

8084131

**WHEN RECORDED, PLEASE MAIL TO:**

W.L. Homes, LLC,  
dba John Laing Homes - Utah Division  
c/o David R. Prolo  
3653 West 1987 South  
Building 7  
Salt Lake City, Utah 84104

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12/06/2001 04:34 PM 126.00  
Book - 8537 Pg - 9147-9155  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
BY: ZJM, DEPUTY - WI 9 P.

**FIFTH AMENDMENT  
TO THE  
DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
THE ESTATES AT ROSE CREEK**

**Dated November 5, 2001**

Capitalized terms utilized throughout this instrument shall be defined to have the same meaning as in the Original Declaration, as defined herein.

*Accommodation only*

A. That certain Declaration of Covenants, Conditions, Restrictions and Easements for the Estates at Rose Creek, dated August 28, 1997 (the "Original Declaration"), has been executed by Watt Residential Partners, a California Partnership, d.b.a. Watt Homes, Utah Division, and duly recorded in the office of the Salt Lake County Recorder, State of Utah, on August 29, 1997, as Entry No. 6727909, in Book 7746, at Page 2241 of Records.

B. In order to annex and bring additional property within the provisions of the Original Declaration, the Original Declaration has been amended pursuant to that certain First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek, dated August 7, 1998, duly recorded in the office of the Salt Lake County Recorder, State of Utah, on August 12, 1998, as Entry No. 7054218, in Book 8062, at Page 2101 of Records (the "First Amendment"); that certain Second Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek, dated August July 1, 1999, duly recorded in the office of the Salt Lake County Recorder, State of Utah, on July 8, 1999, as Entry No. 7407092, in Book 8292, at Page 6477 of Records (the "Second Amendment"); that certain Third Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek, dated October 4, 2000, duly recorded in the office of the Salt Lake County Recorder, State of Utah, on November 6, 2000, as Entry No. 7754868, in Book 8399, at Page 5029 of Records (the "Third Amendment"); and that certain Fourth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek, dated June 26, 2001, duly recorded in the office of the Salt Lake

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County Recorder, State of Utah, on July 5, 2001, as Entry No. 7940602, in Book 8476, at Page 2867 of Records (the "Fourth Amendment").

C. The real property more particularly described in the Original Declaration, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment (the "Property"), is subject to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes as set forth therein, to: (i) insure the enhancement and preservation of property values, (ii) provide for the proper design, development, improvement and use of the Property by the Grantor and its successors-in-interest, and all other persons or entities who may subsequently acquire an interest in the Property consistent with a general master plan approach, and (iii) create a residential development of high quality;

D. Section 11.01 of the Original Declaration expressly provides that:

Additional property may be annexed and brought within the provisions of this Declaration by the Grantor, at any time, without the approval of any Owner or the Association. To annex additional property, the Grantor shall record an amendment to this Declaration which shall describe the additional property to be annexed, and the Grantor may supplement this Declaration with additional or different Covenants and Restrictions applicable to the annexed property, as the Grantor may deem appropriate, and the Grantor may delete or modify such covenants as are contained herein which the Grantor deems inappropriate for the annexed property. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with the same rights, privileges and obligations as all other members. The amendment of this Declaration as authorized by this Section, to annex additional property, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 12.02 of this Declaration. Notwithstanding the foregoing, it is anticipated that each annexed parcel shall be developed and platted as a separate and distinct subdivision and the annexation thereof shall not, by virtue of such annexation, be considered an alteration, amendment or change to the plat for any prior subdivision comprising the Property governed by the provisions of this Declaration.

