

**PROTECTIVE COVENANTS FOR
POINTE WEST ESTATES SUBDIVISION**

A SUBDIVISION LOCATED IN ST. GEORGE
WASHINGTON COUNTY, UTAH

Kevin Ence Development, Inc., a Utah corporation, hereinafter referred to as the "Developer," is the owner of the following described property, hereinafter referred to as the "Property," located in Washington County, State of Utah, to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED
HEREIN BY THIS REFERENCE

Developer hereby includes all of the Property in the plat recorded herewith of Pointe West Estates Subdivision, and divides the Property into lots as shown on said plat and dedicates the streets shown on said plat to the public. The easements indicated on said plat are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements.

Developer further declares that all of the Property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and every lot, part or portion thereof. The acceptance of any deed to or conveyance of any lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer and with each other to accept, hold, improve, use and convey the Property described and conveyed in or by such deed or conveyance subject to said restrictions, covenants and conditions. These restrictions, covenants and conditions shall run with the land.

ARTICLE 1 - USE RESTRICTIONS

1.1 LAND USE AND BUILDING TYPE: All Lots shall be used only for detached single family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the lot restrictions contained in this section shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal, business or professional telephone calls or correspondence therefrom.

"Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.

1.2. LOT SIZE: Lot sizes as described on the recorded plat of the subdivision are considered minimum lot sizes and no person shall further subdivide any lot other than as shown on the recorded plat of said subdivision. Lots may be combined for construction of a single residence.

In the event of such combination of adjacent lots, all easements and rights of lot owners and third parties, such as utilities, in the boundary area between such Lots which had been exercised prior to construction of the home on the Lot would remain in place, in perpetuity. However, all easements and other rights in the boundary area between such lots which had not been used prior to construction of the home could not thereafter be exercised.

The lot purchaser is encouraged to obtain a soils test and recommendation on foundation from a Utah registered engineer prior to construction. The Architectural Control Committee may condition final approval following the recommendations set forth in the soils test document.

1.3. CARE AND MAINTENANCE OF LOT: The owner of each lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. Each lot shall be subject to an easement for access to make repairs upon adjoining lots and structures; provided however, that:

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

Each owner shall be responsible for maintenance of his lot. In the event any owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property, or affect adversely the value or use of any other lot, the Architectural Control Committee shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be a lien against the subject lot.

1.4. CARE AND MAINTENANCE OF THE LANDSCAPE EASEMENTS. The City of St. George shall be responsible for care and maintenance of the landscaping in the landscape easement that is shown on the plat recorded herewith and improvements thereon.

1.5. **EASEMENTS:** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each lot shall from time to time as may be reasonably required grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

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

1.7. **WEED CONTROL.** Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his lot so as to minimize weeds, fire and other hazards to surrounding lots, living units, the Landscape easements, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, livestock, land, or the public health.

1.8. **NUISANCES:** No noxious or offensive activity shall be carried on upon any lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the Property.

No clothes drying or storage of any articles which are visible from any public street shall be permitted. No clutter, debris, or other such materials shall be permitted which are visible from any public street.

No resident's use of a lot shall endanger the health or disturb the reasonable enjoyment of any other owner or resident.

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

1.10. OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such lot or portion of the Property.

1.11. ANIMALS, LIVESTOCK, POULTRY, AGRICULTURE: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, part or portion of the Property, except that dogs, cats or other domesticated household pets, two (2) or less in total number may be kept in a residence constructed on a lot, provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances, and shall be on a leash or inside a fence when outside the owner's residence.

1.12. GARBAGE AND REFUSE DISPOSAL: No lot or part or portion of the Property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property, shall be kept only in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

1.13. WATER SUPPLY: Each residence shall be connected to and use the municipal culinary water supply. No individual culinary water supply system shall be used or permitted to be used on any lot, part or portion of the Property.

1.14. SEWAGE DISPOSAL: Each residence shall be connected to and use the municipal sewage disposal system. No individual sewage disposal system shall be permitted on any lot, part or portion of the Property.

1.15. RV'S, BOATS, AND VEHICLES: No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles, shall be parked or stored upon any lot except within an enclosed garage or on a cement pad, with a screen so as to shield the vehicle from the street, behind the required front Lot line set-back area. No such vehicles shall be parked overnight on any street located within the subdivision. Trailers, motor homes, and trucks over 9,000 pounds GVW are not allowed to be stored upon any vacant Lot or street or road area adjacent to the Property.

