

**ENTRY NO. 00812053**

05/03/2007 04:04:28 PM B: 1863 P: 0662

Agreement PAGE 1 / 107

ALAN SPRIGGS SUMMIT COUNTY RECORDER

FEE \$ 222.00 BY HIGH COUNTRY TITLE



**WHEN RECORDED, RETURN TO:**

Marc Wangsgard  
P.O. Box 982258  
Park City, UT 84098

**CHARITABLE PLEDGE AGREEMENT**

THIS CHARITABLE PLEDGE AGREEMENT (the "Agreement") is made this 1 day of May, 2007, by and between NEWPARK CORPORATION, a Utah corporation ("NEWPARK") and SWANER MEMORIAL PARK FOUNDATION ("Foundation") a Utah non-profit charitable corporation.

**RECITALS**

A. NEWPARK is engaged in the development of a mixed-use commercial project adjacent to the Swaner Nature Preserve near Kimball Junction, in Summit County, Utah (the "Project"). The Project is sometimes referred to as Redstone Parkside or Newpark.

B. The Foundation is an organization described in Sections 170(c)(2), 170(h)(3), and 509(a)(1) of the Internal Revenue Code of 1986, as amended, a principal purpose of which is to preserve and nurture natural and open-space lands for "conservation purposes" and provide environmental education to the citizens of Utah, within the meaning of Section 170(h)(4)(A) of said Code.

C. NEWPARK is willing to donate a parcel of land within the Project to the Foundation (the "Donation Parcel"). A legal description of the Donation Parcel is attached to this Agreement as Exhibit A.

D. Newpark has received development and zoning approval from the Board of County Commissioners for Summit County for the development of the Donation Parcel and will constitute an important piece of Summit County's new Town Center.

E. When fully developed, Newpark has the potential to incorporate 700,000 to 800,000 square feet of retail, office, resort residential and public spaces, with a build-out value exceeding \$150 million.

F. NEWPARK understood when it was planning the project and seeking a Development Agreement approval that the Foundation desired to locate the Foundation's education center and its offices within the Project and adjacent to the property owned by the Foundation (the "Nature Preserve"), and that construction of the facility was reasonably imminent. Significant land planning and design work went into the Project to accommodate the Foundation's intended use. The Foundation presented to Newpark schematic architecture for its education center which Newpark determined is compatible with the other buildings, public spaces,

and amenities within the Project. Because the education center would be a public attraction and benefit to the Project as a whole, Newpark planned a central icon feature of the Project, the Sun Calendar Plaza, to be located next to the Donation Parcel.

G. During the zoning and density approval process, NEWPARK represented to the County on many occasions that the Donation Parcel would be used for the Foundation's education and office site in such a way as to create a public amenity. The Redstone Parkside Town Center Development Agreement, dated October 18, 2001 (the "**Development Agreement**") refers to required public amenities as "community benefits." The book of exhibits to the Development Agreement recites:

The Swaner Nature Preserve and the adjacent Sun Calendar Plaza will anchor the Town Center . . . . The symbiosis between the nature preserve and the Town Center is unique and will add texture to the Center and the Basin. The presence of the educational headquarters, the nature preserve and its emphasis on environmental preservation and the Sun Calendar Plaza with its emphasis on human achievement should combine to form a most inviting and inspiring educational setting.

H. Consequently, a condition of this Agreement is that the Donation Parcel will be used by the Foundation as a Swaner Nature Preserve education center consistent with the NEWPARK'S Development Agreement. This condition shall continue in effect after this Agreement is executed and will be included as a condition of the land deed used to transfer title to the Foundation. However, with NEWPARK's consent as set forth herein, the Donation Parcel may be used by the Foundation for a use other than that describe, provided NEWPARK determines the alternative use proposed by the Foundation would compliment the buildings and public spaces adjacent to the Donation Parcel and will not place NEWPARK in breach of its Development Agreement.

NOW, THEREFORE, for valuable consideration, NEWPARK and the Foundation agree as follows:

1. NEWPARK agrees to donate the Donation Parcel to the Foundation within 30 days of receipt from the Foundation of a written request (the "**Donation Request**") from the Foundation notifying NEWPARK that the Foundation elects to obtain title to the Donation Parcel. To be effective, the Donation Request must be accompanied by (a) a copy of the building permit application of Summit County (or other governmental entity having jurisdiction) for the improvements that the Foundation intends to construct on the Donation Parcel (the "**Facility**"), and (b) payment to NEWPARK by the Foundation of an amount equal to that portion of the Foundation's Infrastructure Share. The Foundation is entitled to give the Donation Request at any time during the period (the "**Election Period**") prior to October 18, 2007. The Foundation must complete construction of its education center, or alternative project approved per the terms of this Agreement, on the Donation Parcel on or before October 18, 2008. That failing, the Donation Parcel shall be reconveyed to NEWPARK.

2. NEWPARK intends to construct site-improvements that are not located on the Donation Parcel, including but not limited to public spaces, pocket parks, utilities, roads and

parking areas. Attached to this Agreement as **Exhibit B** is a conceptual site plan. The utilities will be extended to the property boundary of the Donation Parcel and of sufficient size to accommodate a 10,000 square foot +/- office building and educational center. The Donation Parcel will also have voting rights, pay member assessments, have the use of common parking, vehicular and pedestrian ways, and enjoy all other rights and duties as a member in the Newpark Owners Association. Site improvements located on the Donation Parcel shall be the sole responsibility of the Foundation, if the Foundation acquires the Donation Parcel. NEWPARK'S site-improvements plan is not a final plan. It is expected that the site-improvements plan will be modified and refined by NEWPARK as the development within the Project continues. There will not be parking spaces constructed on the Donation Parcel. Parking will occur within the common areas of the project and be subject to regulation by the Owners Association. However, NEWPARK shall construct 4 parking spaces at the location shown on the site plan for compliance with the Foundation's LEED certification goals. With the exception of the specific commitment pertaining to the LEED, parking off-site, pedestrian and vehicular access to the Donation Parcel will be determined at the time final site plans are prepared for the Sun Calendar area and for the Donation Parcel. The NEWPARK development is a mixed use project with common parking and there will not be parking stalls dedicated for the Foundation and its visitors off-site of the Donation Parcel. NEWPARK and the Foundation shall deliver to Summit County a final site-improvements plan showing the infrastructure to be constructed to serve the development of the Donation Parcel at the time the Foundation submits to Summit County a request for approval of a final plat for the Donation Parcel (the "**Infrastructure Improvements**"). Construction of the Infrastructure Improvements shall be undertaken and completed by NEWPARK in a lien-free condition, by duly licensed contractors, in a good and workmanlike manner and in accordance with all applicable governmental requirements and codes and the CC&Rs. As used in this Agreement, the "**Foundation's Infrastructure Share**" means \$7.07 multiplied by the smaller of 10,000 or the number of square foot of buildable area ("**Gross Square Footage**") of the Foundation's Facility. Gross Square Footage shall mean each square foot of floor space, whether at, above or below ground level, and shall include outside areas such as patios, decks, and view towers, where public access is controlled or the area is fenced or reserved for exclusive use of the owner or permittee of such owner as measured from the outside of such access controls. Decks and piers located east of the Project boundary are not included in Gross Square Footage. The Gross Square footage is measured from the exterior surfaces of outside walls or exterior edge of open decks and patios where an outside wall does not enclose the space. Based on the Foundation's architecture approved as of the date of this Agreement, the **Foundations Infrastructure Share** is \$70,700.00 ( $\$7.07 \times 10,000$ ).

3. NEWPARK is not willing to guarantee a completion date for the Infrastructure Improvements, but NEWPARK will use its best efforts to complete the Infrastructure Improvements so as to avoid any delays in the Foundation's construction and occupancy of its facility. NEWPARK will complete the Infrastructure Improvements prior to Summit County issuance of a certificate of occupancy to the Foundation.

Summit County requires that roads and infrastructure work be completed prior to October 15 to avoid freezing conditions. If the Foundation advances the cost of the Infrastructure Improvements, NEWPARK shall diligently endeavor to complete such improvements within 160 days of receipt of the funds. Notwithstanding the forgoing goal to complete the improvements

within 160 days, if the date the funds are advanced occurs after June 15, the completion date of the improvements will be delayed until June 15 of the following calendar year.

4. The Foundation agrees the Donation Parcel is subject to covenants, conditions, restrictions, rules, and regulations (collectively, the "CC&Rs"), which are recorded in the Summit County Recorder's office, and subject to being amended from time to time. Among other things, the CC&Rs provide for the use by the Foundation, its employees, agents, contractors, licensees and invitees of the common areas (including parking areas) within the Project. Attached as **Exhibit C** to this Agreement, are copies of the CC&Rs and related amendments to date.

5. The Foundation has obtained architectural approval of the proposed development according to the procedures set forth in the Development Agreement. A significant change in the size of the structure (e.g., downsizing from a 10,000 square foot building to a 5,000 square foot building) or a change in use of the Donation Parcel requires an amendment to Specially Planned Area zoning for the Project (the "SPA") and/or the Development Agreement and the consent of NEWPARK. NEWPARK's consent will not be unreasonably withheld, conditioned or delayed. If NEWPARK determines that the significant change in the size of the structure or change in use will not adversely impact the use and enjoyment of the properties owned, controlled or managed by NEWPARK in the vicinity of the Donation Parcel, and will not in any manner cause unreasonable adverse impacts on any of the design principals contemplated for the Project, NEWPARK and the Foundation shall work jointly together to petition the County to amend the SPA and the Development Agreement to permit such change, and if the SPA and/or the Development Agreement is amended to accommodate such a change, the Foundation would be responsible for any new public benefits obligations or other conditions imposed by the County as a condition to approval of the change.

6. A duly executed and acknowledged quitclaim deed conveying title to the Donation Parcel to the Foundation shall be delivered by NEWPARK to the Foundation within the time period provided in **Paragraph 1**. Recording fees for the deed shall be paid by NEWPARK. Real property taxes shall be prorated between the parties as of the date of recordation of the deed. Any liens, encumbrances or special assessments which attached to the Donation Parcel subsequent to the time NEWPARK acquired title (other than the lien for current year real property taxes) shall be paid in full by NEWPARK prior to delivery of the deed to the Foundation, such that the conveyance to the Foundation shall be free and clear of all such liens and encumbrances created by NEWPARK.

7. Until delivery of the title to the Foundation, the Donation Parcel shall be owned by NEWPARK and may be used for other purposes, which in NEWPARK's discretion are deemed to further the interest of the Project. Possession of the Donation Parcel shall be delivered to the Foundation on the date of delivery of the deed. The risk of loss or damage to the Donation Parcel and all liability to third persons with respect to the Donation Parcel shall be the responsibility of NEWPARK until delivery of the deed to the Foundation.

8. Following the date of this Agreement, NEWPARK will not record or permit to be recorded against the Donation Parcel any easements, covenants, conditions, restrictions, liens, or

encumbrances whatsoever except for the items referred to in **Paragraph 4** and title matters that have been approved in advance and in writing by the Foundation, such approval not to be unreasonably withheld, delayed or conditioned.

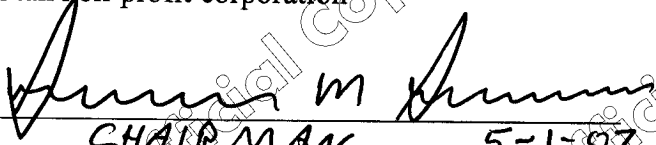
9. To the knowledge of NEWPARK and its members, as of the date of this Agreement and as of the date of conveyance of the Donation Parcel to the Foundation, the following are and will be true: (a) no part of the Donation Parcel has ever been used as a sanitary landfill, waste dump site or for the treatment, storage or disposal of Hazardous Materials; (b) no underground tanks (or piping) are or have been present on the Donation Parcel; (c) no Release of Hazardous Materials has occurred from or upon the Donation Parcel; (d) the Donation Parcel does not contain any Hazardous Materials, and (e) NEWPARK has not received any notice of any action or proceeding relating to any Hazardous Material or Release thereof on, under or at the Donation Parcel or any property within 2,000 feet of the Donation Parcel. NEWPARK has disclosed to the Foundation the fact that an abandoned sewer pipe is buried in certain locations within the Project, but not on the Donation Parcel, that may contain asbestos. As used herein, "**Hazardous Materials**" means any substance or material which is defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous wastes", "restricted hazardous waste", "toxic substances", or "known to cause cancer or reproductive toxicity" (or words of similar import), petroleum products (including crude oil or any fraction thereof), asbestos, or any other chemical, substance or material which is prohibited, limited or regulated under any federal, state or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health or safety, the environment or natural resources ("**Environmental Law**"). "**Release**" or "**Released**" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migration on or from the Donation Parcel or adjacent property, or disposing of Hazardous Materials into the environment. The intent of this paragraph is to address the fact that NEWPARK has no knowledge of any Hazardous Materials affecting the Donation Parcel, unless specifically noted herein. No warranty or indemnity to the Foundation relative to Hazardous Materials is expressed or implied by this paragraph. The Foundation agrees to receive the Property in an as is, where is condition with respect to Hazardous Materials.

10. The provisions of this Agreement are binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns. NEWPARK may sell its interest in the Project to a third party and upon such a sale, the rights, duties and obligations of NEWPARK hereunder shall be assigned and assumed by said third party, and NEWPARK shall be relieved of all further liability or obligation under this Agreement. In the event of a dispute related to this Agreement, the parties agree to first attempt to reach resolution through mediation. The mediator shall be selected by mutual agreement of the parties. If mediation does not resolve the dispute, the matter will be resolved through binding arbitration under the rules and procedures of the American Arbitration Association. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any

provision of this Agreement intended for its benefit; provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement. This Agreement will be construed according to the laws of the State of Utah. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 o'clock p.m. (Salt Lake City time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by the Foundation and NEWPARK.


**FOUNDATION:**

**SWANER MEMORIAL PARK FOUNDATION,**  
A Utah non-profit corporation

By   
Its CHAIRMAN 5-1-07

**NEWPARK:**

**NEWPARK CORPORATION**  
a Utah corporation

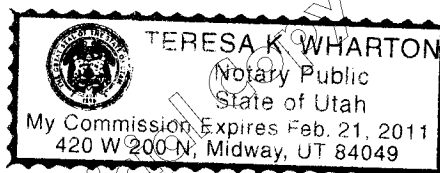
By   
Its Co-President

STATE OF UTAH )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2007, by Sumner Swaner the Chairman of **SWANER MEMORIAL PARK FOUNDATION**, a Utah non-profit corporation, on behalf of said corporation.

