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AFTER RECORDING PLEASE MAIL COPIES TO:

GRANITE CONSTRUCTION COMPANY
Attn: Carlos Alegre
1000 North Warm Springs Road
Salt Lake City, UT 84116

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2005 Jan 20 4:41 PM FEE 49.00 BY LJ
RECORDED FOR FIRST AMERICAN TITLE CO

VIEW POINTE SUBDIVISION
Highland, Utah
A Residential Subdivision Development

DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS

GRANITE CONSTRUCTION COMPANY
DEVELOPER

***DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
AFFECTING THE REAL PROPERTY KNOWN AS***

View Pointe Subdivision

THIS DECLARATION is made as of this 20th day of January, 2005, by Granite Construction Company, a California corporation, hereinafter referred to as "Declarant".

WITNESSTH

WHEREAS, the Declarant is the record owner of real property more particularly described as follows:

All of Lots 101 through 422 inclusive, excepting common areas which shall be owned and maintained by Highland City, of View Pointe Subdivision, situated in the City of Highland, in the County of Utah, in the State of Utah, according to the official plats thereof recorded as Entry Nos 4669:2005, 46790:2005, 4671:2005 and 4672:2005, Map Nos. 10882, 10883, 10884 and 10885, in the office of the Utah County Recorder; hereinafter referred to as "Property".

WHEREAS, it is the desire and intention of the Declarant to subdivide and sell the Property described above and to subject the Property to mutually beneficial restrictions under a general plan of improvement for the benefit of all the Property in the subdivision and the future owners of said Property;

THEREFORE, to further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that all of the Property shall at all times, be owned, held, used and occupied subject to the provisions of this Declaration and to the covenants, conditions and restrictions herein contained.

NOW, THEREFORE, Declarant hereby declares, for the purpose of protecting the value and desirability of the Property, that all of the Lots shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which shall run with the Lots, and be binding on all parties having any right, title or interest in the Lots or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I - ARCHITECTURAL CONTROL COMMITTEE

- 1.1 COMMITTEE MEMBERSHIP:** The Architectural Control Committee ("Committee") shall consist of the following three members: Sean Fleming, Carlos Alegre and Brian Morin. Action by this committee shall be ratified by at least two members. In the event of death or resignation of any member of the committee, the remaining members of the committee shall have full authority to select a successor.
- 1.2 COMMITTEE DUTIES & PLAN SUBMITTALS:** The Committee shall have all authority to interpret these covenants. Prior to the commencement of construction, the new owner or builder must submit two sets of plans to include all front, side and rear elevations detailing all exterior materials to be used, floor plans (including scale & dimensions of the structure to be erected), material specifications, and site plan before the review process can commence. A landscaping plan may be required as part of this initial review if the Committee deems it necessary. The Committee will respond with an approval or disapproval as required in these covenants in writing within seven (7) calendar days. In the event the Committee or its designated representative fails to approve or disapprove within seven (7) calendar days after plans and specifications have been submitted to it, approval will not be required but all related covenants must be fully complied with. Liability for non-compliance with said restrictions and

covenants should not be borne by Committee as a result of misrepresentations by applicant or oversights by Committee.

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The Committee is authorized to charge a \$400.00 non-refundable review fee. No approval shall be given until the fee has been paid in full.

1.3 PERSONAL LIABILITY. Neither GRANITE CONSTRUCTION COMPANY, nor any member of the Committee (individually or collectively) shall be personally liable to any Owner, Member, or to any other person, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, or performed intentionally and with malice.

1.4 RIGHTS OF ENFORCEMENT: The Committee, as the agent and representative of the members, shall have the right to enforce the covenants set forth in this Declaration. The Committee, the Declarant, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations now or hereafter imposed by the provisions of the Declaration. In addition, the Committee and the Declarant shall have the right to enforce at law or in equity, all liens and charges now or hereafter imposed by the provisions of this Declaration. If the Committee, Declarant or any Owner prevails in any proceeding it is entitled to judgment against the breaching Owner or Member for all costs and reasonable attorney's fees associated with the action. Failure by the Committee or the Declarant to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

1.5 IMPROPER MAINTENANCE AND LIENS: In the event any portion of any lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of surrounding Lots or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event any Owner is failing to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Committee, the Committee may give notice thereof to the offending Owner that unless corrective action is taken within fourteen days, the Committee may cause such action to be taken at said Owner's costs. If at the expiration of said fourteen-day period of time the required corrective action has not been taken the Committee shall be authorized and empowered to cause such action to be taken, and the cost thereof shall be assessed against such Owner.

