

AMENDED AND RESTATED

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DECLARATION

OF

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COVENANTS, CONDITIONS & RESTRICTIONS

OF

JAMESTOWNE SQUARE

A PLANNED RESIDENTIAL UNIT DEVELOPMENT

July 2010

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

THIS AMENDED AND RESTATED DECLARATION of COVENANTS, CONDITIONS and RESTRICTIONS of Jamestowne Square (hereinafter called the "Declaration"), is made by the members of the JAMESTOWNE SQUARE HOMEOWNERS ASSOCIATION, Kaysville, Utah, (hereinafter called the "Association").

RECITALS

WHEREAS, Jamestowne Square was created by the Declaration of Covenants, Conditions and Restrictions of Jamestowne Square dated April 20, 1994, and recorded May 6, 1994, in the Records office of Davis County, Utah (referred to herein as the "prior CC&Rs"); and

WHEREAS, Jamestowne Square Homeowners desire to amend the prior CC&Rs to update and modify provisions in the prior CC&Rs; and

WHEREAS, the Homeowners of Jamestowne Square desire to (1) preserve and enhance the quality of life at Jamestowne Square, (2) prevent disregard for the welfare and consideration of others, (3) prevent nuisances and inconvenience to the residents of Jamestowne Square, (4) clarify the responsibility of the Trustees and the Home Owners relative to maintenance of homes and Common Area, and (5) enforce the rules of the Association more consistently, fairly and economically, and (6) to generally update, amend and restate the Jamestowne Square CC&Rs;

NOW THEREFORE, the Homeowners of Jamestowne Square hereby amend and restate all prior CC&Rs for Jamestowne Square recorded against the real property located in Davis County, Utah, known as Jamestowne Square and more fully described on Exhibit "A" attached hereto. If there is any conflict between this Amended and Restated Declaration and prior CC&Rs, this Amended and Restated Declaration shall control.

The Jamestowne Square Declaration and prior CC&Rs are hereby amended and restated as follows:

1. DEFINITIONS

The following definitions control in this Declaration.

- 1.1. **Association** means Jamestowne Square Association, its successor and assigns.
- 1.2. **Common Area** means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.
- 1.3. **Declaration** means this instrument and any amendments.
- 1.4. **Fee Simple** means an estate under which the owner is entitled to unrestricted powers to dispose of the property, and which can be left by will or inherited.
- 1.5. **Garden Homes** means a single family dwelling, one-story in height, without any walls or roofs in common with other single family dwelling lots. As used herein, Garden Homes may also be referred to as a residence, a home, or a unit.
- 1.6. **Limited Common Area** means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot wherein such Limited Common Area is located and subject to rights of the Association set forth in this Declaration.
- 1.7. **Lot** Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the originally constructed Garden Homes walls shall be treated for maintenance and use purposes:
 - 1.7.1. as Common Area, if adjacent to and naturally forming a part of common area;
or
 - 1.7.2. as Limited Common Area, if adjacent and naturally forming a part of limited common area. The purpose of laying out a lot larger than the Garden Home is to allow flexibility in the original Garden Home construction. Subsequent construction, if any, must nevertheless conform to original Garden Home location, size and appearance in all respects.
- 1.8. **Member** means every person or entity that holds membership in the Association. Every Member is an Owner, and every Owner is a Member.
- 1.9. **Mortgage** includes "deed of trust" and Mortgagee includes "trust deed beneficiary."
- 1.10. **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."
- 1.11. **Plat or Map** means the subdivision plat recorded herewith entitled "Jamestowne Square," consisting of one sheet, prepared and certified by Don C. Cottrell, a Utah Registered Land Surveyor, or any replacements thereof, or additions thereto.
- 1.12. **Property** means that certain real property hereinbefore described.
- 1.13. **Trustees** means the governing body of the Association.