Teresa K. Wharton  
NOTARY PUBLIC

My Commission Expires  
2/21/11

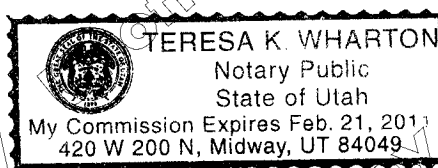


STATE OF UTAH )  
 ) ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of May, 2007, by marc Wangsgard the Co-president of **NEWPARK CORPORATION**, a Utah corporation, on behalf of said company.

Teresa K. Wharton  
NOTARY PUBLIC

My Commission Expires  
2/21/11



**EXHIBIT A**

**LEGAL DESCRIPTION OF DONATION PARCEL**



LEGAL DESCRIPTION

A PARCEL OF LAND LYING AND SITUATE IN THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN. BASIS OF BEARING FOR SAID PARCEL BEING SOUTH 00°01'00" EAST BETWEEN THE NORTHWEST CORNER AND THE WEST QUARTER CORNER OF SAID SECTION 19. PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MONUMENT REPRESENTING THE NORTHWEST CORNER OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN AND RUNNING SOUTH 89°47'32" EAST 2665.60 FEET AND SOUTH 00°05'40" EAST 1925.22 FEET AND NORTH 89°54'20" EAST 503.99 FEET EAST TO THE SOUTHERNMOST LINE OF NEWPARK PARCELS A&L, ENTRY NO. 765487 AND THE POINT OF BEGINNING; THENCE EAST 21.91 FEET; THENCE NORTH 64.32 FEET; THENCE NORTH 31°42'34" EAST 101.39 FEET; THENCE NORTH 62°27'15" EAST 7.31 FEET; THENCE SOUTH 44°59'32" EAST 112.82 FEET; THENCE SOUTH 00°00'28" WEST 88.14 FEET; THENCE SOUTH 45°00'28" WEST 222.44 FEET; THENCE WEST 13.15 FEET; THENCE NORTHEASTERLY 52.00 FEET ALONG THE ARC OF A 139.18 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 10°42'15" EAST 51.70 FEET) THROUGH A CENTRAL ANGLE OF 21°24'31"; THENCE NORTHWESTERLY 80.24 FEET ALONG THE ARC OF A 103.12 FOOT RADIUS CURVE TO THE LEFT (CHORD BEARS NORTH 00°52'58" WEST 78.23 FEET) THROUGH A CENTRAL ANGLE OF 44°34'58"; THENCE NORTHWESTERLY 18.24 FEET ALONG THE ARC OF A 34.31 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 07°56'42" WEST 18.02 FEET) THROUGH A CENTRAL ANGLE OF 30°27'30"; THENCE NORTH 07°17'03" EAST 24.57 FEET; TO THE POINT OF BEGINNING.

PARCEL CONTAINS 31,067 SQUARE FEET.

Part of Summit County Tax Serial Number NPRK-RP

**EXHIBIT B**  
**CONCEPTUAL SITE PLAN**



**EXHIBIT C**

**NEWPARK CC&Rs**

mm

**DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
NEWPARK OWNERS ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NEWPARK OWNERS ASSOCIATION, INC. is executed this 10<sup>th</sup> day of April, 2003 by MJM5,LC, a Utah limited liability company (herein referred to as "Declarant").

RECITALS

- A. Capitalized terms in this Declaration are defined in Article I and elsewhere in this Declaration when such terms appear capitalized and in quotation marks.
- B. The Declarant holds legal title to a certain tract of real property located in Summit County, Utah, and more particularly described in Article II of this Declaration.
- C. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations and conditions, all of which shall constitute covenants which run with the land and shall be binding on, and enure to the benefit of, the Declarant, its successor and assigns and all Owners of all or any part of the Property together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

ARTICLE I. DEFINITIONS.

When used in this Declaration, capitalized terms appearing in quotation marks shall have the meaning attributable hereto and the following terms shall have the meanings indicated:

1. "Article" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.
2. "Association" shall mean and refer to Newpark Owners Association, Inc., a Utah nonprofit corporation.

00654675 Bk01526 Pg00719-00746  
ALAN SPRIGGS, SUMMIT CO RECORDER  
2003 APR 14 10:31 AM FEE \$74.00 BY DMG  
REQUEST: NEWPARK CORPORATION

3. "Billable Square Foot" shall mean each square foot of floor space of buildings, whether at, above or below ground level, measured from exterior surfaces (or in the case of property divided by a party wall, from the center of such wall), and shall include outside areas within controlled access or fenced enclosures reserved for exclusive use of the Owner or permittee of the Owner, such as ice skating rinks, swimming facilities and patios, as measured from the outside surfaces of such controlled or fenced areas. That portion of the Property that is developed as a nature preserve, including all areas within access control devices associated with any such nature preserve, shall not be included in the calculation of Billable Square Feet.

4. "Board of Directors" or "Board" shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association.

5. "Building" shall mean and refer to structures on the Property.

6. "Building Exterior" shall mean and refer to those portions of Buildings which are open to the elements such as roofs, exterior walls, exterior doors, footings and foundations.

7. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

8. "CAAP" shall mean common area activity programs planned, managed and administered by the Association on Common Areas, and easements held by the Association, that may include, but are not limited to, art displays, music and other entertainment productions, farmers' market, public activities, outdoor features, e.g., plant baskets, fountains and lighting.

9. "COLA" shall mean an adjustment to charges or credits that are the subject thereof, based on an increase in cost of living, as determined by an index that is the "Consumer Price Index - U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau of Labor Statistics discontinue the publication of said index, or publish the same less frequently, or alter the same in some other manner, then a substitute index or substitute procedure which reasonably reflects and monitors consumer prices shall be used in lieu of the index herein identified. Further, if the base year "1982-1984 = 100" or other base year used in computing the Consumer Price Index is changed, the figures used in making the adjustments required herein shall be changed accordingly so that all increases in the Consumer Price Index are taken into account notwithstanding any such change in the base year. The amount which is subject to adjustment shall be increased (but not decreased) by multiplying the amount which is subject to adjustment by a fraction, the numerator of which is the Consumer Price Index for the adjustment date, and the denominator of which is the Consumer Price Index for the date on which such change or credit amount is initially established.

10. "Common Areas" shall mean and refer to that part of the Property, including without limitation all roadways, sidewalks, trailways, parking areas and landscaped areas located

on real property owned by the Association within the Project, and all improvements now or hereafter constructed or located thereon.

11. "Common Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of this Declaration and into which all monies of the Association shall be deposited.

12. "Common Expenses" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described herein.

13. "County" shall mean and refer to Summit County, Utah.

14. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may hereafter be modified, amended and supplemented.

15. "Declarant" shall mean and refer to MJM5,LC and/or any successors thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or any portion thereof) as did its predecessor.

16. "Limited Common Areas" shall mean Common Areas, if any, designated as reserved for use by certain Owners to the exclusion of the other Owners in the Project.

17. "Member" or "Membership" shall mean and refer to every person who holds a Membership in the Association, and the rights and obligations pertaining thereto, provided the Association shall not be considered a Member.

18. "Mortgage" shall mean any mortgage, deed of trust or other document pledging or encumbering any portion of the Property or interest therein as security for the payment of a debt or the performance of an obligation.

19. "Mortgagee" shall mean a beneficiary of a Mortgage as well as the named Mortgagee.

20. "Owner" shall mean the person or persons, including the Declarant, and in the case of joint ownership such owners jointly, owning, in fee simple, real property in the Project, as such ownership is shown by the records of the County Recorder of Summit County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure), or to any person or persons purchasing property within the Project under contract until such contract is fully performed and legal title conveyed of record, provided the Association shall not be considered an Owner.

00654675 BK01526 Pg00721

21. "Parcel A" shall mean that portion of the Property that is more particularly described as Parcel A on Exhibit "B" attached hereto. Parcel A shall be used only for recreation purposes. The fee structure for use of SBSRD's public facilities within the Project shall allow residential property owners, renters and resort residential patrons within the Project to access such public facilities for the same fee or charge as residents of the County. The covenants in this Section shall run with the land constituting Parcel A, and are subject to modification or termination pursuant to an amendment or modification of this Declaration as provided in Article X below.

22. "Parcel B" shall mean that portion of the Property that does not include Parcel A.

23. "Project" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

24. "Property" shall mean all of the real property that is the subject of the SPA and this Declaration, more particularly described in Article II hereof.

25. "SBSRD" shall mean Snyderville Basin Special Recreation District, a Utah special service district.

26. "SPA" shall mean Redstone Parkside Specially Planned Area and Development Agreement, as adopted by Summit County Ordinance No. 427.

27. "Voting Power of the Association" shall mean all votes entitled to be cast at any point in time as computed in accordance with paragraph 3 of Article III hereof.

#### ARTICLE II. PROPERTY DESCRIPTION.

The property associated with the Project, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions, easements and restrictions of this Declaration, consists of the following described real property situated in Summit County, State of Utah and more fully described in Exhibit "A" attached hereto.

#### ARTICLE III. THE ASSOCIATION

1. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically on becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to real property within the Project is held by more than one person, the Membership appurtenant thereto shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title is held, provided that liability for Annual Assessments shall be joint and several as between such Members and such Members must act unanimously to cast votes in respect to their membership. Each Membership shall be appurtenant to the real property within



the Project to which it relates and shall be transferred automatically by conveyance thereof. Ownership of real property within the Project cannot be separated from the Membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such real property within the Project shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association.

2. **Board of Directors.** The initial Board of Directors of the Association shall be appointed by Declarant. Such directors shall serve until their replacements are elected and qualified in accordance with the By-Laws.

3. **Votes.** Members shall be entitled to voting rights calculated in respect of such Members' real property within the Project, which voting rights shall be the greater of:

A. One vote per square foot of floor space of buildings, whether at, above or below ground level, as shown in the Newpark Schematic Architecture Approval Package prepared by Cottle Greybeal Yaw Architects, as approved by the County at the time of recording of this Declaration.

B. Ten votes for each Billable Square Foot located on such Member's real property (consisting of the greater of the area of Buildings or other improvements (i) actually constructed, or (ii) in accordance with final plans for any such construction), effective on the soonest to occur of:

(i) Twelve (12) months after final site plan approval by the County, with all contingencies imposed with respect to such approval having been removed or satisfied;

(ii) Delivery to the Association of a notice of intent to commence construction, along with final plans as previously approved by the Association for such construction;

(iii) Issuance of a certificate of occupancy by the local government agency charged with issuance of such certificates; and

(iv) Actual occupancy or commencement of use of improvements constituting Billable Square Footage.

C. Notwithstanding any provision of this Declaration to the contrary, Declarant shall have three (3) times the votes as calculated in accordance with paragraph 3.A. or 3.B., as applicable, until the sooner of:

(i) Expiration of five (5) years from the date of recording of the Declaration, and

(ii) Total votes as calculated in accordance with paragraph 3.A. and 3.B. meets or exceeds 4,700,000 total votes.

The votes cast at any Association meeting by any of the Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the real property of such Owner(s), unless an objection is immediately made by another Owner of the same real property. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Cumulative voting is not permitted.

4. Association Rights and Duties.

A. The Association shall maintain Common Areas, other real property to which it takes title, and all personalty owned by the Association, in good condition and repair, in a first-class, high quality manner, clean and free of rubbish, snow, ice or other hazards to persons using the Project, and otherwise in compliance with all applicable ordinances, laws and regulations of any governmental entity having jurisdiction thereof, and provide for the maintenance of the common roadways and utilities located thereon or therein, to replace, repair and reconstruct any improvements related to such Common Areas, roadways or utilities, or other infrastructure which may from time to time exist on real property owned by the Association, all in a manner consistent with a first-class, high quality commercial and/or residential real estate development. Further, the Association shall construct and maintain such storm drainage and wetlands mitigation systems as may be required by separate agreement relating to storm drainage and wetland mitigation facilities constructed offsite and to the east of the Property. The Association shall pay any other utility or other costs and expenditures associated with such activities.

B. The Association shall maintain commercial general liability insurance insuring the Association, its Members, and such other persons who hold other interests in any real property comprising all or any portion of the Project against all claims for personal injury, bodily injury, death or property damage occurring on the Common Areas, or in association with such other property, real or personal, as may be held by the Association. Such insurance shall be carried by a responsible company and shall afford at least the coverage provided by a "combined single limit" policy of not less than \$2 million per occurrence, and not less than \$5 million in the aggregate, for personal injury, bodily injury, death and property damage, which may be increased by the Association in its reasonable discretion from time to time, to the extent the Association deems advisable. The Association may maintain casualty insurance on the improvements owned by it or located on, under or within the Common Areas or other real or personal property owned by the Association, subject to commercially reasonable deductibles, and shall pay all taxes on the Common Areas, roadways and real and personal property owned by the Association.

00654675 Bk01526 Pg00724

Unofficial Copy

C. The Association shall have the right to establish rules respecting use of the Common Areas, parking rules and regulations, including provisions for Limited Common Areas designated as reserved for parking by certain Owners to the exclusion of other Owners in the Project, along with rules relating to the size or configuration of vehicles parking within the Project, and may require that the Owner of real property within the Project, at its sole expense, provide adequate parking to be constructed concurrently with any proposed construction within the Project so as to accommodate parking needs or uses to which such real property will be put, which limitations may be a condition of approval of plans for construction undertaken on the Project. All such rules, when adopted by the Association, shall be binding on the Owners.

D. The Association shall have the right to evaluate, determine and construct, and make such expenditures as the Association in its reasonable discretion deems appropriate for, mass transit hubs, systems, and associated expenses and capital acquisitions to be located on the Property, and in conjunction therewith, the right to create special service districts, special improvement districts and special service areas.

E. The Association shall establish, design, plan, manage, operate, make acquisitions and expenditures for and administer CAAPs.

F. The Association shall have the right to approve, disapprove or give conditional approval to all uses, appearance and configuration of any construction of Buildings or other improvements located within the Project, and to the extent deemed necessary by the Association, to develop guidelines relating to requests for approval of Buildings or other improvements. Approval of any plans for construction of Buildings or other improvements located in the Project may be conditioned upon such assurances as the Association deems appropriate to ensure that any such construction is completed in a timely fashion, and that adequate parking will be constructed concurrently with any such construction to reasonably accommodate the parking needs or uses associated with such Buildings or other improvements.