E. W.L. Homes, LLC., a Delaware Limited Liability Company, d.b.a. John Laing Homes - Utah Division (the legal successor-in-interest to Watt Residential Partners, a California Partnership, d.b.a. Watt Homes, Utah Division, the grantor under the Original Declaration), as

owner of the property to be annexed pursuant hereto as hereinafter more particularly described, including the property described in The Estates at Rose Creek Plat 4-B, The Estates at Rose Creek Phase 6A, The Estates at Rose Creek Phase 6B, and the Estates at Rose Creek Phase 6C Plat 2 (the "Annexation Property"), and Washington Mutual Bank, FA, a federal association, successor by merger to Bank United, and First American Title Insurance Company, Inc., Trustee, as owners or holders of legal interests in the Annexation Property described in The Estates at Rose Creek Plat 4-B and The Estates at Rose Creek Phase 6C Plat 2 (W.L. Homes LLC, Washington Mutual Bank FA and First American Title Insurance, Inc. being collectively referred to herein as the "Grantor"), desire to annex and bring the Annexation Property owned by them as hereinafter described within the provisions of the Original Declaration, as amended, and to subject the Annexation Property to the covenants, conditions, restrictions, easements, reservations, limitations, and equitable servitudes set forth in the Original Declaration, as amended.

F. The Annexation Property, situated in Salt Lake County, State of Utah, is being developed and platted as separate and distinct subdivisions and is more particularly described as follows:

**THE ESTATES AT ROSE CREEK PLAT 4-B**

Beginning at the Southwest corner of the Estates of Rose Creek Plat 3 Subdivision recorded June 10, 1999 in Book 99-6P Page 157 in the Salt Lake County Recorder's Office; said point also being South 89°42'16" East 846.238 feet and South 894.078 feet from the Northwest corner of Section 2, Township 4 South, and Range 2 West, Salt Lake Base and Meridian; running thence along the Southerly boundary of said Plat 3 East 307.093 feet; thence North 39.617 feet; thence East 308.816 feet; thence South 66.714 feet; thence East 250.000 feet; thence South 79°51'08" East 59.483 feet; thence South 31°05'35" West 46.045 feet; thence South 64°39'16" East 110.705 feet to a point on a 764.000 foot radius curve to the left; thence leaving said boundary line and continuing along the arc of said curve a distance of 413.168 feet (Center bears South 64°39'17" East; chord bears South 09°51'10" West 408.151 feet through a central angle of 30°59'07"); thence South 84°21'36" West 142.099 feet; thence North 63°04'49" West 182.531 feet; thence North 73°58'07" West 171.908 feet; thence West 154.412 feet; thence South 59°21'26" West 58.115 feet; thence West 259.216 feet; thence North 00°16'35" East 440.005 feet to said point of beginning.

Contains 10.024 acres or 19 lots.

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003

**THE ESTATES AT ROSE CREEK PHASE 6A**

Beginning at a point which is North 89°25'50" West 39.000 feet from the Center of Section 2, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 89°25'50" West 1011.653 feet; thence North 01°46'32" West 284.848 feet; thence North 43°09'19" East 104.402 feet; thence North 39°53'20" East 158.411 feet; thence North 40°59'34" East 410.217 feet to a point on the Westerly line of Mirabella drive; thence along said Westerly line of Mirabella Drive the following 12 courses: thence Southeasterly 19.027 feet along the arc of a 764.000 foot radius curve to the left, chord bears South 48°17'46" East 19.024 feet; thence South 49°00'34" East 80.979 feet; thence Southeasterly 39.270 feet along the arc of a 25.000 foot radius curve to the right, chord bears South 04°00'34" East 35.355 feet; thence South 49°00'34" East 50.000 feet; thence Northeasterly 39.270 feet along the arc of a 25.000 foot radius curve to the right, chord bears North 85°59'26" East 35.355 feet; thence South 49°00'34" East 235.815 feet; thence Southeasterly 42.086 feet along the arc of a 25.000 foot radius curve to the right, chord bears South 00°46'54" East 37.290 feet; thence South 42°33'15" East 50.00 feet; thence North 47°26'45" East 11.314 feet; thence Northeasterly 36.453 feet along the arc of a 25.000 foot radius curve to the right, chord bears North 89°13'06" East 33.309 feet; thence South 49°00'26" East 20.492 feet; thence Southeasterly 302.956 feet along the arc of a 461.000 foot radius curve to the right, chord bears South 30°10'58" East 297.533 feet to a point on the Southwesterly boundary line of the Estates at Rose Creek Plat 5-A Subdivision; running thence along said line South 50°28'16" West 231.983 feet; thence South 89°25'04" East 187.631 feet; thence South 00°19'56" West 29.884 feet to the point of beginning.