2. PROPERTY RIGHTS

- 2.1. **Common Area** The Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards.
- 2.2. **Owner's Easements of Enjoyment** Every owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every lot, subject to:
- 2.2.1. the right of the Association to charge reasonable admission, use, service and other fees for the use of any service or recreational storage, or parking facility situated upon the Common Area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a lot.
 - 2.2.2. the right of the Association to limit the number of guests of members using the Common Area.
 - 2.2.3. the right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
 - 2.2.4. the right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.
 - 2.2.5. the right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
 - 2.2.6. the terms and conditions of this Declaration.
 - 2.2.7. the right of the Association, through its Trustees, to adopt rules and regulations concerning use of the Common Area.
- 2.3. **Limited Common Area** A lot owner is entitled to the exclusive use of the Limited Common Area adjacent and appurtenant to his residence, and to exclusive use of the parking area, if any, designated with his lot number on the plat. Limited Common Area is subject to rights of the Association set forth in this Declaration. The Association, through its Trustees, may adopt rules and regulations concerning use of the Limited Common Area.
- 2.4. **Delegation of Use** An owner is deemed to delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is nonresident shall have any such right of enjoyment.
- 2.5. **Lot** Each lot is owned in fee simple by the owner. However, area within the surveyed lot boundaries but outside the originally constructed Garden Home shall be treated as Common Area for maintenance purposes.

3. MEMBERSHIP AND VOTING RIGHTS

- 3.1. **Membership** Every owner is a member of the Association. The term "owner" includes contract purchasers 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 in the Association automatically transfers upon transfer of title by the record owner to another person or entity.
- 3.2. **Voting Rights** The Association has one class of voting membership: Members are entitled to one vote 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. A vote cast at any Association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

4. STATUS AND AUTHORITY OF TRUSTEES

- 4.1. **Powers** The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its name. The Trustees shall have, and is hereby granted, the following authority and powers:
 - 4.1.1. **To Enter** The power and authority to enter into or upon any lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of Jamestowne Square. Except in the case of an emergency, reasonable notice shall be given to the residents.
 - 4.1.2. **Grant Easements** The authority, without the vote or consent of the owners, mortgagees, insurers or guarantors of any mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and nonexclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of Jamestowne Square.
 - 4.1.3. **Execute Documents** The authority to execute and record, on behalf of all owners, any amendment to the Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment.
 - 4.1.4. **Standing** The power to sue.
 - 4.1.5. **Enter Into Contracts** The authority to enter into contracts which in any way concern Jamestowne Square, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

- 4.1.6. **Transfer Interests in Real Property** The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least sixty-seven percent (67% or 29 lots) of the members in the Association.
- 4.1.7. **To Purchase** The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least sixty-seven percent (67% or 29 lots) of the members in the Association.
- 4.1.8. **To Add Property** The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (4.1.7) above to Jamestowne Square, so long as it has been approved by at least sixty-seven percent (67% or 29 lots) of the members in the Association.
- 4.1.9. **Promulgate Rules** The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the trustees in carrying out any of its functions or to insure that Jamestowne is maintained and used in a manner consistent with this Declaration, including the right to make reasonable rules and regulations governing the use of the Lots and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Trustees may take judicial action against any owner to enforce compliance with such rules and regulations or other obligations of owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. The Trustees are empowered to adopt rules allowing for the termination of services upon non-payment of fees, as provided in Utah Code Annotated § 57-8a-204, to adopt rules for the collection of lease payments from tenants as provided in Utah Code Annotated § 57-8a-205, and to adopt rules allowing the Association to assess a fine against those residents, owners or tenants who violate the Association Declaration, regulations or rules, which rules shall be similar and consistent with those permitted for Utah Condominium Associations in Utah Code Annotated § 57-8-37. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorney fees, from the offending owner.
- 4.1.10. **Meetings** The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to members of the Association or residents not on the Board, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board meetings.
- 4.1.11. **Borrow Money** The power and authority to borrow money and pledge assets of the Association, so long as it has been approved by at least sixty-seven percent (67% or 29 lots) of the members in the Association.
- 4.1.12. **Assess Fines** Fines, as determined necessary by the Trustees, may be assessed against those who violate the provisions of these CC&Rs.

