Association to said owner. The Association shall levy a limited assessment against the owner to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys fees, arising out of or incident to such maintenance and repair and the assessment therefor.

(ii) In addition to maintenance and repair, the Association, upon certification from the ACC of the failure or refusal of an owner to correct a violation of this Declaration or the ACC rules or standards, shall have the power to correct any such violation on a lot or any improvement

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on a lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys fees shall be assessed to said lot owners.

(iii) The Association shall have the power to levy a limited assessment against owners and lots for any limited special purpose which the Association believes necessary with respect to certain lots but not an appropriate expense for payment by the Association. Such limited assessment shall not be made until the owners of said lots subject thereto have been given an opportunity, after notice, to participate in a hearing before the Association or any of its delegated representatives with respect to said limited assessment.

(e) Except as expressly provided to the contrary in this Declaration, regular and special assessments of the Association shall be levied at a uniform rate for all lots.

(f) The due dates for regular, special and limited assessments shall be the first day of the first month of the second calendar quarter, unless some other due date is established by the Association. Each installment of an assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Association from requiring that special or limited assessments be paid in a lump sum instead of installments. Any delinquent assessments shall bear interest at an annual as shall be set by the Association from time to time, or if none is so set, at an annual rate of twelve percent (12%). In addition to the interest charge, the Association may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for failure to timely pay an assessment when due.

17. Collection and Enforcement: Attorneys Fees and Costs.

The right to collect and enforce payment of the assessments levied by the Association is vested in the Association. In the event an attorney is employed for the collection of an assessment,

whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, or to foreclose a lien against the lot in order to collect on any amounts owed, the owner against whom such enforcement is sought shall pay reasonable attorneys fees and court costs in connection therewith. Such remedies are non-exclusive, and the Association may pursue any other remedies available at law or in equity.

18. Annexation.

The Developer may annex additional property to the Subdivision. Such annexation shall not require the approval of the Association or the ACC. Any such annexed property shall be subject to the terms and conditions of this Declaration the same as lots currently part of the Subdivision.

PART B

THE ARCHITECTURAL CONTROL COMMITTEE

1. Membership.

The initial membership of the Harper's Landing Subdivision ACC shall consist of those owners of lots to be chosen by the Association, and in a number to be determined from time to time by the Association, but in no event in a number less than three (3) persons. In addition, as long as the undersigned owns any lots in Harper's Landing Subdivision, the undersigned or his designated representative shall be a member of the ACC. A majority of the members ACC may designate a representative to act for it. In the event of death or resignation of any member of the ACC, the remaining members shall have full authority to designate a successor. Neither the members of the ACC nor their designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. Members of the ACC may be removed at any time by the Association, with or without cause.

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2. Purpose.

In making any determination, the ACC shall use its best efforts and judgments to insure that all construction and improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality to maintain the Subdivision as a quality residential development.

3. Non-liability.

Neither the ACC, nor any member thereof, shall be liable to the Association, any owner of a lot or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application, or any other decision it is responsible to make in connection with any lot in the Subdivision.

4. Variances. The ACC may authorize variances from compliance with the requirements of any conditions or restrictions contained in this Declaration when, in the sole discretion of the ACC or its delegate, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by at least two (2) members of the ACC.

5. Decisions. In reviewing any application or materials submitted to it for a decision, the ACC shall render said decision within thirty (30) days after the receipt of such application or materials. The basis for and/or conditions of any such decision shall be set forth with particularity in a writing to be signed by at least two (2) members of the ACC.

6. Inspection. The ACC is empowered to inspect all work in progress on any lot at any time.

7. Enforcement. The ACC, upon approval by the Association, shall be authorized on behalf of and in the name of the Association, to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition on any lot which violates the provisions of this declaration, or any ACC rule and standards. Such action shall not be taken until a lot owner has been given reasonable notice and opportunity to cure any such violation and fails to do so within such time. The ACC, upon approval by the Association and where appropriate, may levy a limited assessment upon a lot for costs and expenses arising from a violative activity or condition on that lot.