Tax ID 32-02-100-049 ~~1032-02-131-006~~  
Contains 12.170 acres and 35 lots (excluding Lots A & B).

**THE ESTATES AT ROSE CREEK PHASE 6B**

Beginning at a point which is North 89°25'50" West 1050.653 feet from the Center of Section 2, Township 4 South, Range 2 West, Salt Lake Base and Meridian; and running thence North 89°25'50" West 751.315 feet; thence North 00°16'35" East 1360.065 feet; thence East 259.216 feet; thence North 59°21'26" East 58.115 feet;

thence East 154.412 feet; thence South 73°58'07" East 171.908 feet; thence South 63°04'49" East 182.531 feet; thence North 84°21'36" East 142.099 feet; thence Southeasterly 235.428 feet along the arc of a 764.000 foot radius curve to the left, chord bears South 14°28'04" East 234.497 feet; thence Southwesterly 37.812 feet along the arc of a 25.000 foot radius curve to the right, chord bears South 20°01'59" West 34.309 feet; thence South 26°38'17" East 42.000 feet; thence Southeasterly 37.812 feet along the arc of a 25.000 foot radius curve to the right, chord bears South 73°18'33" East 34.309 feet; thence Southeasterly 234.713 feet along the arc of a 764.000 foot radius curve to the left, chord bears South 38°46'54" East 233.791 feet; thence South 40°59'34" West 410.217 feet; thence South 39°53'20" West 158.411 feet; thence South 43°09'19" West 104.402 feet; thence South 01°46'32" East 284.848 feet to the point of beginning.

Tax ID 32-02-100-049 / 32-02-131-006  
Contains 28.904 acres and 29 lots (excluding Lots "A, B, & C")

#### THE ESTATES AT ROSE CREEK PHASE 6C PLAT 2

Beginning at a point that is S 00°16'38" W 1516.621 feet and West 16.500 feet from the Northeast Quarter Corner of Section 2, Township 4 South, Range 2 West, Salt Lake Base and Meridian; running thence S 00°16'38" W 925.020 feet; thence S 89°43'22" E 16.500 feet to a point on the easterly line of said section; thence continuing along said section line S 00°16'38" W 274.992 feet to the East Quarter Corner of said section; thence continuing along the Quarter section line at record bearing of N 89°25'31" W 333.006 feet to a point on said Quarter section line and a Southeast corner of the Estates of Rose Creek Subdivision Plat 2 recorded as No. 7040202 of Book 98-7P Page 200 in the Salt Lake County Recorder's Office; thence continuing along said boundary line of said subdivision N 00°16'38" E 1198.283 feet to a point on the easterly boundary line of the Estates of Rose Creek Plat 1 recorded as No. 6726198 of Book 97-8P Page 264 in the Salt Lake County Recorder's Office; thence S 89°43'22" E 316.500 feet to said point of beginning.

Contains 8.817 acres or 18 lots.

Tax ID 32-02-200-009  
011  
012

NOW, THEREFORE, pursuant to and in conformance with the provisions of Section 11.01 of the Original Declaration, the Grantor hereby amends the Original Declaration, as amended, and declares that:

1. The Annexation Property as described above, and each lot, tract or parcel thereof, is hereby annexed to the Original Declaration, and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to and in conformance with all of the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes ("Covenants and Restrictions") set forth in the Original Declaration, as amended, the terms and provisions of which are incorporated herein by this reference as though fully set forth herein.

2. There shall be no additional or different Covenants and Restrictions imposed by this Amendment which are applicable to the Annexation Property, nor shall any of the Covenants and Restrictions set forth in the Original Declaration, as amended, be deleted or modified with respect to the Annexation Property.

3. The Owners of Lots within the Annexation Property shall become members of the Association with the same rights, privileges and obligations as all other Members.