- 4.1.13. **All other Acts** The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Trustees to perform its functions on behalf of the owners.
- 4.2. **Delegation of Management Responsibilities** The Trustees may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than thirty (30) days, no such contract shall be for a term greater than one (1) year.
- 4.3. **Liability of Board of Trustees** The Association shall indemnify every Trustee against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any Trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Trustees) to which he may be a party by reason of being or having been a Trustee. The Trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The Trustees shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such members of the Board may also be members of the Association), and the Association shall indemnify and forever hold each such Trustee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any Trustee, or former Trustee may be entitled. The Association shall, as a common expense, maintain adequate general liability, officers and directors insurance coverage to fund this obligation, if such insurance is reasonably available.

5. FINANCES AND OPERATIONS

- 5.1. **Creation of the Lien and Personal Obligation of Assessments** The owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (4) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged.
- 5.2. **Purpose of Assessments** The assessments levied by the Association shall be used (1) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (2) for the improvement and maintenance of properties, services and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing the Common and Limited Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those Common and Limited Common Areas which must be replaced

on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association.

- 5.3. **Maximum Annual Assessment** The annual assessment may be increased each year not more than five percent (5%) above the assessment for the previous year, without a vote of the membership. The Association may change the basis and maximum of the assessments fixed by this section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67% or 29 lots) of the votes of members, voting in person or by proxy, at a meeting duly called for this purpose.
- 5.4. **Special Assessments for Capital Improvements** In addition to the annual assessments, the Association may levy in any assessment year, a special assessment applicable to that year only. Special assessments may be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures and personal property related thereto. Special assessments must have the consent of sixty-seven percent (67% or 29 lots) of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.
- 5.5. **Additional Assessments** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary for the purpose of repairing and restoring the damage of disruption resulting to streets or other Common or Limited Common Areas from the activities of the City of Kaysville, in maintaining, repairing or replacing utility lines and facilities thereon. It is acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they were installed by the developer and shall be maintained by the City to City specifications.
- 5.6. **Notice and Quorum for Any Action Authorized Under Sections 5.3, 5.4 and 5.5** Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 5.3, 5.4 or 5.5 shall be sent to all members at least thirty (30) days in advance of said meeting. At any meeting so called, the presence at the meeting of members, or of proxies, entitled to cast sixty-seven percent (67% or 29 lots) of the votes of the membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on 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.
- 5.7. **Uniform Rate of Assessment: Periodic Assessment** Both annual and special assessments must be fixed at a uniform rate for all lots.
- 5.8. **Date of Commencement of Annual Assessment: Due Dates**
- 5.8.1. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

- 5.8.2. The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessment in equal installments throughout the assessment year.
- 5.8.3. The Trustees shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.
- 5.8.4. The Association shall, upon demand, and for a reasonable charge, furnish written proof signed by a Trustee setting forth whether the assessment on a specified lot has been paid.

5.9. Effect of Non-Payment of Assessment — Remedies of the Association

- 5.9.1. Each monthly payment or assessment is due by the 15th of the month and may incur a late fee, as determined by the Trustees. 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. If any owner fails or refuses to pay an assessment after 30 days of the due date, that amount constitutes a lien on the interest of the owner in the property, and upon the recording of notice of lien by the manager or Trustees it is a lien upon the owner's interest in the property.
- 5.9.2. The Trustees may, in the name of the Association, (1) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (2) may foreclose the lien against the property 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 (3) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member. If the Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, the owner hereby transfers in trust to said Trustee all of his right, title, and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.
- 5.9.3. There shall be added to the amount of any delinquent assessment the cost and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with the reasonable rental for the lot from 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.