G. "Construction," as that term is used herein, means initial construction of the Buildings or other improvements upon the land, structural changes to improvements, as well as remodeling and changes to esthetic aspects associated with Buildings or other improvements which are either new or materially change the appearance or configuration of any Buildings or other improvements on the Property. Any construction of Buildings or other improvements, as shown in the Newpark SPA Schematic Architecture Approval Package, as approved by the County at the time of recording of this Declaration, are deemed approved by the Association, subject to the Association's right to withhold approval of construction to ensure compliance with the provisions of paragraph 4.C.

H. The Association shall establish budgets for all expenditures, on a yearly basis, which shall be presented to the Members by the Board of Directors at the annual meeting of Members and shall include sub-budgets for costs and expenses anticipated to be incurred for the following:

(i) Items associated with the Association's right and duties, as set forth in paragraphs 4.A and 4.B. of this article.

(ii) Items associated with costs and expenses of the Association relating to its rights and duties, as set forth in paragraph 4.C. and 4.D. of this article.

(iii) Items associated with costs and expenses of the Association relating to its rights and duties, as set forth in paragraph 4.E. of this article.

I. The Association shall be obligated to accept from Declarant title to such property as Declarant shall reasonably determine to be used as Common Areas within the Project. The Association may take title to such other property as it deems appropriate in furtherance of the purposes of this Declaration.

J. The Association shall have the right to enter into contracts for any purpose related to the rights or duties set forth in this Declaration, to borrow money, and to maintain investments as the Association deems appropriate, and in such form as the Association shall approve to mortgage, lease, encumber, sell, dedicate, or otherwise dispose of, alienate or acquire interests in property, real or personal, and to otherwise do all things, perform all acts and enter into all arrangements that it deems reasonable and prudent in furtherance of the rights and duties of the Association contained in this Declaration. The foregoing notwithstanding, the Association shall not incur any indebtedness in an amount in excess of two times the amount of the budgets for all expenditures, as the same may have been established in accordance with paragraph 4.H. of this Article, for the year prior to the year in which such indebtedness is to be undertaken, except upon approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

#### ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS/EASEMENTS

1. Easement of Enjoyment. Subject to the Association's right to designate Limited Common Areas, and to promulgate any rules or regulations contemplated by this Declaration or the Bylaws, each Member shall have an undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress over and across such Common Areas. Each Owner shall also have the exclusive right, subject to any other easements, to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to the land and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any invitee, guest, tenant, lessee, contract purchaser, or other person who occupies or utilizes such Member's land.

2. Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the Buildings or other improvements causes any part of such Buildings or other improvements, if built in substantial accord with the boundaries and approvals given by the Association for such improvements, to

encroach upon the Common Areas, or upon adjoining land, or if any part of the Common Areas encroaches or shall encroach for any such reason(s), an easement for such encroachment and for the maintenance of the same shall and does exist.

3. Easement for CAAPs. All of the exterior surfaces of all Buildings and other improvements now or hereinafter located within the Project shall be burdened with an easement in favor of the Association to conduct CAAPs which easement shall include without limitation the right to append materials to the exterior surfaces of such Buildings and other improvements and make such penetrations and alterations of such surfaces as are reasonably necessary to the exercise of the rights herein created. This easement shall not apply to Parcel A.

#### ARTICLE V. ASSESSMENTS.

1. Agreement to Pay Assessments. Declarant for itself and each Owner by the acceptance of instruments of conveyance and transfer of property within the Project, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all Assessments made by the Association for the purposes provided in this Declaration. Such Assessments shall be established and collected from time to time as provided in this Declaration.

2. Annual Assessments. "Annual Assessments" or "Assessments" shall mean and be computed and assessed by the Association as follows:

A. Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of capital acquisitions as permitted hereunder and all estimated costs and expenses of the Association arising out of or connected with the maintenance and operation of the Common Areas, CAAPs, and furnishing common utility services and other common items to the real property within the Project, costs and expenses associated with wetland mitigation facilities as provided in this Declaration, and all other costs and expenses of the Association respecting the rights and duties of the Association as herein created. Such estimated expenses may include, without limitation: real property taxes and special assessments on the Common Areas; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance, restoration and cleaning of the Common Areas; landscaping; snow removal; wages of Association employees, including fees for managers, independent contractors and consultants; trash removal; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, maintenance reserves and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis; expenses associated with CAAPs; capital acquisitions and any other expenses and liabilities which may be incurred by the Association under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses for non-capital acquisitions shall be apportioned among and assessed to all Owners based on the relationship between the total

number of votes entitled to be cast by Members, but without regard to the weighted voting rights set forth in Article III, paragraph 3.C. hereof, and the number of votes to which each Owner is entitled to cast as set forth in paragraph 3 of Article III hereof. Declarant shall be duly liable for the amount of any Assessments against it calculated without regard to the weighted voting rights set forth in Article III, paragraph 3.C. hereof. Common Expenses for capital improvements shall be determined at the time the assessment for such expenses is made, and shall be apportioned among and assessed to all Owners in proportion to the Billable Square Footage that is approved for development by the County in the Project and the Billable Square Footage that is approved for development by the County with respect to each Owners' parcel in the Project, without regard to whether the parcel has been improved, in whole or in part, at the time of the assessment. County approved footage for each parcel will be determined by the final architecture approved by the County prior to or at final plat approval for any particular parcel, as may be amended from time to time. If final architecture has not been approved for a particular parcel at the time of the levy of such assessment, the Billable Square Footage for that parcel will be determined by reference to the Newpark Schematic Architectural Approval Package Cottle Greybeal Yaw Architects, as approved by the County as of the time of recording of this Declaration or as may be amended from time to time.

The intent of apportionment of common expenses for capital improvements is that all parcel Owners should pay a share for a portion of common expenses for capital improvements without regard to whether the parcel is vacant, the parcel is partially developed, or the parcel is fully developed with residential, commercial, retail or other improvements constructed thereon.

The Association shall not undertake capital improvements in any single instance where the cost of such improvements is in excess of two times the amount of the budgets for all expenditures, as the same may have been established in accordance with paragraph 4.H of ~~this~~ Article for the year prior to the year in which such capital improvement is to be undertaken, except upon approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

If the Association incurs Common Expenses for capital improvements related to the construction of structured parking on the Property, the SBSRD share of such expenses and costs shall be as follows:

(i) SBSRD shall fund its proportionate share of the cost of constructing structured parking on the Project to the extent that SBSRD's peak parking demand from all of SBSRD's facilities within the Project exceeds 283 parking spaces.

(ii) If the Declarant, its successor, or the Association proposes that a regional transit hub be located within the Project, the transit hub and the structured parking may be funded, in part, through federal subsidies under the Transit Oriented Development ("TOD") grant system. SBSRD shall act as co-applicant for any such TOD subsidies for the Project, provided that SBSRD does not incur any material cost or any actual or potential liability. If SBSRD provides such co-applicant assistance and

Declarant, its successor, or the Association is successful in obtaining such TOD subsidies, SBSRD's financial obligation to fund parking structures to meet demands in excess of 283 spaces shall be reduced by fifty (50%).

C. CAAP Assessments. Anything elsewhere in this Article V to the contrary notwithstanding, the Owner of each parcel of real property within the Project shall be assessed and pay not less than \$.04 plus COLA for each vote that such Owner is entitled to cast, calculated in accordance with the greater of paragraph 3.A. and paragraph 3.B. of Article III hereof, to fund CAAPs ("CAAP Assessments"); provided, however, the Association may allow a credit of up to 75% of any CAAP Assessment for activities approved in advance (as used in this paragraph "Qualifying Activities") which, in the Association's discretion, contribute to the purposes of CAAPs.

(i) For purposes of the maximum 75% credit referred to above, the following shall be deemed Qualifying Activities to the extent conducted by the SBSRD on Parcel A:

- (a) Cost of construction and maintenance of capital improvements freely accessible to the public, such as "pocket parks."
- (b) Incremental cost of initial improvements made to a field house to accommodate use of such facility as a convention center.
- (c) Incremental cost of initial improvements made to a swimming pool to accommodate year round operation, as compared to seasonal operations only.
- (d) Incremental cost of operation and maintenance of a swimming pool to accommodate year round operation, as compared to seasonal operations only.

(ii) The cost of such Qualifying Activities described in paragraphs 2.C.(i)(a), (b) and (c) shall be divided by ten (10) plus COLA to determine the yearly credit hereunder and shall be available perpetually as such credit until disqualified as hereinafter provided. Such credit shall begin in the first full year after completion of such Qualifying Activities and shall continue for each successive year until the year of cessation of use of such capital facilities for the purposes for which such credit was given. Such credit shall resume in the first full year after such capital facilities resume the use for the purposes for which such credit is provided. Respecting 2.C.(i)(b), the facility must be utilized ten (10) days per calendar year for non-athletic events such as concerts and conventions to qualify for the credit. Respecting 2.C.(i)(c) and (d), and the swimming pool must be available for use 90 days during the period between

Thanksgiving and Easter, inclusive to qualify for the credit. In any year, credit for Qualifying Activities in excess of 75% of CAAP Assessments shall not carry forward to successive years.

D. The provisions set forth in paragraph 2.C. of this Article V shall not be amended except upon approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present, and any amendment reducing SBSRD Qualifying Activities or credit shall require consent of SBSRD.

E. Notice and Payment. Except with respect to the first year, the Association shall notify each Owner in writing as to the amount of the Annual Assessment at the annual Owners' meeting, or as soon as reasonably practical after the annual Association meeting. Except as otherwise provided by the Association, each Annual Assessment shall be payable in one (1) annual installment, due on or before February 15 of the year for which such Annual Assessment is payable; provided, however, the Annual Assessment for the first year shall be prorated to reflect the portion of the first year that shall have elapsed prior to the date of assessment. All unpaid installments of any Assessments shall bear interest at the rate established by the Association, which rate shall not exceed the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum rate permitted by applicable law, from fifteen (15) days after the date each such installment becomes due until paid. The Association shall also have the right to assess a late fee of up to five percent (5%) of any Assessment installment not paid within fifteen (15) days following the due date thereof. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment.

F. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including without limitation non-payment of any Owner's Assessment, the Association may levy additional Assessments in accordance with the procedure for special Assessments set forth in Article V Section 3 below, except that the vote therein specified shall be unnecessary.

3. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy, at any time, and from time to time, upon the approval of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present, which shall be payable over such periods as the Association may determine, for the purpose of defraying in whole or in part, the cost of any conversion, expansion, construction or reconstruction, unexpected repair or replacement of the Project or any part hereof, or for any other expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of each such special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special Assessment shall bear interest at the rate established by the Association, which shall not



exceed the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum rate permitted by applicable law, from the date such portions become due until paid. All funds received from special Assessments under this section shall be part of the Common Expense Fund.

4. Lien for Assessments. Except with respect to parcels owned at any point in time by any governmental entity, all sums assessed to Owners of real property within the Project pursuant to the provisions of this Article, together with penalties and interest thereon as provided herein, shall be secured by a lien on the respective Owner's real property within the Project in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the parcel owned by such Owner. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Summit County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of power of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by applicable law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including without limitation reasonable attorneys' fees and related costs), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessment which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in some or all of the amount so secured at any foreclosure sale and to hold, lease, mortgage or convey the parcel in the name of the Association following such foreclosure if the Association is the successful bidder.

5. Personal Obligation of Owner. The amount of any Annual Assessment or special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including without limitation reasonable attorneys' fees and related costs.

6. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid Assessments shall not pass to successors in title unless assumed by them; provided, however, that the lien to secure unpaid Assessments shall not be affected by the sale or transfer of the parcel so encumbered.

7. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner, the Association within a reasonable period of time thereafter shall issue to such Owner a written certificate stating (a) that all Annual and special Assessments have

been paid as of the date of such certificate, or (b) if all Annual and special Assessments have not been paid, the amount of such Annual and special Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificate, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated.

## ARTICLE VI. OWNER MAINTENANCE

1. Maintenance. All Buildings and other improvements shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect, adversely, the value or use of the Project or any portion thereof. The Owner of each parcel in the Project shall maintain, or cause to be maintained, in a safe, clean and tenantable condition, and in good order and repair, consistent in manner and appearance with a first-class, high quality commercial and/or residential real estate development, all Buildings and other improvements located on such Owner's respective parcel.

2. Association's Right to Maintain. The Association shall have the right, but not the obligation, to maintain and repair the Buildings and other improvements of any Owner, after written notice of not less than thirty (30) days to such Owner of his failure to repair or maintain as required by this Declaration, specifying in reasonable detail the items not performed by such Owner. In the event the Owner fails to cure such failure to repair or maintain following delivery of such notice, the Association may undertake, on behalf of such Owner, those items of repair or maintenance therein specified, in which event the Owner shall reimburse the Association for all costs and expenses incurred by the Association in performing such repair or maintenance, plus 15% of all such amounts, within thirty (30) days following demand for payment.

The cost of any such repair or maintenance by the Association shall be treated and enforceable in accordance with provisions herein relating to Assessments for which such Owner is liable and to which such Owner's real property within the Project is subject.

3. Destruction. In the event of destruction or damage from fire or any other casualty to any Buildings or other improvements, the Owner whose Building or other improvements is destroyed or damaged shall within six (6) months following the date of such fire or casualty have started to rebuild or repair the same, or to remove debris and level the same. If an Owner elects to rebuild or repair such Building or other improvements, the same shall be repaired and rebuilt to at least substantially the same size and condition as such existed immediately preceding such fire or casualty within one (1) year following the date of such fire or casualty. If the Owner elects to remove the debris and level the Buildings or other improvements so destroyed or damaged, the same shall be leveled so that the affected area conforms substantially to the Common Areas around it. The Owner shall retain the right to rebuild such Building or other improvements provided that such Owner comply with all of the terms and conditions of this Declaration.

4. Utilities. The Owner shall pay for all utility services furnished to each parcel of real property within the Project except utility services which are not separately billed or metered to individual parcels by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Owner as part of the Common Expenses.

#### ARTICLE VII. ARCHITECTURAL CONTROL

1. Association Approval. Except for routine maintenance which does not substantially alter the appearance of Buildings or other improvements, no Building or other improvement of any sort whatsoever, or other structure or improvement, shall be erected, altered, moved, removed or maintained on any parcel of real property within the Project, nor shall any exterior, addition to, or change or alteration to any exterior of any Building or other improvement be made, unless the plans and specifications showing the color, nature, kind, shape, height, materials and location of the same, along with such other specifications as the Association shall request, shall have been submitted to, and approved in writing by, the Association which approval shall not be unreasonably withheld or delayed. The Association shall use its best judgment to ensure that all Buildings and other improvements, constructions and alterations within the Project conform to and harmonize with the requirements of this Declaration and the external design, color, texture and quality of existing Buildings and other improvements.