If the assessed cost is not paid by such Owner within thirty days, the amount of the cost plus interest, collection costs and reasonable attorney's fees, constitutes a lien upon the Owner's lot and upon the recording of notice of the lien by the Committee, it is a lien upon the Owner's lot in priority position to all other liens and encumbrances, recorded or unrecorded, except (1) tax and special assessment liens on the Owner's lot in favor of any assessing unit or special improvement district, and (2) encumbrances on the Owner's Lot recorded prior to the date such notice is recorded.

The Committee in cases of extreme hardship may release any such lien if it received other security for the payment of the delinquent costs, which it deems sufficient to protect the interests of the Association.

ARTICLE II - RESIDENTIAL AREA COVENANTS

2.1 DWELLING—SIZE, QUALITY, EXTERIOR MATERIALS: The following minimum finished square foot living area requirements shall apply. Living areas shall be calculated exclusive of garages, open porches, and basements. The "ground floor," as herein referred, shall be defined as the first floor with a floor elevation extending above the top back of curb at the driveway approach side of the lot.

a. **Dwelling Size:**

One Story Dwellings (Rambler): The required minimum above ground floor finished space shall be 1600 square feet with a minimum 3-car garage required, and 1800 square feet or more above ground floor finished space with a minimum of 2-car garage required.

Two Story Dwellings: The required minimum above ground floor finished space shall be 2100 square feet with a minimum 3-car garage required, and 2300 square feet or more above ground floor finished space with a minimum of 2-car garage required.

Multi-Level Dwellings: The required minimum above ground floor finished space shall be 2100 square feet with a minimum 3-car garage required, and 2300 square feet or more above ground floor finished space with a minimum of 2-car garage required.

THE COMMITTEE RESERVES THE RIGHT TO GRANT EXCEPTIONS TO THE ABOVE RESTRICTIONS IN ORDER TO PLACE AN APPROPRIATE HOME ON A SPECIFIC LOT DUE TO SLOPE RESTRICTIONS, LOT IRREGULARITY OR FOR ANY OTHER REASON THEY DEEM APPROPRIATE.

b. **Dwelling Quality:** All construction shall be comprised of new materials, with exception to the use of used brick with prior written approval of the Committee. All improvements on a Lot shall be made, constructed and maintained, and all activities on a Lot shall be undertaken, in conformity with all laws and ordinances of the city of Highland, Utah County, and the State of Utah which may apply, including without limiting the generality of the foregoing, all zoning and land use ordinances.

Dwelling Exterior Materials: Dwelling exterior shall be constructed of brick, stone, stucco, or a combination thereof with at least 25% being brick or stone on each wall. Soffit and facial materials may be aluminum or vinyl. All exterior materials are subject to the Committee approval.

Material for Roofs and Pitch: Roofing material (minimum 25-year guarantee) shall be high-grade architectural asphalt shingle or tile. All main roof areas shall have a 6/12 pitch or greater.

If the Committee permits detached structures, they are to be constructed of identical exterior materials of the primary structure unless otherwise approved by the Committee. All property owners are required to check with the governing municipality for building code requirements and zoning restrictions.

ALL DWELLING SIZES, FLOOR PLANS AND EXTERIOR MATERIALS MUST BE SUBMITTED TO THE COMMITTEE IN WRITING, AS OUTLINED IN ARTICLE 1.2 OF THESE COVENANTS, AND APPROVALS MUST BE OBTAINED IN WRITING PRIOR TO THE BEGINNING OF CONSTRUCTION ON THE HOME. IF SAID APPROVALS ARE NOT OBTAINED AND CONSTRUCTION BEGINS, OWNER SHALL BE SUBJECT TO A \$1000.00 FINE, AT THE COMMITTEES DISCRETION, PAYABLE TO THE COMMITTEE.