Motor vehicles that are inoperable shall not be permitted to remain upon any street or lot or road areas adjacent thereto. In the event an inoperable motor vehicle remains upon any lot or road area for a period exceeding thirty (30) days, the developer or other lot owners residing within the Property may remove the inoperable motor vehicle after a ten (10) day written notice. The cost of such removal shall attach to the vehicle and the Lot as a valid lien in favor of the persons, entities, or parties causing

such removal. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle that is unable to operate in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of not less than six (6) weeks.

1.16. **BUSINESS AND SALES:** Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Developer, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Developer may be reasonably required, convenient or incidental to the construction of homes and sale of lots during the Development Phase, and upon such portion of the Property including lots as Developer deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices.

ARTICLE 2 - ARCHITECTURAL CONTROL

2.1. **ARCHITECTURAL CONTROL COMMITTEE:** Prior to the commencement of any excavation, construction or remodeling of any building or structure or of any addition to any building or structure, or modification of the natural topography of any lot, or installation of fences or landscaping elements, approval of the Architectural Control Committee is required.

- a. Two (2) complete sets of building plans and specifications shall be filed with the Architectural Control Committee, together with a site or plot plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the Architectural Control Committee may determine from time to time, and an application and such supporting material, such as samples of building materials, as the Architectural Control Committee deems necessary. No work shall commence unless and until the Architectural Control Committee shall endorse on both sets of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said Architectural Control Committee pursuant hereto. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee.
- b. Said Architectural Control Committee shall have the right to refuse to approve any such plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.

- c. The Architectural Control Committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.
- d. In the event said Architectural Control Committee fails to approve or disapprove in writing any such plans within sixty (60) days after the submission thereof to the Architectural Control Committee, then approval shall be deemed to have been given.
- e. The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the lot owner and the lot owner's designed, architect, or contractor. The Architectural Control Committee's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.
- f. The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.
- g. Until every Lot subject to the covenants has been transferred to a bona fide purchaser, Developer may appoint three persons to be the Architectural Control Committee. When title to all of the lots in the Property have been transferred by the Developer to bona fide purchasers, a majority of the owners of lots subject to these covenants shall elect and appoint members of the Architectural Committee, which shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the Property subject to these restrictions, covenants and conditions.
- h. The Architectural Control Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The Architectural Control Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to members who have made application to the Architectural Control Committee for approval of plans.
- i. The members of the Architectural Control Committee shall not receive any compensation for services rendered.

- j. Developer shall be exempt from the provisions, restrictions, and requirements of this Article, relating to marketing, signage, sales and other such commercial activities, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Protective Covenants.

2.2 PERMIT REQUIRED. No living unit, accessory or addition to a living unit, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a lot until any required permit or required approval therefor is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may reasonably require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Architectural Control Committee to refuse to approve any such matter.

2.3. DESIGN RESTRICTIONS: In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines, together with any guidelines hereafter established by the Architectural Control Committee, are applicable to the Property:

- (a) Purpose and Intent. The intent of these Architectural Guidelines is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture of the created environment of the project. These standards allow design latitude and flexibility, while ensuring that the value of the property will be enhanced through the control of site planning, architecture and landscape elements.

The Architectural Guidelines serve as an evaluative aid to owners, builders, project developers, design professionals, City staff, the Planning Commission, City Council and the Architectural Control Committee in the design review of individual, private and public developments within the Property. The City of St. George Zoning Regulations will apply for any area of design not addressed in these guidelines.

- (b) Permitted Structures. The only building(s) or structure(s) permitted to be erected, placed or permitted to be located on any lot within the subdivision shall be (i) a detached single family dwelling placed within the building envelope for each Lot and not to exceed the height requirements found in this section, which must include a minimum two car, private, enclosed garage, and (ii) accessory buildings. All construction shall be of new materials. All structures shall be constructed in accordance with the zoning and building ordinances of the City of St. George, Utah, in effect from time to time.

- (c) Minimum Area. The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any

single-story residential dwelling constructed on any lot within the subdivision shall be not less than 1,700 square feet, exclusive of porches, balconies, patios and garages. Two-story homes shall have a minimum of 1,200 square feet on the main level, with a total square footage of not less than 1,800 square feet, exclusive of porches, balconies, patios and garages.