2. Procedure. In the event the Association fails to approve or disapprove plans and specifications within sixty (60) days after said plans and specifications, in complete detail, have been submitted to it, approval shall be deemed to have been given, and the provisions of this Article VII shall be deemed to have been fully complied with. The Association may establish such rules as in its discretion it deems appropriate, including without limitation rules governing the form and content of submissions for consideration, as provided hereunder.

3. No Liability. Neither the Association, nor any Member thereof, nor any officer or director of the Association, nor any representative of the Association, shall be liable for damages by reason of any action or inaction or approval or disapproval by the Association, or by such other person, which occurs, or is taken, given or refused with respect to any matter relating to this Declaration.

4. Repair Work. All construction, alteration and repair work shall be accomplished in an expeditious manner in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction thereof. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party or any other parcel of real estate within the Project. The Owner undertaking such work shall repair, at his own cost and expense, any and all damage to Common Areas or third party property caused by such work and shall restore any such damaged property to a condition which is equal

to, or better than, the condition which existed prior to the beginning of such work. The Owner undertaking such work shall indemnify and hold all other Owners and the Association harmless from all damages, loss or claims, including without limitation reasonable attorneys' fees and related costs attributable to the performance of such work.

#### ARTICLE VIII. ENFORCEMENT/MISCELLANEOUS

1. Rights of Enforcement. The right to enforce the terms, restrictions, covenants and easements contained herein and rules adopted by the Association shall belong only to the Owners, those holding real property within the Project through the Owners, and the Association.

2. Injunctive Relief. In the event of any violation or threatened violation of any of the terms, restrictions, covenants or easements contained herein, and any rules adopted by the Association, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, if any, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

3. Force Majeure; Attorneys' Fees. If the performance of any act or obligation of any party is prevented or delayed by an act of God, war, labor disputes or other causes beyond the reasonable control of such party, the time for the performance of the act or obligation shall be extended for a period that such act or performance is actually delayed or prevented by such cause. In the event any suit is brought for the enforcement of any provision of this Declaration, or as the result of any alleged breach thereof, or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered shall include an award thereof.

4. No Termination. It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

5. Cumulative Remedies; Waiver. The remedies to which any person entitled to enforce this Declaration may resort under the terms hereof are cumulative and are not intended to be exclusive of any other remedies to which such person may be entitled. Failure to insist upon the strict performance of any of the covenants of this Declaration, or to exercise any remedy herein contained, in any one or more cases shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

00654675 Bk01526 Pg00734

6. Severability. If any clause, sentence or other portion of the terms, covenants or restrictions of this Declaration shall be determined to be illegal, null or void for any reason, or is held by a court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

#### ARTICLE IX. DURATION

This Declaration, and each easement, covenant, condition and restriction hereby created, shall continue for a period of fifty (50) years from the date of recording of this instrument with the Office of the Summit County Recorder, State of Utah, or for such longer period as may be provided for by amendment to this Declaration.

#### ARTICLE X. AMENDMENTS OR MODIFICATIONS

Except as otherwise provided respecting certain provisions hereof, this Declaration, and any term, covenant, restriction or easement contained herein, may be terminated, extended, modified or amended by the Association upon the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

#### ARTICLE XI. RIGHTS OF FIRST MORTGAGEES

1. Notification to First Mortgagees. Upon receipt by the Association of a written request from a Mortgagee holding a first lien against any portion of the Property (an "Eligible Mortgage Holder") or insurer or governmental guarantor of a Mortgage that is a first lien against any portion of the Property (an "Eligible Insurer" or "Eligible Guarantor") informing the Association of its correct name and mailing address and number or address of the portion of the Property to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

A. Any condemnation loss or any casualty loss which affects a material portion of the Property on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Eligible Guarantor;

B. Any delinquency in the payment of Assessments or charges owed by an Owner of a portion of the Property subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Eligible Guarantor or any obligation under this Declaration, the Articles of Incorporation or the Bylaws (collectively, the "Constituent Documents"), which delinquency or default remains uncured for the period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

00654675 Bk01526 Pg00735

D. Any proposed action which requires the consent of a specified percentage of Eligible Mortgage Holders as set forth in Article X of this Declaration.

2. Approval Required for Amendment to Constituent Documents.

A. The approval of Owners representing at least two-thirds (2/3) of the Voting Power of the Association and of Eligible Mortgage Holders holding Mortgages on portions of the Property the Owners of which have a majority of the votes in the Association allocated to Owners of all portions of the Property subject to Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Constituent Documents which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, CAAP Assessments, Special Assessments, liens for any of the foregoing or subordination of any such liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition of property to the Project;
- (vii) Boundaries of any portion of the Project;
- (viii) Reallocation of interests in the Common Areas or Limited Common Areas or rights to their use;
- (ix) Convertibility of individually owned portions of the Property into Common Areas or of Common Areas into individually owned portions of the Property;
- (x) Leasing of individually owned portions of the Property;
- (xi) Imposition of any restriction on an Owner's right to sell or otherwise transfer his individually owned portion of the Property;
- (xii) A decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage Holder;

00654675 Bk01526 Pg00736

(xiii) Restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than specified in the Constituent Documents;

(xiv) Any action to terminate the legal status of the Constituent Documents after substantial destruction or condemnation occurs; and

(xv) Any provisions which expressly benefit Eligible Mortgage Holders or Eligible Insurers or Eligible Guarantors.

B. Any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project must be approved by two-thirds (2/3) of the Voting Power of the Association and by Eligible Mortgage Holders holding Mortgages on portions of the property the Owners of which have at least two-thirds (2/3) of the votes in the Association allocated to Unit Owners of all Units subject to Mortgages held by Eligible Mortgage Holders.

C. Any Eligible Mortgage Holder who receives a written request to approve additions or amendments to any of the Constituent Documents, which additions or amendments are not material, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. Any addition or amendment to the Constituent Documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only.

D. The approvals required by this section shall not apply to amendments that may be executed by the Declarant in the exercise of its rights hereunder.

3. Prohibition Against Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his portion of the Property shall not be subject to any right of first refusal or similar restriction. Paragraph 3 of this Article XI may not be amended without the consent of all Eligible Mortgage Holders then of record.

4. Right of Inspection of Records. Any Owner, Eligible Mortgage Holder, Eligible Insurer or Eligible Guarantor shall, upon written request, be entitled to (i) inspect the current copies of the Constituent Documents and the books, records and financial statements of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

5. Prior Written Approval of Eligible Mortgage Holder. Except as provided by statute in case of condemnation or substantial loss to the individually owned portions of the Property or the Common Areas, unless at least two-thirds (2/3) of all Eligible Mortgage Holders

(based upon one vote for each Eligible Mortgage Holder) or Owners have given their prior written approval, the Association shall not be entitled to:

A. By act or omission, seek to abandon or terminate this Declaration or the Project;

B. Change the pro rata interest or obligations of any individually owned portion of the Property for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each individually owned portion of the Property in the Common Areas;

C. Partition or subdivide any individually owned portion of the Property;

D. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this subsection; and

E. Use hazard insurance proceeds for losses to any individually owned portions of the Property or the Common Areas for any purpose other than the repair, replacement or reconstruction of such individually owned portions of the Property or the Common Areas.

Nothing contained in this section or any other provision of this Declaration shall be deemed to grant the Association the right to partition any individually owned portion of the Property without the consent of the Owner(s) thereof. Any partition of an individually owned portion of the Property shall be subject to such limitations and prohibitions as may be set forth elsewhere in this Declaration or as may be provided under Utah law.

6. Liens Prior to Mortgage. All taxes, assessments, and charges which may become liens prior to the Mortgage under local law shall relate only to the individually owned portion of the Property and not to the Project as a whole.

7. Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any Eligible Mortgage Holder of the individually owned portion of the Property pursuant to its mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of individually owned portions of the Property and/or Common Areas. Subject to the foregoing, the allocation of awards for the exercise of eminent domain, or deeds in lieu thereof, shall be governed by the provisions of §§ 78-34-1, *et seq.*, Utah Code Ann.

8. Limitation on Partition and Subdivision. No individually owned portion of the Property shall be partitioned or subdivided without the prior written approval of any Eligible



Mortgage Holder of that individually owned portion of the Property. This Article XI.8 may not be amended without the consent of all Eligible Mortgage Holders then of record.

9. Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Article XI and any other provision of the Constituent Documents, the provisions of this Article XI shall prevail; provided, however, that in the event of any conflict or inconsistency between the different sections of this Article XI and any other provision of the Constituent Documents with respect to the number or percentage of Owners, Eligible Mortgage Holders or Eligible Insurers or Eligible Guarantors that must consent to (i) an amendment to any of the Constituent Documents; (ii) a termination of the Project; or (iii) certain actions of the Association as specified in Articles XI.2 and XI.5 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, Eligible Mortgage Holders or Eligible Insurers or Eligible Guarantors shall prevail, provided, however, that the Declarant, without the consent of any Owner or Eligible Mortgage Holder being required, shall have the right to amend the Constituent Documents to comply with (i) the Utah Revised Nonprofit Corporation Act; (ii) the requirements or guidelines in effect from time to time of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or (iii) the rules or requirements of any federal, state or local governmental agency whose approval of the Project or the Constituent Documents is required by law or requested by the Declarant.

7/11/11

00654675 Br01526 Pg00739

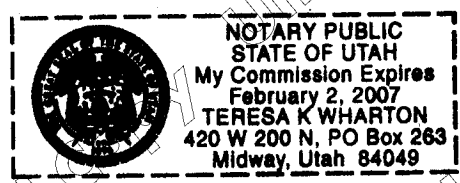
IN WITNESS WHEREOF, the undersigned Declarant herein has set his hand this 10<sup>th</sup>  
day of April.

MJM5,LC

By *James A. Doilney*  
Its *Managing Member*

STATE OF UTAH )  
COUNTY OF Summit ) SS.

On the 10<sup>th</sup> day of April, 2003, personally appeared before me JAMES A. Doilney, who, being first duly sworn, declared that he is the Declarant respecting the above Declaration of Covenants, Conditions and Restrictions of MJM5,LC and that he signed the foregoing document and that the statements therein contained are true.



*Teresa K. Wharton*  
Notary Public

WST\G\Redstone CC&Rs.2

00654675 BK01326 Pg00740

EXHIBIT "A"  
to  
NEWPARK CC&R'S

00654675 Bk01526 Pg00741

BEGINNING at the intersection of the extension of the East Line of The Village at Kimball Junction, a subdivision recorded March 11, 1992, as Entry No. 355411 on file at the Summit County Recorder's Office and the Southerly right-of-way line of I-80, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 4.13 feet from the Northwest Corner of Section 19, Township 1 South Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19); and running thence along said Southerly right-of-way line of I-80 the following three (3) courses: 1) thence South 68°45'09" East 61.64 feet to a Right-of-Way Brass Cap; 2) thence South 70°15'49" East 121.75 feet to a Right-of-Way Brass Cap; 3) thence South 72°09'40" East 853.08 feet; thence South 17°50'20" West 160.83 feet; thence South 44°50'21" West 274.42 feet; thence South 276.32 feet; thence South 44°59'21" West 222.70 feet; thence South 44°59'32" East 112.82 feet; thence South 00°00'28" West 88.14 feet; thence South 45°00'28" West 222.44 feet; thence South 00°00'16" East 47.66 feet; thence South 44°59'32" East 142.15 feet; thence South 00°00'28" West 224.85 feet; thence South 45°00'28" West 108.12 feet; thence South 00°00'28" West 44.51 feet; thence South 45°00'00" East 111.12 feet; thence South 00°02'15" West 225.00 feet; thence South 30°38'35" West 94.22 feet; thence West 89.67 feet; thence South 45°00'28" West 107.25 feet; thence South 25°14'08" West 186.89 feet to a point of curvature of a 165.41 foot radius curve to the right, the center of which bears North 64°45'52" West; thence Southwesterly along the arc of said curve 384.81 feet through a central angle of 133°17'30" to the East Line of said the Village at Kimball Junction Subdivision; thence North 00°16'14" West along said East Line and its extension 2545.07 feet to the POINT OF BEGINNING.