2.2 **FENCES, WALLS, AND HEDGES:** All fences or walls should be kept to a minimum to encourage the use of the common areas and aesthetics. The use of hedges are encouraged but are required to be in conformance with the guidelines found in this section as well as any and all landscape requirements found herein. Any fence or wall constructed on any lot shall be approved by the Committee and be constructed in conformity to the following guidelines:

a. **Material:** All allowed fences or walls shall be of brick, stone, wrought iron, rough-sawn cedar, or vinyl. No fence or walls shall be constructed of chain link, wire mesh, slump block (painted or

unpainted) or concrete block unless approved in writing by the Committee. Fences bordering the common areas shall be of the same construction and style as determined by the Committee.

b. **Height:** Any fence, wall, hedge, or other similar dividing structure (including without limitation, any "topping" on such structures) shall not be erected in a front yard to a height in excess of three (3) feet, nor shall any such structure be erected in any side or rear yard to a height in excess of six (6) feet. Where a retaining wall protects a cut below the natural grade and is located on the line separating Lots, a fence, wall or hedge or similar structure six (6) feet in height may top such retaining wall.

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2.3 **DRIVeways:** All driveways and walkways forward of the front setback line shall be constructed of concrete, brick, flagstones, or similar high-grade material and not of asphalt, and be of a width to provide side by side parking for a minimum of two cars.

2.4 **SPECIAL PROVISIONS:** The open space in the View Point Subdivision is owned, maintained, and controlled by Highland City and therefore is accessible to the public in general. In addition, the open space improvements connect to the Bonneville Trail System, which is also accessible to the public in general. The property to the east of the View Point Subdivision is wilderness area and federal law may prohibit the use of mechanized vehicles of any kind within its boundaries.

2.5 **DRAINAGE:** Generally, the side and rear property lines are deemed drainage easements, and no lot shall be graded and no structure or other obstacle shall be erected, placed, or permitted to remain thereon in such a way as to interfere with the established drainage pattern over the lot to and from adjoining land. In the event it becomes necessary to change the established drainage over a lot, adequate provision shall be made for proper drainage. Any fence, wall or structure erected along the side or rear property line of any lot shall be constructed so as to not prevent the flow of surface water from adjoining land where such flow is in accord with the established drainage. The owner of the lot shall continuously maintain the sloped areas of each lot and all improvements in them, except for those improvements for which a public authority or utility company is responsible.

2.6 **USE RESTRICTIONS:** The use of the Lots and common areas in the tract are subject to the following use restrictions:

- a. **Land Use.** Each lot shall be used for private residence purposes only, and no pre-existing structure of any kind shall be moved from any other location and placed upon said lot, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started, unless approved by the Committee. No Lot shall be subdivided or partitioned.
- b. **Nuisance.** No Owner or resident, or their family members, guests or invitees shall create or maintain a nuisance, or if a nuisance is created, it shall be promptly abated. A nuisance means any condition, activity or behavior which bothers, disturbs or annoys other residents, or interferes with their quiet and peaceful enjoyment of the neighborhood, or the creation or maintenance of any noxious or offensive condition including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property.
- c. **Temporary Structures.** No Owner or resident shall place upon any part of the Property any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Committee, although the Developer may install and use temporary structures in the development of the Property and marketing of the Lots or Units.

No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

- d. **Out Buildings.** It is understood that out buildings such as swimming pool and dressing facilities may be constructed on any lot as long as they are in conformity with the requirements of this Declaration and are approved by the Committee.
- e. **Energy Conservation Equipment.** No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Property without the prior written consent of the Committee.
- f. **Commercial or Business Use.** No commercial trade or business may be conducted in or from any Lot unless: 1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; 2) the business activity conforms to all zoning requirements for the Property, and the necessary and required permits and licenses are obtained; 3) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and 4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Committee. The terms "trade or business" shall have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or a license is required therefore. The leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this subsection.
- g. **Storage and Parking of Vehicles.** Motor Vehicles in the Property shall be subject to the parking rules and regulations adopted by the Management Committee from time to time. No automobiles, trailers, boats, racks, snowmobiles, motor homes, recreational vehicles or any other type of vehicles shall be stored on driveways for more than 30 days. Such vehicles that are properly licensed and in running condition may be stored on side of the lot if properly screened from view. The Committee must approve the acceptability of the screening structure. Unlicensed vehicles or vehicles that are not in running condition must be stored in garages or at locations off the Property. No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot, Building or parking space, or to create an obstacle or potentially dangerous situation. No resident shall repair or restore any vehicle of any kind in, on or about any of the common areas or Public Rights of Way, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of motor vehicles that may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.
- h. **Aerials, Antennas, and Satellite Systems.** No television, ham radio, citizen band or radio antenna or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any home or elsewhere if exposed to the view from any other lot, unless approved by the Committee. New digital satellite style "mini-dishes" are excluded from this provision, and do not require Committee approval. In no case will any such receiving or sending antenna or other device