- 5.9.4. A power of sale is hereby conferred upon the Association which it may exercise. 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 of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.
- 5.9.5. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his lot.
- 5.9.6. If an owner fails or refuses to pay any assessment when due, the Trustees may, after giving notice and an opportunity to be heard as provided herein, terminate an owner's right to receive services paid as a common expense. Before terminating services, Trustees shall give written notice to the owner.
- 5.10. **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 or insured by the Federal Housing Administration or the Veterans Administration if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the 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 he takes title or from lien of such later assessments.
- 5.11. **Books, Record and Audit** The Association shall maintain current copies of the Declaration, Rules and Regulations (R&R), Policy & Procedures, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantors of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

6. INSURANCE

- 6.1. **Casualty Insurance on Insurable Common Areas** The Trustees shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss of damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and proceeds thereof shall be payable to, the Association. Insurance premiums shall be a common expense of the Association which shall be included in the regular annual assessments made by the Association.

6.2. **Replacement or Repair of Property**

6.2.1. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all lot owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such lot owner.

6.2.2. In the event of damage or destruction by fire or other casualty to any portion of Jamestowne Square covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or arguments. The Association is appointed attorney-in-fact of each owner for this purpose.

6.3. **Liability Insurance** The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause of endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

6.4. **Fidelity Insurance** The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (a) three months' operating expenses and (b) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

6.5. **Directors and Officers Insurance** The Trustees shall obtain adequate directors and officers liability insurance (aka Errors and omissions insurance).

6.6. **Annual review of Policies** All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

7. **ARCHITECTURAL CONTROL COMMITTEE**

7.1. No structure, building, fence, 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 Garden Home be made until the plans and specifications showing the nature, kind, shape, height, materials, colors 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 Trustee or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustee. In the event said Trustee, or the 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 in writing, the lot owner must resubmit the plans to all the Trustees and upon their failure to respond in writing within ten (10) days, approval will not be required and compliance with this article will be deemed to have been made.

- 7.2. Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67% or 29 lots) of the owners, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of Garden Homes and lots, and maintenance of the Common and Limited Common Areas, including walls, fences, driveways, lawns and plantings.
- 7.3. All Garden Homes, exclusive of porches, decks, patios and garages shall have a round floor minimum size of 1100 sq. ft. A minimum of one attached doublewide garage.
- 7.4. All main floor exterior walls of dwelling and garage shall have a minimum of four feet of brick. (Excluding bay windows or pop-outs where there is a hangover, no foundation.) All other exterior wall surfaces shall be stucco with aluminum soffits and fascias. Roofs are to be 25-year architectural asphalt shingles.

8. EXTERIOR MAINTENANCE

- 8.1. **Exterior Maintenance by Owner** Each owner shall be responsible for the maintenance, repair and replacement to the exterior of the Garden Home they own, including but not limited to maintenance, repair and replacement of the patio, deck and driveway which is on the owner's Garden Home lot. Homeowners shall be responsible to maintain all bushes, flowers, etc. immediately adjacent to their Garden Home. In the event an owner fails to perform maintenance which is the owner's responsibility, the Trustees after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), shall provide exterior maintenance upon the Garden Home and lot. The cost of such maintenance shall be assessed against the lot or Garden Home as a common expense to that lot owner.
- 8.2. **Exterior Maintenance by Association** The Association shall be responsible for maintenance upon the Common Area, the Limited Common Area which is not adjacent to any lot, and the area of any lot outside the walls of the Garden Home which is of the same character as surrounding Common or Limited Common Area. The cost of such maintenance shall be a common expense. The Association shall be responsible for snow removal only from the driveways, and shall not be responsible for the maintenance, repair or replacement of any patio, deck or driveway. In the event a deck or patio, driveway or other portion of the Common Area or Limited Common Area is damaged and the damage is covered by Association insurance coverage, then, and only then, shall the Association be responsible for repairing or replacing a deck, driveway or patio.

- 8.3. **Access at Reasonable Hours** For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or Limited Common Area at reasonable hours.
- 8.4. **Alteration of Certain Maintenance Duties by Rule** The duty of maintenance for the area of a lot outside the walls of the Garden Home, and the Limited Common Areas adjacent and appurtenant to the Garden Home, except as otherwise set forth in this Article eight (8), may be altered by the rule of the Association.