4. The annexation of the Annexation Property hereto shall not, by virtue of such annexation, be considered an alteration, amendment or change to the plats for the Property.

5. This amendment to the Original Declaration, as amended, is made pursuant to and in conformance with the provisions of Section 11.01 of the Original Declaration, as amended, and is expressly excluded from the requirements of Section 12.02 of the Original Declaration, as amended. Except for the amendment provided herein with respect to the annexation of the Annexation Property, the Original Declaration, as amended, remains in full force and effect and otherwise operates and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, the Grantor has executed this Fifth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek as of the date first above written.

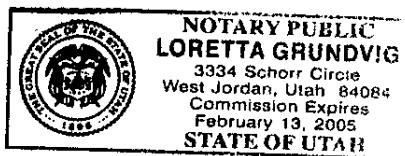
**W.L. HOMES**, a Delaware Limited  
Liability Company, d.b.a., John Laing Homes -  
Utah Division

By: 

\_\_\_\_\_  
David R. Prolo  
Division President

STATE OF UTAH )  
: ss.  
County of Salt Lake )

On the 13th day of November, 2001, personally appeared before me David R. Prolo, Division President, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of the limited liability company therein named, and who acknowledged to me that the company executed the same.



*Loretta Grundvig*  
NOTARY PUBLIC

**WASHINGTON MUTUAL BANK FA**, a federal association, successor by merger to Bank United,

By: *Thomas S. Griffin*  
Thomas S. Griffin  
Vice President

STATE OF CALIFORNIA )  
: ss.  
County of San Diego )

On the 29th day of November, 2001, personally appeared before me Thomas S. Griffin, who after duly being sworn acknowledged to me that he is a Vice President of Washington Mutual Bank FA, a federal association, that he signed the foregoing Fifth Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for The Estates at Rose Creek freely voluntarily for and in behalf of said federal association for the purposes therein mentioned.



*Terri L. Castellanos*  
NOTARY PUBLIC

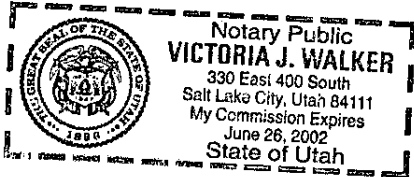
**FIRST AMERICAN TITLE INSURANCE  
COMPANY, INC., TRUSTEE**

By: *Bill Rowley*  
Bill Rowley  
Vice President

STATE OF UTAH )  
                  ) ss.  
County of Salt Lake )

On the 5<sup>th</sup> day of December, 2001, personally appeared before me Bill Rowley, known to me, or proved to me on the basis of satisfactory evidence, to be the person who executed the within instrument on behalf of First American Title Insurance Company, and who acknowledged to me that the company executed the same.

*Victoria J. Walker*  
NOTARY PUBLIC

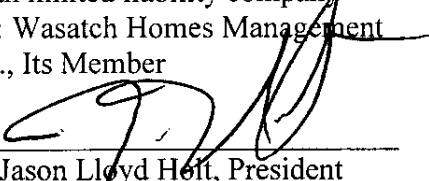




The undersigned owner of Lot 607 Estates at Rose Creek Phase 6B hereby consents to the execution and recording of this Fifth Amendment to the Declaration of Covenants, Condition, Restrictions and Easements for The Estates at Rose Creek.

Dated this 6th day of December, 2001.

Wasatch Homes LLC, a  
Utah limited liability company  
By: Wasatch Homes Management  
Inc., Its Member


By:   
Its: Jason Lloyd Holt, President

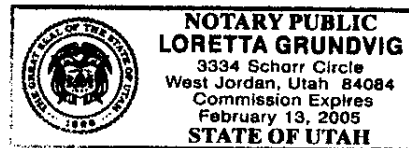
State of Utah

SS:

County of Salt Lake

On the 6th day of December, 2001, personally appeared before me Jason Lloyd Holt, the President of Wasatch Homes Management Inc., the Member of Wasatch Homes LLC, a Utah limited liability company, who duly acknowledged that the above was signed on behalf of Wasatch Homes LLC by authority of its operating agreement.

  
Notary Public



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