- (d) Setbacks. The setback standards in effect by the City of St. George at the time of construction shall apply to each lot.
- (e) Building Height. The building height standards in effect by the City of St. George at the time of construction shall apply to each lot.
- (f) Dwelling. Elevations should be consistent with the intended architectural style of the residence and carried around all four elevations of the structure.
- (g) Facades. Facades shall be stucco, brick, or stone. No siding is allowed. Exceptions may be allowed only upon approval by the Architectural Control Committee.
- (h) Roof Materials. Roof material shall be limited to clay or concrete tiles or slate. Exceptions may be allowed only upon approval by the Architectural Control Committee. Colors shall be subdued earth tones to complement the natural beauty of the surrounding area, or in such other colors as may be allowed by the Architectural Control Committee.
- (i) Sheet metal, flashing, vents and pipes must be colored or painted to match the material to which they are attached or from which they project. No reflective exterior surfaces or materials shall be used.
- (j) Colors. Base building colors shall be in subdued earth tones to complement the natural surroundings and conform to or be in harmony with approved samples. White is prohibited. Pastels or high gloss finishes may not be used. Complementary accent colors can be used on window trim, shutters and doors.
- (k) Prohibited structures Dome Structures, Log homes, Re-located homes, manufactured homes, and Earth or Berm homes of any type are not allowed.
- (l) Temporary or Other Structures. No trailer, bus, basement, outhouse, tent, shack, garage, or accessory building shall be used at any time as a residence either temporarily or permanently. No old or second-hand structures shall be moved onto any lots nor shall any such structures be erected or placed on the Property at any time. It is the Developer's intention that all dwellings and other buildings to be erected within the

subdivision be new construction, of good quality, workmanship, and materials.

- (m) Driveways and Parking. There shall be area on the driveway (excluding sidewalk areas) to park not less than two vehicles per lot. Each driveway on a lot shall be constructed out of cement, brick, concrete, or interlocking pavers. Cinders, sand, gravel, asphalt or dirt shall not be permitted for driveway material in the front and side yard area of any lot.

- (n) Fences and Sight Obstructions. No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points forty (40) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within the (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines. No fence, wall, hedge, shrub or other structure shall be placed along any front lot line. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner as, in the opinion of the Architectural Control Committee, shall create a serious potential hazard or an aesthetically unpleasant appearance to the other lot owners.

- (o) Fences, walls and other barriers shall be approved by the Architectural Control Committee and constructed of approved material and color. No fences shall be constructed in the front setback area.

Individual owners may construct walls in the rear and along the side property lines, in accordance with local governmental ordinances. Fences and walls shall be constructed of cinderblock or wrought iron in a color that matches the perimeter wall that surrounds Pointe West. Exceptions may be allowed only upon approval by the Architectural Control Committee.

- (p) Retaining Walls. Retaining walls are restricted to a maximum height of five (5) feet, unless otherwise approved by the Architectural Control Committee. In the event approval is given for a retaining wall higher than five (5) feet, the retaining wall must be tiered and landscaping must be installed to hide the retaining wall.

- (q) Light used to illuminate garages, patios, parking areas or for any other purposes, shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists. Low level

outdoor illumination may be used for particular landscape features (trees, rock formations, etc.). All light sources must be shaded. No exposed bulbs are permitted.

- (r) Antennas for radio, television, or device for the reception or transmission of radio, microwaves or other similar signals are restricted to the attic or interior of the residence. One satellite dish antenna shall be allowed provided it is located in such area as may be designated by the Architectural Control Committee. In no event shall satellite dish antennas be visible from neighboring property or exceed 20 inches in diameter or width.
- (s) Air conditioning, heating equipment, and soft water tanks must be screened from view so as not to be visible from neighboring property or from the streets of the development, and shall be insulated for sound attenuation. Air conditioning units are not permitted on roofs.
- (t) Utility meters shall be placed in as inconspicuous a location as possible. Locations of meters are to be shown on the plans, and meters must be screened from view from neighboring property. Exposed piping should be painted to match exterior colors of the dwelling structure. The area immediately around the meters should be cleared to allow for access. Electric meters, switches, or circuit breaker boxes are not to be located in the same enclosure with the gas meter and regulator. Enclosures for gas meters and regulators are to be vented in compliance with the Uniform Building Code.
- (u) Mailboxes Cluster Mailboxes, if installed, are the only allowed mail receptacles. Otherwise, mailboxes must be installed in compliance with local governmental standards.
- (v) 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 Architectural Control Committee.
- (w) Landscaping Landscaping may include but shall not be limited to the preparation for the planting of lawn, grass or other appropriate ground cover, and appropriate shrubbery.

Each owner shall be responsible for the maintenance of his lot. In the event that any owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property or affect adversely the value of use of any lot, the Developer or any owner within the Property shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall become a lien against the subject lot.

- (x) Planting and Gardening Excepting the back yard area of a lot, no planting or gardening shall be done, 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 Architectural Control Committee.
- (y) Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. Lot owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.
- (z) Easements. Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.
- (aa) Lateral and Subjacent Support and Drainage. An owner's activities which affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their lot(s) to adjacent landowners.
- (bb) Signs; Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, 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 commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period.