9. USE RESTRICTIONS

- 9.1. **General Use Restrictions** All of the properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including, but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the property and no subsequent building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.
- 9.2. **Leasing Restrictions**
- 9.2.1. The leasing of homes at Jamestowne Square is prohibited unless leasing is consistent with this Section.
- 9.2.2. Not more than four homes at Jamestowne Square shall be occupied by non-owners at any one time.
- 9.2.3. Any home purchased or inherited in Jamestowne Square shall not be considered for lease by the Board until said owner has resided in the home for at least two (2) years. (Unless they qualify for exemptions as outlined in 9.2.6.) Afterwards, no home may be leased for more than a total of twelve (12) months without renewal by the Board.
- 9.2.4. All leases, subleases, assignments of leases, and all renewals of such agreements shall be first submitted to the Trustees, who shall determine compliance with this Section and then approve or disapprove the application.
- 9.2.5. Any owner, desiring to lease his home or have it occupied by a non-owner, shall notify the Trustees in writing of this intent. No permission shall be granted to lease a home until less than four of the homes at Jamestowne Square are occupied by a non-owner.
- 9.2.6. The restrictions herein shall not apply if an owner moves from his home (1) due to temporary (less than three years) military, humanitarian, hardship due to temporary illness, religious or charitable activity or service, and (2) leases his home with the intent to return to occupy his home when the military, humanitarian, illness, religious or charitable activity has concluded. Nor shall the restrictions herein apply if a parent or child leases the home to a family member (parent, grandparent, child, grandchild, or sibling).

- 9.3 **Signs; Commercial Activity** Except for one "For Sale" sign of not more than five (5) square feet, no advertising signs, bill boards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the Association in furtherance of its powers and purposes set forth hereinafter and in its Rules and Regulations, as the same may be amended from time to time. Home occupations may be permitted as set forth by Jamestowne Square R&R's and/or policy.
- 9.4. **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.
- 9.5. **Animals** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said lots, except that dogs, cats or other household pets, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the Common Areas. This provision may be made more restrictive by rule of the Association.
- 9.6. **Use of Common Area** Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said Common Area, other than as permitted in this Declaration of Covenants 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 Jamestowne Square and is necessary for the protection of the interests of all said owners in and to the Common Area.
- 9.7. **Parking** Driveways within Jamestowne Square shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle which is inoperable or unregistered shall be placed in driveways, and any motor vehicle which remains parked over 72 hours shall be subject to fine or removal by the Association, at the owner's expense, and after notice. Such expense of removal shall be secured by the lien for assessment obligations previously provided. Motor homes and RVs may be parked on an owner's driveway for up to seventy-two (72) hours for the purpose of cleaning and loading the vehicle, etc., if it does not interfere with emergency equipment or block access by other vehicles.
- 9.8. **Planting and Gardening** No planting or gardening shall be done except in the area immediately adjacent to the home, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.
- 9.9. **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 Trustees.

- 9.10. **Exterior Television or Other Antennas** No exterior radio or other antennas, except one television antenna or dish which shall not exceed four feet in height, 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 Trustees.
- 9.11. **Garbage Removal** All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.
- 9.12. **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 or any work that will impair any easement of hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

10. EASEMENTS

- 10.1. **Encroachments** Each lot and the property included in the Common and Limited Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed by the developer. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or Common or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.
- 10.2. **Utilities** There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone and electricity, and a master television antenna system. 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 except as initially programmed and approved by the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, the Association shall have the right to grant such easement on said property without conflicting with the terms hereof. All utilities that are installed in, upon, under or through the Common Areas of the properties shall be maintained by the Association, or Kaysville City, as agreed.

- 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 and Limited Common Area in the performance of their duties.
- 10.4. **Maintenance by Association** An easement is hereby granted to the Association, its Trustees, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common and Limited Common Areas and any lot to perform the duties of maintenance and repair.
- 10.5. **Other Easements** The easements provided for in this Article shall in no way affect any other recorded easement.