### PART C

#### THE HARPER'S LANDING SUBDIVISION HOMEOWNERS ASSOCIATION

1. Organization.

(a) The Association shall be organized as a Utah non-profit organization. Neither its Articles of Incorporation nor By-laws shall be interpreted so as to be inconsistent with the terms of this Declaration.

(b) The owner of each lot in the subdivision, including the undersigned as long as the undersigned owns any lots in the subdivision, belongs to and is allowed one vote in the Association for each lot owned. Membership shall be appurtenant to and inseparable from the lot owned by the member, and no membership shall be assigned, transferred, pledged or alienated in any way except upon the transfer of title to said lot and then only to the transferee of record title to such lot. The

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Association is to meet annually to elect a chairman and to vote upon business that is in the common interest of the property owners.

(c) The chairman is to serve at the pleasure of a majority of the owners of lots in the subdivision; hence the chairman may be terminated (voluntary or involuntary) by a majority vote of the resident owners of Harper's Landing. (Each lot receiving one vote.)

2. Powers of the Association.

(a) The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Utah, subject only to such limitations as may be expressly set forth in the Association's Articles of Incorporation and By-laws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the aforementioned instruments, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management of the Subdivision, and the performance of any other responsibilities incident thereto.

(b) No member of the Association shall be personally liable to any owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act, error, or omission of the Association, its chairman, or any other representative or agent of the Association or the ACC, provided that such member has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

2. Scope of Responsibilities. In addition to powers delegated to it by the aforementioned instruments, the Association shall conduct all business affairs of common interest to the members and owners, including, but not limited to, performing each of the following duties:

(a) Obtain, from reputable insurance companies authorized to do business in the State of Utah, and maintain in effect, comprehensive public liability insurance, full coverage directors and officers liability insurance, and such other insurance (such as fire insurance, workmen's compensation insurance, fidelity, performance, and other bonds), to the extent and in such amounts as deemed necessary by the Association in order to comply with applicable law and to carry out the Association's functions. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the regular assessments levied by the Association.

(b) Make, establish, promulgate, amend and repeal Association rules.

(c) Appoint and remove members of the ACC, all subject to the provisions of this Declaration.

(d) Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and the Association rules or ACC determinations.

(e) Prepare and distribute operating budgets and financial statements as deemed necessary by the Association.

#### PART D

#### GENERAL PROVISIONS

##### 1. Terms.

These covenants are to run with the land and shall be binding upon all parties and persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for a successive period of ten (10)

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years unless an instrument signed by a majority of the then owners of the lots have been recorded agreeing to change said covenants in whole or in part.

2. Enforcement.

Enforcement of the foregoing shall be a proceeding at law or in equity against every person, persons, or entity violating or attempting to violate any covenant herein, restraining violation of these covenants by injunctive relief, as well as by an award damages incurred thereby, including a reasonable attorney fee to the person or Association enforcing the same.

3. Severability.

Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

4. Conflict with Other Ordinances.

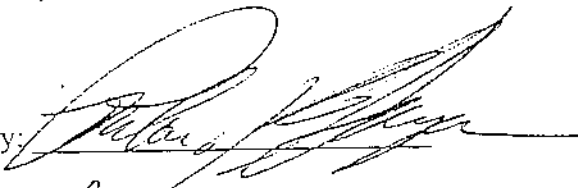
In the event of any conflicts between: (1) the provisions of this Declaration or the determinations of the ACC; and (2) and the requirements of any applicable ordinances of Daggett County, Utah or any municipality which may annex any portion of Harper's Landing Subdivision (as to that portion or portions so annexed), the more restrictive provisions shall control.

5. Non-waiver

Failure by any interested party to enforce any of the covenants, conditions, restrictions and easements herein contained in any one instance shall in no event be deemed or construed as a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequently thereto.

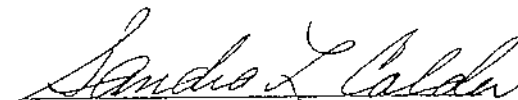


DATED this 19 day of March, 2001

By:   
RUBEN J. HARPER

STATE OF UTAH                    )  
  :SS  
COUNTY OF SALT LAKE    )

SUBSCRIBED AND SWORN TO before me this 19 day of March, 2001

  
Notary Public

My commission expires: 1-20-2002

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