Summit County Tax Serial No: PP-79-F

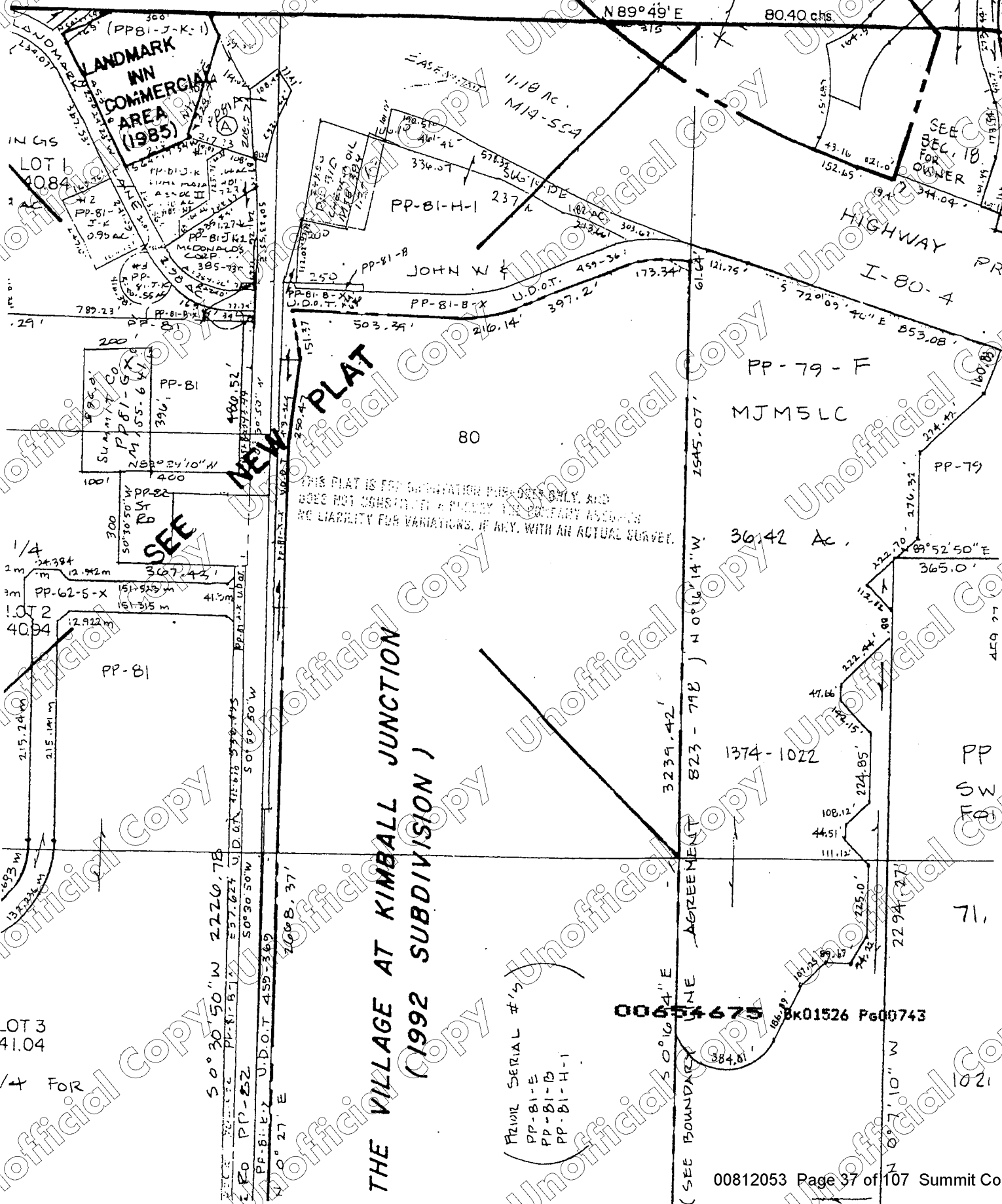
00684678 BK01826 P#00742

**STEWART TITLE®**

GUARANTY COMPANY  
00812053 Page 36 of 107 Summit Count

PP 81-A  
 HEALTHY CORP.  
 302-684 387-424-5  
 M 217-536 1.52 AC.  
 316-524  
 461-226

110 - RTE  
 SALT LAKE BASE & MERIDIAN  
 SCALE 18  
 SPRING CREEK SHO



THIS PLAT IS FOR INFORMATION PURPOSES ONLY, AND DOES NOT CONSTITUTE A WARRANTY OR COMPANY ASSUMES NO LIABILITY FOR VARIATIONS, IF ANY, WITH AN ACTUAL SURVEY.

THE VILLAGE AT KIMBALL JUNCTION  
 (1992 SUBDIVISION)

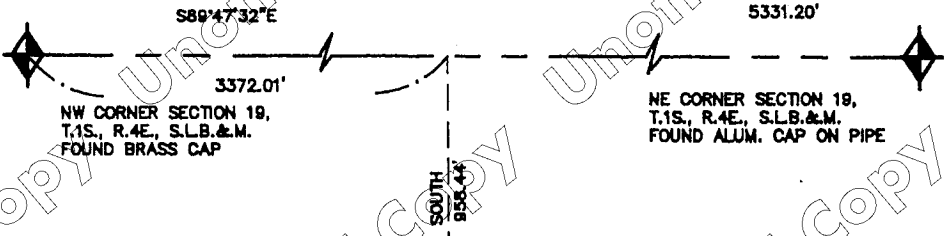
FIGURE SERIAL #'S  
 PP-81-E  
 PP-81-B  
 PP-81-H-1

000004675 BK01526 Pg00743

*mu*

EXHIBIT "B"  
to  
NEWPARK CC&R'S

**00654675 Bk01526 Pg00744**



NW CORNER SECTION 19,  
T.1S., R.4E., S.L.B.&M.  
FOUND BRASS CAP

NE CORNER SECTION 19,  
T.1S., R.4E., S.L.B.&M.  
FOUND ALUM. CAP ON PIPE

PARCEL T

COMMON PARCEL 1

P.O.B.

**PROPOSED  
SBSRD  
PARCEL**

103,092 Sq. Ft.  
2.367 Ac.

PARCEL "A"

PARCEL V

PARCEL P

PARCEL W

00654675 Bk01526 Pg00745



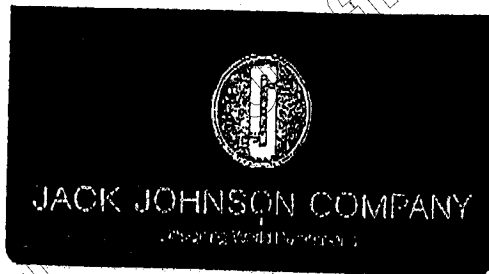
**JACK JOHNSON COMPANY**  
Designing World Destinations

EXHIBIT MAP

**SBSRD PARCEL**  
**REDSTONE NEWPARK**

SUMMIT COUNTY, UTAH

SUE DATE: FEB. 04, 2003



**PROPOSED SBSRD PARCEL**  
**Legal Description**  
**Revised February 04, 2003**

Beginning at a point which is South 89°47'32" East along the Section Line 3372.01 feet and South 958.44 feet from the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19) and running thence South 72°09'40" East 131.42 feet to a point of curvature of a 458.98 foot radius curve to the right, the center of which bears South 17°50'20" West, thence Easterly along the arc of said curve 73.27 feet through a central angle of 09°08'48" to the point of reverse curvature of a 458.98 foot radius curve to the left, the center of which bears North 26°59'08" East, thence Easterly along the arc of said curve 73.55 feet through a central angle of 09°10'54"; thence South 17°50'20" West 89.16 feet; thence South 44°50'21" West 274.42 feet; thence South 26.46 feet; thence West 81.65 feet to a point on a 75.00 foot non-tangent curve to the left, the center of which bears South 81°34'36" West; thence Northerly along the arc of said curve 47.88 feet through a central angle of 36°34'36"; thence North 45°00'00" West 196.00 feet; thence North 44°58'29" East 219.74 feet; thence North 35°00'00" East 80.55 feet more or less to the Point of Beginning.

Containing 103,092 Sq. Ft. or 2.367 Acres more or less

Subject to and together with any and all easements, restrictions, conditions and/or instruments of record.

00654675 Bk01526 Pg00746



Newpark Corp  
D.O. 98228  
Park City, UT  
87000

**FIRST AMENDMENT**  
**TO**  
**DECLARATION OF COVENANTS**  
**CONDITIONS AND RESTRICTIONS**  
**OF**  
**NEWPARK OWNERS ASSOCIATION**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NEWPARK OWNERS ASSOCIATION, INC. is executed this 23 day of June 2003.

**RECITALS**

A. Newpark Corporation, a Utah Corporation, is the successor in interest to the Declarant under the original Declaration of Covenants Conditions and Restrictions of Newpark Owners Association (CC&RS), which covenants were filed with the Summit County Recorders' office on or about April 14, 2003.

B. This first amendment to the CC&Rs addresses the status of parking areas ownership, parking use rights, and the possibility of future structured parking within the project.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations and conditions, all of which shall constitute covenants which run with the land and shall be binding on, and enure to the benefit of, the Declarant, its successor and assigns and all Owners of all or any part of the Property together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

1. Public Transportation and parking structures are contemplated in the Newpark Town Center. The Declarant holds fee title to the parking areas within the Property subject to a parking right easement held by the Association for the benefit of the Members/Owners. The Members/Owners have the right to the use of the parking areas for parking and related uses enjoyed in common, subject to the rules and regulations of the Association. Declarant has the right to convey easements or fee title to the parking areas to facilitate transit oriented development grants or other forms of public transportation and/or parking improvement financial assistance to a public agency pursuant to such issuing grants or loans, but any conveyance shall be subject to satisfying the parking needs of the Members/Owners. If structured parking is constructed within the project, the parking needs of the Members/Owners would be met through a combination of surface parking and parking in the structures. In the event the Declarant has transferred title to the parking areas by deed to the Association, the Association has the right to convey easements or fee title to the parking areas to facilitate transit oriented development grants or other forms of public transportation and/or parking improvement

00665660 BK01552 Pg00704-00707

ALAN SPRIGGS, SUMMIT CO RECORDER  
2003 JUL 16 15:29 PM FEE \$16.00 BY DMG  
REQUEST: FOUNDERS TITLE CO

00812006 Page 41 of 107 Summit County

financial assistance to a public agency pursuant to such issuing grants or loans. However, any such conveyance shall be subject to an appropriate reservation to address the parking demands of Members/Owners.

Dated and approved this 20 day of June by the undersigned Members.

Newpark Corporation

By Marc Wangsgaard

Its Vice President

Snyderville Basin Special Recreation District

By \_\_\_\_\_

Its \_\_\_\_\_

Zions First National Bank

By Eric B. Stouffer

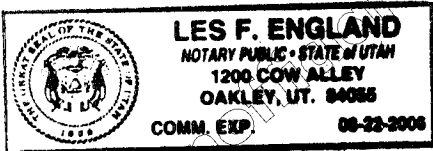
Its Vice President

STATE OF UTAH )

ss.

COUNTY OF SUMMIT )

On the 20 day of June, 2003, personally appeared before me Marc Wangsgaard, and acknowledged that he signed the forgoing document on behalf of Newpark.



[Signature]  
Notary Public

BK1552 PC0705



BEGINNING at the intersection of the extension of the East Line of The Village at Kimball Junction, a subdivision recorded March 11, 1992, as Entry No. 355411 on file at the Summit County Recorder's Office and the Southerly right-of-way line of I-80, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 4.13 feet from the Northwest Corner of Section 19, Township 1 South Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19); and running thence along said Southerly right-of-way line of I-80 the following three (3) courses: 1) thence South 68°45'09" East 61.64 feet to a Right-of-Way Brass Cap; 2) thence South 70°15'49" East 121.75 feet to a Right-of-Way Brass Cap; 3) thence South 72°09'40" East 853.08 feet; thence South 17°50'20" West 160.83 feet; thence South 44°50'21" West 274.42 feet; thence South 276.32 feet; thence South 44°59'21" West 222.70 feet; thence South 44°59'32" East 112.82 feet; thence South 00°00'28" West 88.14 feet; thence South 45°00'28" West 222.44 feet; thence South 00°00'16" East 47.66 feet; thence South 44°59'32" East 142.15 feet; thence South 00°00'28" West 224.85 feet; thence South 45°00'28" West 108.12 feet; thence South 00°00'28" West 44.51 feet; thence South 45°00'00" East 111.12 feet; thence South 00°02'15" West 225.00 feet; thence South 30°38'35" West 94.22 feet; thence West 89.67 feet; thence South 45°00'28" West 107.25 feet; thence South 25°14'08" West 186.89 feet to a point of curvature of a 165.41 foot radius curve to the right, the center of which bears North 64°45'52" West; thence Southwesterly along the arc of said curve 384.81 feet through a central angle of 133°17'30" to the East Line of said the Village at Kimball Junction Subdivision; thence North 00°16'14" West along said East Line and its extension 2545.07 feet to the POINT OF BEGINNING.

Summit County Tax Serial No: PP-79-F

BK1552 PG0707

00654675 BK01526 Pg00742

**STEWART TITLE**  
GUARANTY COMPANY

99-C-1

When recorded return to:

Marc Wangsgard  
P.O. Box 982258  
Park City, UT 84098

00714301 BK01653 Pg01157-01161  
ALAN SPRIGGS, SUMMIT CO RECORDER  
2004 OCT 19 15:27 PM FEE \$70.00 BY GGB  
REQUEST: HIGH COUNTRY TITLE

**SECOND AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
NEWPARK OWNERS ASSOCIATION, INC.**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc. ("Second Amendment") is executed effective the 29<sup>th</sup> day of July, 2004.

**RECITALS:**

A. MJMS, L.C., a Utah limited liability company, is Declarant under that certain Declaration of Covenants, Conditions and Restrictions of Newpark Owner Association, Inc., as subsequently amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated June 23, 2003 (collectively the "CC&Rs").

B. Newpark Corporation, a Utah corporation, is the successor in interest to the Declarant under the CC&Rs.

C. A meeting of the members of the Newpark Owners Association was duly call and held on July 29, 2004, for the purpose of approving this Second Amendment, and all members were present.

D. The real property which is the subject of the CC&Rs, and this Second Amendment is more particularly described on Exhibit "A" attached hereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, representing 100% of the votes entitled to be cast by Members of the Association, and there being no Eligible Mortgage Holders, (as those terms are defined in the CC&Rs), hereby adopt the following Second Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc.

Article I, paragraph 10, of the CC&Rs is hereby deleted, and in its place shall be the following:

BK1653 PG0157

10. "Common Areas" shall mean and refer to that part of the Property, including without limitation all roadways, sidewalks, trailways, parking areas and landscaped areas located on real property owned by the Association or on which the Association has an easement or other right of use over such areas within the Project, and all improvements now or hereafter constructed or located thereon.

A new Article I, paragraph 20.1, is hereby adopted and shall provide as follows:

20.1 "Parking and Roadway Related Expenses" shall mean all expenses associated with costs of operation, enforcement of rules related to parking areas and roadways, maintenance and replacement of roadways and parking areas including, but not limited to, costs associated with lighting, marking, clean up, snow removal and reserves for periodic resurfacing and replacement of permanent improvements to parking areas and roadways.

A new Article I, paragraph 22.1, is hereby adopted and shall provide as follows:

22.1 "Peak Parking Demand" shall mean the higher of (a) peak parking demand on a daily basis with respect to any particular use of any parcel of property within the Project, or (b) the greatest number of parking stalls reserved, on a regular basis, exclusively for the use of the Owners or occupants of any particular parcel of property within the Project. The Association shall determine Peak Parking Demand as in its reasonable judgment it determines to reflect the intent hereof, and in conjunction therewith may rely on parking studies or counts and such other matters as the Association deems appropriate.

Article III, paragraph 3 and paragraph 3.A. of the CC&Rs is hereby amended as follows:

3. Votes. Members shall be entitled to voting rights calculated in respect of such Members' real property within the Project, which voting rights shall be the sum of:

A. One vote per square foot of floor space of buildings, whether at, above or below ground level, as shown in the Newpark Schematic Architecture Approval Package prepared by Cottle Greybeal Yaw Architects, as approved by the County at the time of recording of this Declaration as the same may be amended from time to time.

The remaining subparagraphs of Article III, paragraph 3, shall remain unaffected by this amendment.