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be allowed to interfere with the peace and quiet enjoyment of any neighboring lot owner's premises or home entertainment facilities or equipment.

- i. **Signs.** No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five square feet advertising the property for sale; or signs (of any size) used by a builder to advertise the property during the construction and sales period unless otherwise authorized by the Committee in writing.

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- j. **Pets.** No more than two (2) domestic pets (i.e. dogs, cats) are allowed per Lot unless the Committee grants a variance in writing. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on or about the property. Residents with pet(s) shall abide by the pet rules and regulations adopted by the Committee from time to time. No pet may be allowed to create a nuisance. The following activities are deemed to be a nuisance: (1) Pets outside a Dwelling Unit and not in a fenced yard or in a cage or on a leash and under the control of the pet owner or his designee at all times; and (2) Pets in violation of the rules and regulations. Pets, which constitute a nuisance, in the sole opinion of the Committee, must be removed from the Property.

No dog will be allowed to roam unattended. Dogs shall be kept in the house, a dog run or kennel, or in a fenced back yard. All dog runs or kennels shall be screened off and out of the direct view from any street, and should be in the back yard of the home. At other times, dogs shall be on a leash and under the direct control and supervision of the owner.

- k. **Laws.** Nothing shall be done or kept in, on or about any Lot or common area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
- l. **Damage or Waste.** No damage to, or waste of, the common area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Committee, Highland city, and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.
- m. **Common Area Structural Alterations.** No structural alteration to the common area or facilities is allowed without the prior written consent of the Committee and Highland city.
- n. **Repair of Buildings & Improvements.** No building(s) or improvement(s) upon any lot shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.
- o. **Mail Boxes.** The mailbox location is regulated by the US Postmaster and is restricted by the same. Some restrictions may also be placed by the city as to location due to the fact that there is not a sidewalk found on some sides of the road. The Owner is solely responsible to obtain instructions for proper mailbox location and restrictions from said entities.
- p. **Refuse & Disposal.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in the sanitary containers provided by the City of Highland. All containers or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
- q. **Excavations & Completing Improvements.** No excavation shall be made on any lot except in connection with the erection, alteration, or repair of a dwelling or other improvement thereon.

When excavation or the erection, alteration, or repair of a structure or other improvements has once begun, the work must be executed diligently and completed within a reasonable time.

2.7 **OFF-SITE IMPROVEMENTS:** Before taking title or possession of any Lot, the Purchaser shall inspect the completed offsite improvements. Except for deficiencies or defects specified by the Purchaser to the developer before ownership is taken, purchaser hereby releases the Developer from further obligations or responsibility as to the installation of the off-site improvements.

If the off-site improvements are not complete at the time ownership is taken, the Developer will, upon completion of the uncompleted off-site improvements, give written notice of completion to purchaser and, unless Purchaser notifies the Developer of any deficiencies within seven (7) days after the date of receipt of the notice of completion the off-site improvements shall be deemed acceptable to the Purchaser and the Developer will be released from any further obligations or responsibilities as to the installation of the previously incomplete off-site improvements.

CONDITIONS OF ACCEPTANCE: Upon transfer of title from Developer to Purchaser, Purchaser shall assume full responsibility for accepting property 'AS IS' and to make property inspection of the following prior to closing: 1) Sewer; 2) Culinary Water – house use; 3) Secondary Water – pressurized irrigation; 4) Gas; 5) Electric; 6) Telephone; 7) Curb & Gutter; 8) Sidewalks; 9) Asphalt roads; 10) Rough Grading; 11) others as applicable.