11. GENERAL PROVISIONS

- 11.1. **Enforcement** The Association 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, 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 Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provisions hereof: the party against whom enforcement is sought shall pay to The Association or enforcing owner a reasonable attorney fee.
- 11.2. **Severability** All of said conditions, covenants and restrictions contained in this declaration shall be construed together. However, if any one of said conditions, covenants, or restrictions, or any part thereof shall be thereby affected or impaired; the Declarant, Association 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.
- 11.3. **Duration** The covenants and restrictions of this Declaration shall run with and bind the land, and shall exist for 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 until such time as 80% (34 lots) of the owners of lots vote to terminate the Association and revoke this Declaration, which termination and revocation shall also be subject to approval from Kaysville City.
- 11.4. **Amendment** The affirmative vote of at least sixty seven percent (67% or 29 lots) shall be required and shall be sufficient to amend the Declaration. This vote may be taken with or without a meeting of the owners. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Trustees. In such instrument the Trustees shall certify that the vote required by this Section for amendment has occurred.

- 11.5. **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.
- 11.6. **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.
- 11.7. **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.
- 11.8. **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.

12. EFFECTIVE DATE

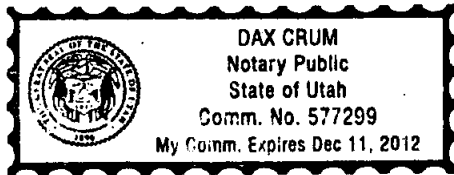
This amended and restated Declaration of Covenants, Conditions and Restrictions of Jamestowne Square shall take effect when recorded.

In witness where of, the undersigned, as President of Jamestowne Square Homeowners Association, hereby certifies that this document has met all requirements of the above named Association by affirmative vote of not less than 67% of the Owners.

By Reil W. Rives

State of Utah)
 ss.
County of Davis)

On this 7th day of December, before me personally appeared Reil W. Rives, who did say that (s)he is the President of the Jamestowne Square Homeowners Association and (s)he acknowledged before me that (s)he signed this Amended and Restated Declaration in behalf of Jamestowne Square.



Dax Crum
NOTARY PUBLIC

THE BUILDING AREAS AS SHOWN HEREON:

BOUNDARY DESCRIPTION

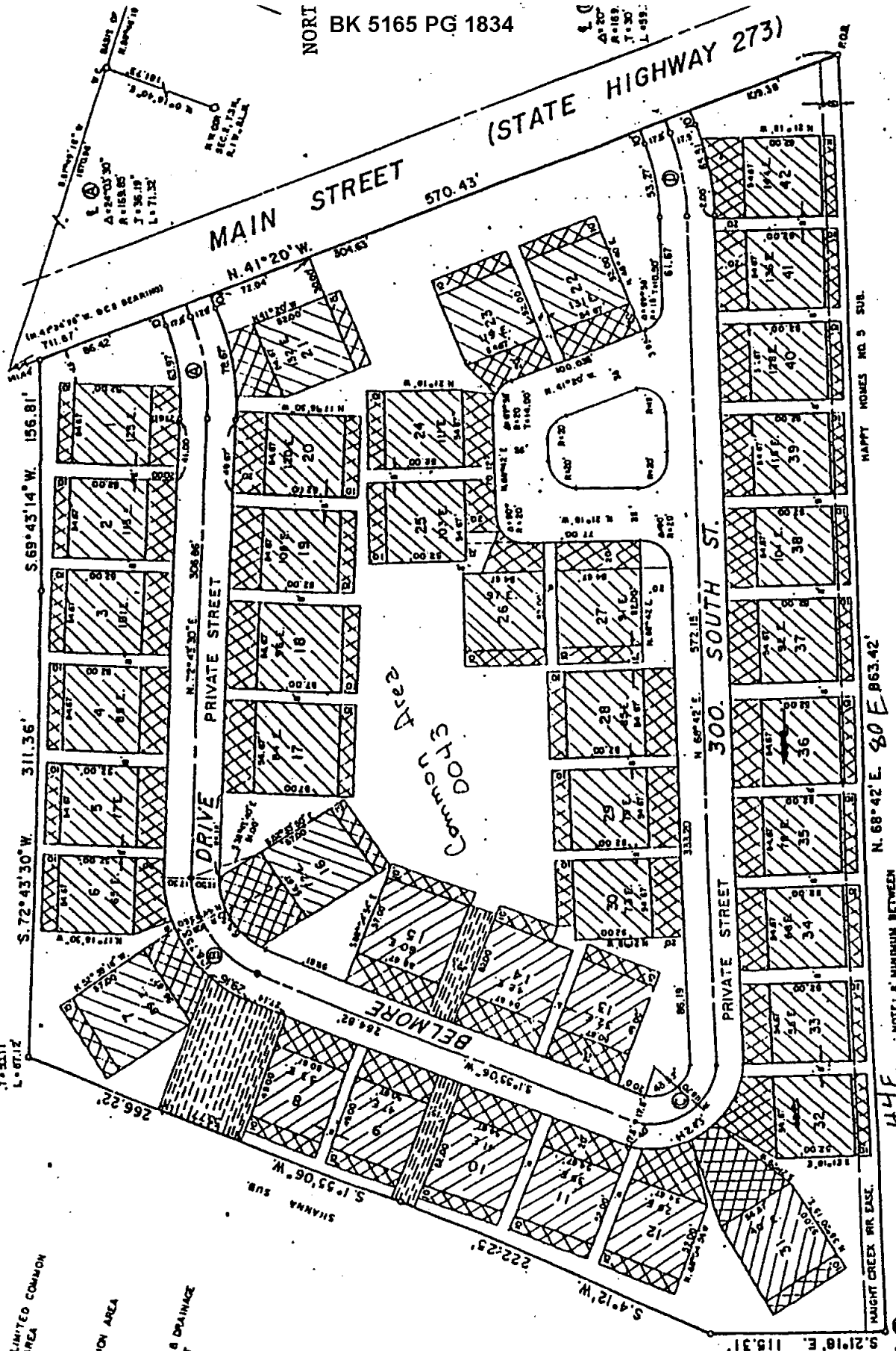
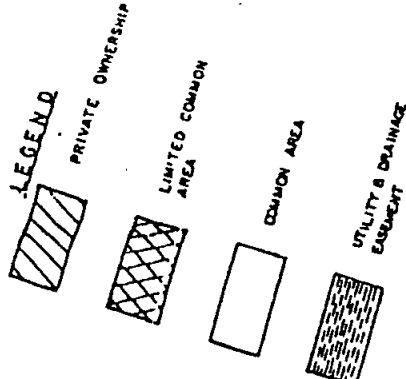
BEGINNING AT THE NORTHEAST CORNER OF HAPPY HOMES SUBDIVISION NO. 5 AND RUNNING THENCE N.41°20'W. 570.43 FEET ALONG THE WESTERLY LINE OF A HIGHWAY; THENCE S.69°43'14"W. 156.81 FEET; THENCE S.72°43'30"W. 311.36 FEET TO THE EASTERLY LINE OF SHANNA SUBDIVISION; THENCE S.1°55'06"W. 266.22 FEET TO THE NORTHEAST CORNER OF PROPERTY CONVEYED IN BOOK 484 PAGE 526; THENCE S.4°12'W. 222.25 FEET; THENCE S.21°18'E. 115.31 FEET TO THE NORTH LINE OF SAID SUBDIVISION; THENCE N.68°42'E. 863.42 FEET MORE OR LESS ALONG SAID NORTH LINE TO POINT OF BEGINNING.

CONTAINS 8.58 ACRES

UNIFIED 'WVIL' 'YUNIL'
 A PART OF THE NE⁴ SECTION 3, T.3N., R.1W., & SE⁴ SECTION 34, T.4N., R.1 S.L.M.

KAYSVILLE CITY, DAVIS COUNTY - UTAH

by BROUGH REALTY 487 NORTH MAIN KAYSVILLE



NORT BK 5165 PG 1834

EXHIBIT B

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