Article III, paragraph 4.A. of the CC&Rs is hereby deleted and in its place shall be the following:

BK1653 PG1158

A. The Association shall maintain Common Areas, other real property to which it takes title, and all personalty owned by the Association, in good condition and repair, in a first-class, high quality manner, clean and free of rubbish, snow, ice or other hazards to persons using the Project, and otherwise in compliance with all applicable ordinances, laws and regulations of any governmental entity having jurisdiction thereof, and provide for the maintenance of the common roadways and utilities located thereon or therein, to replace, repair and reconstruct any improvements related to such Common Areas, roadways or utilities, or other infrastructure which may from time to time exist on real property owned by the Association, all in a manner consistent with a first-class, high quality commercial and/or residential real estate development. Further, the Association shall construct and maintain such storm drainage and wetlands mitigation systems as may be required by separate agreement relating to storm drainage and wetland mitigation facilities constructed offsite and to the east of the Property. The Association shall pay any other utility or other costs and expenditures associated with such activities. Without limiting the foregoing, the Association shall also maintain roadways and parking areas which the Association owns or over which it has an easement or other right of use, and to pay all Parking and Roadway Related Expenses associated therewith.

Article V, paragraph 2.C. is hereby amended as follows:

C. CAAP Assessments. Anything else in this Article V to the contrary notwithstanding, the Owner of each parcel of real property within the Project shall be assessed and pay not less than \$.04 plus COLA for each vote that such Owner is entitled to cast, calculated in accordance with the sum of paragraph 3.A. and paragraph 3.B. of Article III hereof, to fund CAAPs ("CAAP Assessments"); provided, however, the Association may allow a credit of up to 75% of any CAAP Assessment for activities approved in advance (as used in this paragraph "Qualifying Activities") which, in the Association's discretion, contribute to the purposes of CAAPs.

The remaining subparagraphs of Article V, paragraph 2.C., shall remain unaffected by this amendment.

A new Article V, paragraph 2, subparagraph G, is hereby adopted and shall provide as follows:

G. Parking and Roadway Related Expenses. Anything in this Article V to the contrary notwithstanding, Parking and Roadway Related Expenses shall be assessed to Association Owners based upon a formula whereby total Parking and Roadway Related Expenses are determined by the Association and each Owner is assessed a share of such expenses determined by multiplying the total

BK1653 PG1159





BEGINNING at the intersection of the extension of the East Line of The Village at Kimball Junction, a subdivision recorded March 11, 1992, as Entry No. 355411 on file at the Summit County Recorder's Office and the Southerly right-of-way line of I-80, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 4.13 feet from the Northwest Corner of Section 19, Township 1 South Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19); and running thence along said Southerly right-of-way line of I-80 the following three (3) courses: 1) thence South 68°45'09" East 61.64 feet to a Right-of-Way Brass Cap; 2) thence South 70°15'49" East 121.75 feet to a Right-of-Way Brass Cap; 3) thence South 72°09'40" East 853.08 feet; thence South 17°50'20" West 160.83 feet; thence South 44°50'21" West 274.42 feet; thence South 276°32' feet; thence South 44°59'21" West 222.70 feet; thence South 44°59'32" East 112.82 feet; thence South 00°00'28" West 88.14 feet; thence South 45°00'28" West 222.44 feet; thence South 00°00'16" East 47.66 feet; thence South 44°59'32" East 142.15 feet; thence South 00°00'28" West 224.85 feet; thence South 45°00'28" West 108.12 feet; thence South 00°00'28" West 44.51 feet; thence South 45°00'00" East 111.12 feet; thence South 00°02'15" West 225.00 feet; thence South 30°38'35" West 94.22 feet; thence West 89.67 feet; thence South 45°00'28" West 107.25 feet; thence South 25°14'08" West 186.89 feet to a point of curvature of a 165.41 foot radius curve to the right, the center of which bears North 64°45'52" West; thence Southwesterly along the arc of said curve 384.81 feet through a central angle of 133°17'30" to the East Line of said the Village at Kimball Junction Subdivision; thence North 00°16'14" West along said East Line and its extension 2545.07 feet to the POINT OF BEGINNING.

NPRK-RP, NPRK-K-AM, NPRK-P, NPRK-Q, NPRK-S, NPRK-T, NPRK-V

NPKTH-1-1 through NPKTH-1-24, INCLUSIVE

NPKTH-2-25 through NPKTH-2-46, INCLUSIVE

**RECORDER'S NOTE**

LEGIBILITY OF WRITING, TYPING OR  
PRINTING UNSATISFACTORY IN THIS  
DOCUMENT WHEN RECEIVED.

BK1653 PG1161

**THIRD AMENDED AND RESTATED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
NEWPARK OWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NEWPARK OWNERS ASSOCIATION, INC. is executed and effective as of the 17<sup>th</sup> day of December, 2004 by Newpark Owners Association, Inc., a Utah corporation.

RECITALS

**00720283** BK01667 Pg00667-00695  
ALAN SPRIGGS, SUMMIT CO RECORDER  
2004 DEC 17 11:36 AM FEE \$192.00 BY GGB  
REQUEST: NEWPARK CORPORATION

A. MJM5, L.C., a Utah limited liability company, is Declarant under that certain Declaration of Covenants, Conditions and Restrictions of Newpark Owner Association, Inc., as subsequently amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated June 23, 2003, and Second Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated July 29, 2004 (collectively the "CC&Rs").

B. Newpark Corporation, a Utah corporation, is the successor in interest to the Declarant under the CC&Rs.

C. A meeting of the members of the Newpark Owners Association was duly called and held on November 3, 2004, for the purpose of presenting this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions, and all members were present. This Third Amended and Restated Declaration of Covenants, Conditions and Restrictions was subsequently approved by unanimous written consent.

D. The real property which is the subject of the CC&Rs is more particularly described in Article II.

E. These CC&Rs are intended to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, representing 100% of the votes entitled to be cast by Members of the Association, and there being no Eligible Mortgage Holders, (as those terms are defined in the CC&Rs), hereby adopt this Third Amended and Restated Declaration Of Covenants Conditions And Restrictions of Newpark Owners Association, which shall replace all previously dated and filed Declaration Of Covenants Conditions And Restrictions of Newpark Owners Association and amendments thereto.

**BK1667 PG0667** 192

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations and conditions, all of which shall constitute covenants which run with the land and shall be binding on, and enure to the benefit of, the Declarant, its successor and assigns and all Owners of all or any part of the Property together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

#### ARTICLE I. DEFINITIONS.

When used in this Declaration, capitalized terms appearing in quotation marks shall have the meaning attributable hereto and the following terms shall have the meanings indicated:

1. "Article" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

2. "Association" shall mean and refer to Newpark Owners Association, Inc., a Utah nonprofit corporation.

3. "Billable Square Foot—Active" shall mean each square foot of floor space of buildings (consisting of the greater of the area of Buildings or other improvements (i) actually constructed, or (ii) in accordance with final plans for any such construction), whether at, above or below ground level, measured from exterior surfaces (or in the case of property divided by a party wall, from the center of such wall), and shall include outside areas within controlled access or fenced enclosures reserved for exclusive use of the Owner or permittee of the Owner, such as ice skating rinks, swimming facilities and patios, as measured from the outside surfaces of such controlled or fenced areas. That portion of the Property that is developed as a nature preserve, including all areas within access control devices associated with any such nature preserve, shall not be included in the calculation of Billable Square Feet. Billable Square Foot—Active shall become effective on the soonest to occur of:

A. Twelve (12) months after final site plan approval by the County, with all contingencies imposed with respect to such approval having been removed or satisfied;

B. Delivery to the Association of a notice of intent to commence construction, along with final plans as previously approved by the Association for such construction;

C. Issuance of a certificate of occupancy by the local government agency charged with issuance of such certificates; and

**BK1667 PG0668**

D. Actual occupancy or commencement of use of improvements constituting Billable Square Footage.

4. "Billable Square Foot—Passive" shall mean each square foot of floor space of buildings (excluding structured parking), whether at, above or below ground level, as shown in the Newpark Schematic Architecture Approval Package prepared by Cottle Greybeal Yaw Architects, as approved by the County at the time of recording of this Declaration, totaling per all plats 819,360 Square Feet, as per page 10, Land Use section of the Development Agreement Book of Exhibits, as amended from time to time with County approval or as shown on site and schematic architectural plans that are subsequently approved by the Association, less Billable Square Foot—Active. Any modifications to the number of square feet of Billable Square Foot—Passive shall be calculated consistently with the definition of floor space of buildings used in defining Billable Square Foot—Active.

5. "Board of Directors" or "Board" shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association.

6. "Building" shall mean and refer to structures on the Property.

7. "Building Exterior" shall mean and refer to those portions of Buildings which are open to the elements such as roofs, exterior walls, exterior doors, footings and foundations.

8. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

9. "CAAP" shall mean common area activity programs planned, managed and administered by the Association or a User Group on Common Areas, easements held by the Association, areas accessible to all persons or for the common benefit of all persons associated with the Association or a User Group, as applicable, that may include, but are not limited to, art displays, music and other entertainment productions, farmers' market, public activities, outdoor features, e.g., plant baskets, fountains and lighting. CAAP shall also include the cost of construction and maintenance of capital improvements freely accessible to the public, such as "pocket parks."

10. "COLA" shall mean an adjustment to charges or credits that are the subject thereof, based on an increase in cost of living, as determined by an index that is the "Consumer Price Index - U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau of Labor Statistics discontinue the publication of said index, or publish the same less frequently, or alter the same in some other manner, then a substitute index or substitute procedure which reasonably reflects and monitors consumer prices shall be used in lieu of the index herein identified. Further, if the base year "1982-1984 = 100" or other base year used in computing the Consumer Price Index is changed, the figures used in making the adjustments

**BK1667 PG0669**

required herein shall be changed accordingly so that all increases in the Consumer Price Index are taken into account notwithstanding any such change in the base year. The amount which is subject to adjustment shall be increased (but not decreased) by multiplying the amount which is subject to adjustment by a fraction, the numerator of which is the Consumer Price Index for the adjustment date, and the denominator of which is the Consumer Price Index for the date on which such change or credit amount is initially established.

11. "Common Areas" shall mean and refer to that part of the Property, including without limitation all roadways, sidewalks, trailways, parking areas, landscaped areas, and common utility services located on real property owned by the Association or on which the Association has an easement or other right of use over such areas within the Project, and all improvements now or hereafter constructed or located thereon. The initial cost of construction of all Common Areas shall be the responsibility of Declarant or other third party that has accepted the responsibility for such costs.

12. "Common Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of this Declaration and into which all monies of the Association shall be deposited.

13. "Common Expenses" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Common Areas and Association as described herein.

14. "County" shall mean and refer to Summit County, Utah.

15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may hereafter be modified, amended and supplemented.

16. "Declarant" shall mean and refer to MJM5, LC and/or any successors thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or any portion thereof) as did its predecessor.

17. "Eligible Mortgage" shall mean a First Mortgage held by an Eligible Mortgagee.

18. "Eligible Mortgagee" shall mean any Person holding an Eligible Mortgage, including without limitation, any insurer or guarantor of an Eligible Mortgage.

19. "First Mortgage" shall mean a Mortgage having priority as to all other Mortgages encumbering any portion of the Property or interest therein which is held by or vested in an Owner.

20. "First Mortgagee" shall mean any Person holding a First Mortgage, including without limitation, any insurer or guarantor of a First Mortgage

**BK1667 PC0670**

21. "Limited Common Areas" shall mean Common Areas, if any, designated as reserved for use by certain Owners to the exclusion of the other Owners in the Project, such as restaurant patio dining areas or private parking. Limited Common Areas shall be constructed and maintained by the individual owners of such Limited Common Areas.

22. "Member" or "Membership" shall mean and refer to every person who holds a Membership in the Association, and the rights and obligations pertaining thereto, provided the Association shall not be considered a Member.

23. "Mortgage" shall mean any mortgage, deed of trust or other security instrument (including a seller's rights under a contract for deed) by which any portion of the Property or interest therein which is held by or vested in an Owner is encumbered in good faith as security for the payment of a debt or obligation.

24. "Mortgagee" shall mean a Person named as the Mortgagee, beneficiary, or holder of the seller's interest under any Mortgage by which the interest of any Owner of any portion of the Property or interest therein, is encumbered, or any successor to the interest of such Person under such Mortgage.

25. "Owner" shall mean the person or persons, including the Declarant, and in the case of joint ownership such owners jointly, owning, in fee simple, real property in the Project, as such ownership is shown by the records of the County Recorder of Summit County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure), or to any person or persons purchasing property within the Project under contract until such contract is fully performed and legal title conveyed of record, provided the Association shall not be considered an Owner.

26. "Parcel A" shall mean that portion of the Property that is more particularly described as Parcel A on Exhibit "B" attached hereto. Parcel A shall be used only for recreation purposes. The fee structure for use of SBSRD's public facilities within the Project shall allow residential property owners, renters, resort residential patrons, and office tenants and their employees within the Project to access such public facilities for the same fee or charge as residents of the County. The covenants in this section shall run with the land constituting Parcel A, and are subject to modification or termination pursuant to an amendment or modification of this Declaration as provided in Article X below.

27. "Parcel B" shall mean that portion of the Property that does not include Parcel A.

28. "Parking and Roadway Related Expenses" shall mean all expenses associated with costs of operation, enforcement of rules related to parking areas and roadways, maintenance and replacement of roadways and parking areas including, but not limited to, costs associated with lighting, marking, clean up, snow removal and reserves for periodic resurfacing and replacement of permanent improvements to parking areas and roadways.

29. "Peak Parking Demand" shall mean the higher of (a) peak parking demand on a daily basis with respect to any particular use of any parcel of property within the Project, or (b) the greatest number of parking stalls reserved, on a regular basis, exclusively for the use of the Owners or occupants of any particular parcel of property within the Project. The Association shall determine Peak Parking Demand as in its reasonable judgment it determines to reflect the intent hereof, and in conjunction therewith will rely on parking studies or counts and such other matters as the Association reasonably deems appropriate.

30. "Project" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

31. "Property" shall mean all of the real property that is the subject of the SPA and this Declaration, more particularly described in Article II hereof.

32. "SBSRD" shall mean Snyderville Basin Special Recreation District, a Utah special service district.

33. "SPA" shall mean Redstone Parkside Specially Planned Area and Development Agreement, as adopted by Summit County Ordinance No. 427.

34. "User Group" shall mean a group of Members owning property in the Project that have similar use, for example: office, retail, recreation center, hotel, residential, and financial institution.

35. "Voting Power of the Association" shall mean all votes entitled to be cast at any point in time as computed in accordance with paragraph 3 of Article III hereof.