2.4. CONSTRUCTION AND CONTRACTOR PROVISIONS: In order to promote a harmonious community development and protect the character of the Property, the following guidelines which are applicable:

- (a) Completion of Construction. The construction of any building or structure on any portion of the Property shall be continuously and diligently pursued from and after the commencement of such construction, and in any event shall be substantially completed within twelve (12) months after such commencement.
- (b) Building Materials Storage. No lot, part or portion of the Property shall be used or maintained as a storage for building materials except during a construction phase. Once a dwelling is occupied or made available for sale all building materials shall be removed or stored inside a dwelling, or accessory building out of public sight.
- (c) Landscaping. Front yard landscaping shall be completed prior to occupancy of a residence.
- (d) Soils Test. The Lot purchaser is encouraged to obtain a soils test and recommendation on foundation from a Utah registered engineer prior to construction.
- (e) Damages. Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the owner and/or their agents of any particular lot in the subdivision must be repaired within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner.
- (f) Maintenance of Lot During Construction. Contractors or subcontractors as owner/builders must provide on-site dumpsters during construction and are required to clean up the site daily to maintain a clean work site during construction. Dirt or mud from the construction site or elsewhere dispersed, directly or indirectly, on the public streets within the project must be cleaned up within twenty-four (24) hours by the contractor or subcontractor as owner/builder. The Architectural Control Committee may levy up to a Five Hundred Dollar (\$500) fine against a violator of (f) immediately above and/or the owner of the lot for each day of a continuing violation. The fine shall be a charge on the land and shall be a continuing lien on the lot.

ARTICLE 4 - DURATION, ENFORCEMENT, AMENDMENT

4.1. **DURATION OF RESTRICTIONS:** The covenants and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. Until the Developer or its designee ceases to act as the Architectural Control Committee, the covenants and restrictions contained herein may be modified,

amended or repealed in whole or in part at any time and from time to time by the Developer or his successor or assigns by recorded instrument.

4.2. **AMENDMENT:** Upon completion of the Development Phase, the covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of seventy-five percent (75%) of the number of Lots, provided that all signatures must be notarized and obtained within a 180 day period. After the Developer or its designee ceases to act as the Architectural Control Committee, written notice of any such proposed amendment shall be sent to every owner of any Lot, part or portion of the Property at least 30 days in advance.

4.3. **NOTICES:** Any notice required under the provisions of this document to be sent to any Lot owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such owner.

4.4. **CONSTRUCTION AND SEVERABILITY:** All of the restrictions, covenants and conditions contained in this document shall be construed together. Invalidity of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

4.5. **VIOLATION CONSTITUTES NUISANCE:** Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer, or a lot owner or owners. Remedies hereunder shall be deemed cumulative and not exclusive.

4.6. **ENFORCEMENT:** Each and all of the restrictions, covenants and conditions contained in this document is and are for the benefit of the Developer and of the lot owner or owners from time to time of any lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer or a lot owner or owners; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. The Architectural Control Committee may levy a fine or penalty not to exceed \$100 against any owner who fails to refrain from violation of these covenants after three (3) days written notice, and opportunity for hearing. A fine may be levied for each day of a continuing violation. All attorneys fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall

EXHIBIT "A" - LEGAL DESCRIPTION

Beginning at a point North 88°56'10" West, 1991.07 feet along the Section Line and South 780.45 feet from the North Quarter Corner of Section 26, Township 42 South, Range 16 West, Salt Lake Base and Meridian, said point being on the Easterly Right-of-Way Line of Dixie Drive and running thence South 65°03'17" East, 156.93 feet to the point of a 293.81 foot radius curve to the right; thence Southeasterly along the arc of said curve 218.25 feet through a central angle of 42°33'41" to the point of tangency; thence South 22°29'36" East, 173.87 feet; thence North 67°30'24" East, 33.00 feet on a radial line to the point of a 267.00 foot radius curve to the left; thence Southeasterly along the arc of said curve 152.78 feet through a central angle of 32°47'03" to the point of tangency; thence South 55°16'41" East, 19.45 feet to the point of a 600.00 foot radius curve to the left; thence Southeasterly along the arc of said curve, 117.55 feet through a central angle of 11°13'32"; thence South 34°42'26" West, 411.82 feet; thence North 51°50'13" West, 62.72 feet; thence South 83°04'35" West, 136.44 feet; thence North 83°20'04" West, 184.08 feet; thence South 84°53'55" West, 352.00 feet; thence North 38°16'08" West, 57.42 feet to a point on the Easterly Right-of-Way of Dixie Drive, thence along said East Line North 24°56'43" East, 920.65 feet to the point of beginning.

PROOFREAD