2.8 **LANDSCAPING:** Initial landscape requirements are as follows: The owner is to landscape all front and side yards (to the rear of the home) in a manner accepted and approved by the Architectural Control Committee. The owner shall begin landscaping within 12 months of builder's receipt of a Certificate of Occupancy from Highland City (weather permitting), or in the event that weather doesn't permit commencement of landscaping to begin the owner shall begin by April 1st. In either case, all of the landscaping requirements referenced herein shall be completed within 18 months of commencement. Initial landscaping of the common areas shall be exempt from these time restrictions.

The Owner may be required to submit two (2) sets of plans to include all front and side landscaping plans detailing all trees, plants, and grass locations; planters, rocks, berms, and retaining locations to be used before the review process can commence. The Committee shall have the authority to disapprove any landscape practices. The Committee will respond with an approval or disapproval as required in these covenants in writing within ten (10) calendar days. In the event the Committee or its designated representative fails to approve or disapprove within ten (10) calendar days after plans and specifications have been submitted to it, approval will not be required but all related covenants must be fully complied with. Liability for non-compliance with said restrictions and covenants should not be borne by Committee as a result of misrepresentations by applicant or oversights by Committee. A landscaping plan may be required sooner if the Committee deems necessary as a part of approving the architectural style of the home as found in Section 1.2 above.

The Committee is authorized to charge a \$200.00 non-refundable review fee for this service. No approval shall be given until the fee has been paid in full.

All parkstrips shall be landscaped and constructed in a similar manner as determined by the Committee and in conjunction with Highland city tree ordinance(s). All builders and/or owners shall incorporate the parkstrip landscape standards into their overall landscape plan. Parkstrip landscape standards shall be provided by the Committee to the Builder/Owner upon request and at no charge.

All trees, lawns, shrubs or other plantings, including those within the parkstrip, shall be properly nurtured and maintained or replaced at the Owner's expense upon request of the Committee.

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ARTICLE III - GENERAL PROVISIONS

3.1 ENFORCEMENT: 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. Failure by any Owner to enforce any covenants or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

3.2 SEVERABILITY; RELEASE OF DEVELOPER: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision, which shall remain in full force and effect. From and after the date Granite Construction Company transfers of record title to a lot governed by this Declaration, Granite Construction Company, and its directors, officers, employees, representatives, attorneys, agents, and affiliates, shall be unconditionally and fully released from any liability to such lot owner with respect to, and all obligations under, this Declaration. Granite may from time to time transfer its rights as "Declarant" hereunder to the owner of a lot (the "Subsequent Declarant") but the provisions of this Declaration will bind the Subsequent Declarant. A breach of this Declaration by any such Subsequent Declarant shall not constitute a breach of this Declaration by any other person, the rights and obligations of any such Subsequent Declarant being several and distinct from those of Granite Construction Company.

3.3 AMENDMENT: Exceptions to the strict interpretation of these guidelines that would cause undo hardship serving no public purpose may be appealed to the Committee. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

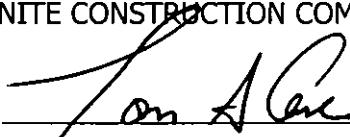
[Signature page follows]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has signed this Declaration as of the 20th day of January, 2005.

DECLARANT:

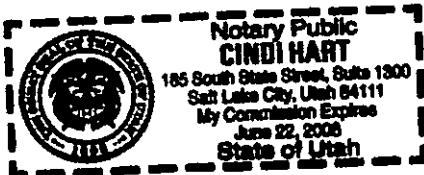
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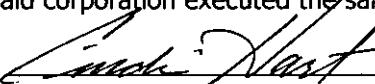
GRANITE CONSTRUCTION COMPANY

By: 

Tom Case, Branch Manager

On the 20th day of January 2005, personally appeared before me Tom Case, who being by me duly sworn did say that he is a Branch Manager of GRANITE CONSTRUCTION COMPANY that he signed the foregoing instrument by proper authority, in his capacity as the Branch Manager of Granite Construction Company, and the said Tom Case, duly acknowledged to me that said corporation executed the same.



Signed: 

NOTARY PUBLIC

Residing at 

My commission expires 1/22/08