## ARTICLE II. PROPERTY DESCRIPTION

The property associated with the Project, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions, easements and restrictions of this Declaration, consists of the following described real property situated in Summit County, State of Utah as described in Exhibit "A" attached hereto.

## ARTICLE III. THE ASSOCIATION

**BK1667 PG0672**

1. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically on becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to real property within the Project is held by more than one person, the Membership appurtenant thereto shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title is held, provided that liability for Annual Assessments shall be joint and several as between such Members and such Members must act unanimously to cast votes in respect to their membership. Each Membership shall be appurtenant to the real property within the Project to which it relates and shall be transferred automatically by conveyance thereof. Ownership of real property within the Project cannot be separated from the Membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such real property within the Project shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association.

2. Board of Directors. The initial Board of Directors of the Association shall be appointed by Declarant. Such directors shall serve until their replacements are elected and qualified in accordance with the By-Laws.

3. Votes. Members shall be entitled to voting rights calculated in respect of such Members' real property within the Project, which voting rights shall be the sum of:

- A. One vote per Billable Square Foot—Passive.
- B. Ten votes for each Billable Square Foot —Active.
- C. Notwithstanding any provision of this Declaration to the contrary,

Declarant shall have three (3) times the votes as calculated in accordance with paragraph 3.A. and 3.B., as applicable, until the sooner of:

- (i) Expiration of five (5) years from the date of recording of the Declaration, and
- (ii) Total votes as calculated in accordance with paragraph 3.A. and 3.B. meets or exceeds 4,700,000 total votes.

The votes cast at any Association meeting by any of the Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the real property of such Owner(s), unless an objection is immediately made by another Owner of the same real property. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Cumulative voting is not permitted.

4. Association Rights and Duties.

**BK1667 PG0673**



A. The Association shall maintain Common Areas, other real property to which it takes title, and all personalty owned by the Association, in good condition and repair, in a first-class, high quality manner, clean and free of rubbish, snow, ice or other hazards to persons using the Project, and otherwise in compliance with all applicable ordinances, laws and regulations of any governmental entity having jurisdiction thereof, and provide for the maintenance of the common roadways and utilities located thereon or therein, to replace, repair and reconstruct any improvements related to such Common Areas, roadways or utilities, or other infrastructure which may from time to time exist on real property owned by the Association, all in a manner consistent with a first-class, high quality commercial and/or residential real estate development. Further, the Association shall construct and maintain such storm drainage and wetlands mitigation systems as may be required by separate agreement relating to storm drainage and wetland mitigation facilities constructed offsite and to the east of the Property. The Association shall pay any other utility or other costs and expenditures associated with such activities. Without limiting the foregoing, the Association shall also maintain roadways and parking areas which the Association owns or over which it has an easement or other right of use, and to pay all Parking and Roadway Related Expenses associated therewith.

B. The Association shall maintain commercial general liability insurance insuring the Association, its Members, and such other persons who hold other interests in any real property comprising all or any portion of the Project against all claims for personal injury, bodily injury, death or property damage occurring on the Common Areas, or in association with such other property, real or personal, as may be held by the Association. Such insurance shall be carried by a responsible company and shall afford at least the coverage provided by a "combined single limit" policy of not less than \$2 million per occurrence, and not less than \$5 million in the aggregate, for personal injury, bodily injury, death and property damage, which may be increased by the Association in its reasonable discretion from time to time, to the extent the Association deems advisable. The Association may maintain casualty insurance on the improvements owned by it or located on, under or within the Common Areas or other real or personal property owned by the Association, subject to commercially reasonable deductibles, and shall pay all taxes on the Common Areas, roadways and real and personal property owned by the Association.

C. The Association shall have the right to establish rules respecting use of the Common Areas, parking rules and regulations, including provisions for Limited Common Areas designated as reserved for private parking by certain Owners to the exclusion of other Owners in the Project, along with rules relating to the size or configuration of vehicles parking within the Project, and may require that the Owner of real property within the Project, at its sole expense, provide adequate parking to be constructed concurrently with any proposed construction within the Project so as to accommodate parking needs or uses to which such real property will be put, which limitations may be a condition of approval of plans for construction undertaken on the Project. All such rules, when adopted by the Association, shall be binding on the Owners.

D. It is the Association's intent to facilitate the development of a mass transit hub(s) to be located on the Property. The Association shall have the right to evaluate, determine and make such expenditures as the Association in its reasonable discretion deems appropriate to study and solicit governmental funding for the development of a mass transit hub(s) and related system(s) be located on the Property. The Association's participation in the cost of construction of a mass transit hub(s) and related system(s) or in conjunction therewith, the right to create special service districts, special improvement districts and special service areas, shall require the approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

E. The funds derived from CAAP Assessments (as defined hereafter in section V.2.C. of this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions) shall be allocated one-third (1/3) to the benefit of the Association ("Association CAAP Fees") and two-thirds to benefit of each User Group that funded the CAAP Assessments ("User Group CAAP Fees"). The Association shall establish, design, plan, manage, operate, make acquisitions and expenditures for and administer CAAPs using Association CAAP Fees. Each User Group shall establish, design, plan, manage, operate, make acquisitions and expenditures for and administer CAAPs using User Group CAAP Fees. Notwithstanding the foregoing, the use of User Group CAAP Fees must be presented to and approved by the Board of Directors of the Association

F. The Association shall have the right to approve, disapprove or give conditional approval to all uses, appearance and configuration of any construction of Buildings or other improvements located within the Project, and to the extent deemed necessary by the Association, to develop guidelines relating to requests for approval of Buildings or other improvements. Approval of any plans for construction of Buildings or other improvements located in the Project may be conditioned upon such assurances as the Association deems appropriate to ensure that any such construction is completed in a timely fashion, and that adequate parking will be constructed concurrently with any such construction to reasonably accommodate the parking needs or uses associated with such Buildings or other improvements.

G. "Construction," as that term is used herein, means initial construction of the Buildings or other improvements upon the land, structural changes to improvements, as well as remodeling and changes to esthetic aspects associated with Buildings or other improvements which are either new or materially change the appearance or configuration of any Buildings or other improvements on the Property. Any construction of Buildings or other improvements, as shown in the Newpark SPA Schematic Architecture Approval Package, as approved by the County at the time of recording of this Declaration, are deemed approved by the Association, subject to the Association's right to withhold approval of construction to ensure compliance with the provisions of paragraph 4.C.

H. The Association shall establish budgets for all expenditures, on a yearly basis, which shall be presented to the Members by the Board of Directors at the annual meeting

BK1667 PG0675

of Members and shall include sub-budgets for costs and expenses anticipated to be incurred for the following:

(i) Items associated with the Association's right and duties, as set forth in paragraphs 4.A and 4.B. of this Article.

(ii) Items associated with costs and expenses of the Association relating to its rights and duties, as set forth in paragraphs 4.C. and 4.D. of this Article.

(iii) Items associated with costs and expenses of the Association relating to its rights and duties, as set forth ins 4.E. of this Article.

I. The Association shall be obligated to accept from Declarant title to such property as Declarant shall reasonably determine to be used as Common Areas within the Project at no purchase cost to the Association in connection with such acceptance of title. The Association may take title to such other property as it deems appropriate in furtherance of the purposes of this Declaration.

J. The Association shall have the right to enter into contracts for any purpose related to the rights or duties set forth in this Declaration, to borrow money, and to maintain investments as the Association deems appropriate, and in such form as the Association shall approve to mortgage, lease, encumber, sell, dedicate, or otherwise dispose of, alienate or acquire interests in property, real or personal, and to otherwise do all things, perform all acts and enter into all arrangements that it deems reasonable and prudent in furtherance of the rights and duties of the Association contained in this Declaration. The foregoing notwithstanding, the Association shall not make any expenditures or incur any indebtedness in an amount in excess of 120 percent of the amount of the budgets for all expenditures, as the same may have been established in accordance with paragraph 4.H. of this Article, for the current year if budgets have been approved or for the year prior to the year in which such expenditures or indebtedness is to be undertaken, except upon approval of a majority the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

K. Public Transportation and parking structures are contemplated in the Newpark Town Center. The Declarant and others holding fee title to the parking areas within the Property ("Parking Fee Title Holders") are subject to parking right easements held by the Association for the benefit of the Members/Owners. The Members/Owners have the right to the use of the parking areas for parking and related uses enjoyed in common, subject to the rules and regulations of the Association. Parking Fee Title Holders have the right, but not the obligation, to convey easements or fee title to the parking areas to facilitate transit oriented development grants or other forms of public transportation and/or parking improvement financial assistance to a public agency pursuant to such issuing grants or loans, but any conveyance shall be subject to satisfying the parking requirements of the Members/Owners. If structured parking is constructed within the project, the parking requirements of the Members/Owners would be met through a combination of surface parking and parking in the structures. In the event the Parking Fee Title



the purposes provided in this Declaration. Such Assessments shall be established and collected from time to time as provided in this Declaration.

2. Annual Assessments. "Annual Assessments" or "Assessments" shall mean and be computed and assessed by the Association as follows:

A. Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of capital improvements as permitted hereunder and all estimated costs and expenses of the Association arising out of or connected with the maintenance and operation of the Common Areas, CAAPs, and furnishing common utility services and other common items to the real property within the Project and all other costs and expenses of the Association respecting the rights and duties of the Association as herein created, however, the initial cost of construction of all Common Areas shall be the responsibility of Declarant or other third party that has accepted the responsibility for such costs. Wetland mitigation facilities were installed or are being installed by the Boyer Company by agreement between the Declarant and the Boyer Company. Such estimated expenses may include, without limitation: real property taxes and special assessments on the Common Areas; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance, restoration and cleaning of the Common Areas; landscaping; snow removal; wages of Association employees, including fees for managers, independent contractors and consultants; trash removal; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, maintenance reserves and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis; expenses associated with CAAPs; capital improvements and any other expenses and liabilities which may be incurred by the Association under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses, not including capital improvements, shall be apportioned among and assessed to all Owners based on the relationship between the total number of votes entitled to be cast by Members, but without regard to the weighted voting rights set forth in Article III, paragraph 3.C. hereof, and the number of votes to which each Owner is entitled to cast as set forth in paragraph 3 of Article III hereof. Declarant shall be duly liable for the amount of any Assessments against it calculated without regard to the weighted voting rights set forth in Article III, paragraph 3.C. hereof.

Common Expenses for capital improvements shall be determined at the time the assessment for such expenses is made, and shall be apportioned among and assessed to all Owners in proportion to each Owner's share of the total of the Billable Square Footage—Active and Billable Square Footage—Passive.

The intent of apportionment of common expenses for capital improvements is that all parcel Owners should pay a share for a portion of common expenses for capital improvements without

regard to whether the parcel is vacant, the parcel is partially developed, or the parcel is fully developed with residential, commercial, retail or other improvements constructed thereon.

The Association shall not undertake capital improvements in any single instance where the cost of such improvements is in excess of the budgets for all expenditures, as the same may have been established in accordance with paragraph 4.H of this Article for the current year if a budget has been established or in the case of emergency expenditures not to exceed the prior year budget, if a current year budget has not been approved, except upon approval of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

The Declarant shall be responsible for the cost of providing all Project parking throughout the complete build out of the Project, except for: i) parking on parcels where a third party has accepted the responsibility for such costs and ii) transit related parking provided under the terms of section III.4.D above. Upon completion of the build out of the Project, the cost of developing additional parking will be the responsibility of the Association, subject to the vote of three-fourths (3/4) of the Members, or by third parties that have accepted the responsibility for such costs.

If the Association incurs Common Expenses for capital improvements related to the construction of structured parking on the Property, the SBSRD share of such expenses and costs shall be as follows:

(i) SBSRD shall fund its proportionate share of the cost of constructing structured parking on the Project to the extent that SBSRD's peak parking demand from all of SBSRD's facilities within the Project exceeds 241 parking spaces.

(ii) If the Declarant, its successor, or the Association proposes that a regional transit hub be located within the Project, the transit hub and the structured parking may be funded, in part, through federal subsidies under the Transit Oriented Development ("TOD") grant system. SBSRD shall act as co-applicant for any such TOD subsidies for the Project, provided that SBSRD does not incur any material cost or any actual or potential liability. If SBSRD provides such co-applicant assistance and Declarant, its successor, or the Association is successful in obtaining such TOD subsidies, SBSRD's financial obligation to fund parking structures to meet demands in excess of 283 spaces shall be reduced by fifty (50%).

C. CAAP Assessments. Anything else in this Article V to the contrary notwithstanding, the Owner of each parcel of real property within the Project shall be assessed and pay not less than \$.03 plus COLA for each vote that such Owner is entitled to cast, calculated in accordance with the sum of paragraph 3.A. and paragraph 3.B. of Article III hereof, to fund CAAPs ("CAAP Assessments"); provided, however, the Association may allow a credit of up to 75% of any CAAP Assessment for activities approved in advance (as used in this paragraph "Qualifying Activities") which, in the Association's discretion, contribute to the

purposes of CAAPs. CAAP Assessments shall be allocated and administered in the manner set forth in section III.4.E. of this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions.

(i) For purposes of the maximum 75% credit referred to above, the following shall be deemed Qualifying Activities to the extent conducted by the SBSRD on Parcel A (or by other Owners on other parcels for cost referred to in paragraph V.2.C.(i) (a) of this Article V):

- (a) Cost of construction and maintenance of capital improvements freely accessible to the public, such as "pocket parks."
- (b) Incremental cost of initial improvements made to a field house to accommodate use of such facility as a convention center.
- (c) Incremental cost of initial improvements made to a swimming pool to accommodate year round operation, as compared to seasonal operations only.
- (d) Incremental cost of operation and maintenance of a swimming pool to accommodate year round operation, as compared to seasonal operations only.

(ii) The cost of such Qualifying Activities described in paragraphs 2.C.(i)(a), (b) and (c) of this Article V shall be divided by ten (10) plus COLA to determine the yearly credit hereunder and shall be available perpetually as such credit until disqualified as hereinafter provided. Such credit shall begin in the first full year after completion of such Qualifying Activities and shall continue for each successive year until the year of cessation of use of such capital facilities for the purposes for which such credit was given. Such credit shall resume in the first full year after such capital facilities resume the use for the purposes for which such credit is provided. Respecting 2.C.(i)(b), the facility must be utilized ten (10) days per calendar year for non-athletic events such as concerts and conventions to qualify for the credit. Respecting 2.C.(i)(c) and (d), and the swimming pool must be available for use 90 days during the period between Thanksgiving and Easter, inclusive to qualify for the credit. In any year, credit for Qualifying Activities in excess of 75% of CAAP Assessments shall not carry forward to successive years.

D. The provisions set forth in paragraph 2.C. of this Article V shall not be amended except upon approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present,

**BK1667 PG0680**

and any amendment reducing SBSRD Qualifying Activities or credit shall require consent of SBSRD.

E. Notice and Payment. Except with respect to the first year, the Association shall notify each Owner in writing as to the amount of the Annual Assessment at the annual Owners' meeting, or as soon as reasonably practical after the annual Association meeting. Except as otherwise provided by the Association, each Annual Assessment shall be payable in one (1) annual installment, due on or before February 15 of the year for which such Annual Assessment is payable; provided, however, the Annual Assessment for the first year shall be prorated to reflect the portion of the first year that shall have elapsed prior to the date of assessment. All unpaid installments of any Assessments shall bear interest at the rate established by the Association, which rate shall not exceed the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum rate permitted by applicable law, from fifteen (15) days after the date each such installment becomes due until paid. The Association shall also have the right to assess a late fee of up to five percent (5%) of any Assessment installment not paid within fifteen (15) days following the due date thereof. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment.

F. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including without limitation non-payment of any Owner's Assessment, the Association may levy additional Assessments in accordance with the procedure for special Assessments set forth in Article V, section 3 below, except that the vote therein specified shall be unnecessary.

3. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy, at any time, and from time to time, upon the approval of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present, which shall be payable over such periods as the Association may determine, for the purpose of defraying in whole or in part, the cost of any conversion, expansion, construction or reconstruction, unexpected repair or replacement of the Project or any part hereof, or for any other expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of each such special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special Assessment shall bear interest at the rate established by the Association, which shall not exceed the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum rate permitted by applicable law, from the date such portions become due until paid. All funds received from special Assessments under this section shall be part of the Common Expense Fund.

4. Lien for Assessments. Except with respect to parcels owned at any point in time by any governmental entity, all sums assessed to Owners of real property within the Project pursuant to the provisions of this Article, together with penalties and interest thereon as provided



herein, shall be secured by a lien on the respective Owner's real property within the Project in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the parcel owned by such Owner. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Summit County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of power of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by applicable law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including without limitation reasonable attorneys' fees and related costs), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessment which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in some or all of the amount so secured at any foreclosure sale and to hold, lease, mortgage or convey the parcel in the name of the Association following such foreclosure if the Association is the successful bidder.

5. Personal Obligation of Owner. The amount of any Annual Assessment or special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including without limitation reasonable attorneys' fees and related costs.

6. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid Assessments shall not pass to successors in title unless assumed by them; provided, however, that the lien to secure unpaid Assessments shall not be affected by the sale or transfer of the parcel so encumbered.

7. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner, the Association within a reasonable period of time thereafter shall issue to such Owner a written certificate stating (a) that all Annual and special Assessments have been paid as of the date of such certificate, or (b) if all Annual and special Assessments have not been paid, the amount of such Annual and special Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificate, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated.

8. Parking and Roadway Related Expenses. Anything in this Article V to the contrary notwithstanding, Parking and Roadway Related Expenses shall be assessed to Association Owners in accordance with this paragraph 8. The total Parking and Roadway Related Expenses shall be determined by the Association and each Owner shall be assessed an obligation to pay a share of such expenses equal to an amount determined by multiplying the total Parking and Roadway Related Expenses by a fraction, the numerator of which is Peak Parking Demand for the applicable period associated with such Owner's uses of its parcel within the Project and the denominator of which is the total Peak Parking Demand by all Owners associated with all parcels within the Project for such period.

#### ARTICLE VI. OWNER MAINTENANCE

1. Maintenance. All Buildings and other improvements shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect, adversely, the value or use of the Project or any portion thereof. The Owner of each parcel in the Project shall maintain, or cause to be maintained, in a safe, clean and tenantable condition, and in good order and repair, consistent in manner and appearance with a first-class, high quality commercial and/or residential real estate development, all Buildings and other improvements located on such Owner's respective parcel.

2. Association's Right to Maintain. The Association shall have the right, but not the obligation, to maintain and repair the Buildings and other improvements of any Owner, after written notice of not less than thirty (30) days to such Owner of his failure to repair or maintain as required by this Declaration, specifying in reasonable detail the items not performed by such Owner. In the event the Owner fails to cure such failure to repair or maintain following delivery of such notice, the Association may undertake, on behalf of such Owner, those items of repair or maintenance therein specified, in which event the Owner shall reimburse the Association for all costs and expenses incurred by the Association in performing such repair or maintenance, plus 15% of all such amounts, within thirty (30) days following demand for payment.

The cost of any such repair or maintenance by the Association shall be treated and enforceable in accordance with provisions herein relating to Assessments for which such Owner is liable and to which such Owner's real property within the Project is subject.

3. Destruction. In the event of destruction or damage from fire or any other casualty to any Buildings or other improvements, the Owner whose Building or other improvements is destroyed or damaged shall within six (6) months following the date of such fire or casualty have started to rebuild or repair the same, or to remove debris and level the same. If an Owner elects to rebuild or repair such Building or other improvements, the same shall be repaired and rebuilt to at least substantially the same size and condition as existed immediately preceding such fire or casualty within 12 months following such fire or casualty. If the Owner elects to remove the debris and level the Buildings or other improvements so destroyed or damaged, the same shall be leveled so that the affected area conforms substantially to the Common Areas around it. The Owner shall retain the right to rebuild such Building or other improvements provided that such

**BK1667 PG0683**

Owner comply with all of the terms and conditions of this Declaration. However, if the Owner fails to rebuild or repair such Building or other improvements within 12 months following the fire or casualty, the Association shall have the right to construct parking or landscaping improvements on the property and the right to use the property as if it were a Common Area, until such time as Owner proceeds with such rebuilding and repair of the Building and other improvements.

4. Utilities. The Owner shall pay for all utility services furnished to each parcel of real property within the Project except utility services which are not separately billed or metered to individual parcels by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Owner as part of the Common Expenses.

#### ARTICLE VII. ARCHITECTURAL CONTROL

1. Association Approval. Except for routine maintenance which does not substantially alter the appearance of Buildings or other improvements, no Building or other improvement of any sort whatsoever, or other structure or improvement, shall be erected, altered, moved, removed or maintained on any parcel of real property within the Project, nor shall any exterior, addition to, or change or alteration to any exterior of any Building or other improvement be made, unless the plans and specifications showing the color, nature, kind, shape, height, materials and location of the same, along with such other specifications as the Association shall request, shall have been submitted to, and approved in writing by, the Association which approval shall not be unreasonably withheld or delayed. The Association shall use its best judgment to ensure that all Buildings and other improvements, constructions and alterations within the Project conform to and harmonize with the requirements of this Declaration and the external design, color, texture and quality of existing Buildings and other improvements.

2. Procedure. In the event the Association fails to approve or disapprove plans and specifications within sixty (60) days after said plans and specifications, in complete detail, have been submitted to it, approval shall be deemed to have been given, and the provisions of this Article VII shall be deemed to have been fully complied with. The Association may establish such rules as in its discretion it deems appropriate, including without limitation rules governing the form and content of submissions for consideration, as provided hereunder.

3. No Liability. Neither the Association, nor any Member thereof, nor any officer or director of the Association, nor any representative of the Association, shall be liable for damages by reason of any action or inaction or approval or disapproval by the Association, or by such other person, which occurs, or is taken, given or refused with respect to any matter relating to this Declaration.

4. Repair Work. All construction, alteration and repair work shall be accomplished in an expeditious manner in compliance with all laws, rules, regulations, orders, permits,

approvals and licenses of governmental authorities having jurisdiction thereof. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party or any other parcel of real estate within the Project. The Owner undertaking such work shall repair, at his own cost and expense, any and all damage to Common Areas or third party property caused by such work and shall restore any such damaged property to a condition which is equal to, or better than, the condition which existed prior to the beginning of such work. The Owner undertaking such work shall indemnify and hold all other Owners and the Association harmless from all damages, loss or claims, including without limitation reasonable attorneys' fees and related costs attributable to the performance of such work.

#### ARTICLE VIII. ENFORCEMENT/MISCELLANEOUS

1. Rights of Enforcement. The right to enforce the terms, restrictions, covenants and easements contained herein and rules adopted by the Association shall belong only to the Owners, those holding real property within the Project through the Owners, and the Association.

2. Injunctive Relief. In the event of any violation or threatened violation of any of the terms, restrictions, covenants or easements contained herein, and any rules adopted by the Association, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, if any, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

3. Force Majeure; Attorneys' Fees. If the performance of any act or obligation of any party is prevented or delayed by an act of God, war, labor disputes or other causes beyond the reasonable control of such party, the time for the performance of the act or obligation shall be extended for a period that such act or performance is actually delayed or prevented by such cause. In the event any suit is brought for the enforcement of any provision of this Declaration, or as the result of any alleged breach thereof, or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered shall include an award thereof.

4. No Termination. It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

5. Cumulative Remedies; Waiver. The remedies to which any person entitled to enforce this Declaration may resort under the terms hereof are cumulative and are not intended to be exclusive of any other remedies to which such person may be entitled. Failure to insist upon the strict performance of any of the covenants of this Declaration, or to exercise any remedy herein contained, in any one or more cases shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

BK1667 PC0685

6. Severability. If any clause, sentence or other portion of the terms, covenants or restrictions of this Declaration shall be determined to be illegal, null or void for any reason, or is held by a court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

#### ARTICLE IX. DURATION

This Declaration, and each easement, covenant, condition and restriction hereby created, shall continue for a period of fifty (50) years from the date of recording of this instrument with the Office of the Summit County Recorder, State of Utah, or for such longer period as may be provided for by amendment to this Declaration.

#### ARTICLE X. AMENDMENTS OR MODIFICATIONS

Except as otherwise provided respecting certain provisions hereof, this Declaration, and any term, covenant, restriction or easement contained herein, may be terminated, extended, modified or amended by the Association upon the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

#### ARTICLE XI. MORTGAGE PROTECTION CLAUSE

1. Mortgage Protection. The Board of Directors shall maintain a roster containing the name and address of each Eligible Mortgagee. A First Mortgagee may become an Eligible Mortgagee by providing the Board of Directors with a certified copy of its recorded First Mortgage and the name and address of the First Mortgagee, together with a written statement that the Mortgage is a First Mortgage and a request that it receive notice of the matters and actions described in this Article below. An Eligible Mortgagee shall be stricken from the roster of Eligible Mortgagees upon written request by such Eligible Mortgagee or upon receipt by the Board of Directors of a certified copy of a recorded full release or satisfaction of the applicable Eligible Mortgage. Notice of such removal shall be given to the Eligible Mortgagee unless the Eligible Mortgagee has requested such removal. Upon the Association's receipt of a written request from an Eligible Mortgagee in the manner set forth herein to receive notice of the matters and actions described in this Article below, an Eligible Mortgagee shall be entitled to written notice of:

A. Any condemnation loss or any casualty loss which materially affects a significant portion of the Property on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of Assessments or charges owed by an Owner a portion of the Property is subject to a First Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which delinquency or default remains

BK1667 PG0686

uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association; and

D. Any default by an Owner of a portion of the Property in the performance of such Owner's obligations under these Declarations, the Articles, or the Bylaws which default is not cured within sixty (60) days.

2. Subordination of Lien. A First Mortgagee who comes into possession of a portion of the Property or an interest therein (a) pursuant to the remedies provided in such First Mortgage, or (b) by foreclosure of the First Mortgage, or (c) by way of deed or assignment in lieu of foreclosure, shall take such portion of the Property or interest therein free of any claims for unpaid assessments or charges which accrued prior to the time such First Mortgagee comes into possession of such portion of the Property or interest therein, except for claims for a pro rata share of the applicable assessments or charges resulting from a pro rata reallocation of such assessments or charges to all or portions of the Property, including the portion of the Property or interest therein which is subject to such First Mortgage. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any portion of the Property or interest therein which have been suspended with respect to the defaulting Owner shall be reinstated. The provisions of this section XI.3 shall be in addition to the rights of a First Mortgagee under section XI.4 below.

3. Prior Written Approval of Eligible Mortgagee. The approval of both three-fourths (3/4) of the Voting Power of the Association, as provided for in these Declarations, and by Eligible Mortgagees holding First Mortgages on portions of the Property the Owners of which have at least three-fourths (3/4) of the votes in the Association allocated to Owners of portions of the Property subject to First Mortgages held by Eligible Mortgagees shall be required before the Association is entitled to:

A. By act or omission, seek to abandon or terminate this Declaration or the Project;

B. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, if such act or omission would materially decrease the value of an Owner's portion of the Property encumbered by a First Mortgage. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this subsection;

C. Use hazard insurance proceeds for losses to the Common Areas for any purpose other than the repair, replacement or reconstruction of the Common Areas; and

D. Modify the rights granted to Mortgagees under this Article XI.

4. Right of Inspection. First Mortgagees shall have the right to inspect Association documents and records on the same terms as the Owners.

ARTICLE XII INFORMAL ACTION BY MEMBERS

1. Written Consent. Any action required to be taken at a meeting of the Members of the Association, or any action which may be taken at such meeting of the Members, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by Members having not less than the number of votes that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote thereon were present and voted. The following additional provisions shall govern any application of this section:

A. The Board of Directors shall provide the proposed written consent to all Members of record entitled to vote thereon no less than ten (10) days prior to when the vote can be counted and in accordance with section III.5. Methods of Providing Notice of the By-Laws of the Association.

B. All necessary consents must be obtained prior to the expiration of sixty (60) days after the proposed written consent was deemed to have been delivered.

C. Unless the consents of all Members having an ownership interest in the same parcel are secured, the consent of none of such owners shall be effective.

2. Form of Participation in Meetings. Members of the Association may participate in any meeting of Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other during the meeting. A Member participating in a meeting by this means shall be considered to be present at such meeting.

ARTICLE XIII. INTERPRETATION TO AVOID CONFLICTS OF LAW

These Declarations shall be interpreted and enforced to comply with the Utah Revised Nonprofit Corporation Act, state or federal laws, or legal restrictions of any governmental or quasi-governmental state or federal entity.

/////

BK1667 PG0688

IN WITNESS WHEREOF, this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions shall be effective the date first set forth above.

NEWPARK OWNERS ASSOCIATION

*Marc Wangsgard*

Marc Wangsgard  
Its: Vice President

CERTIFICATION

Marc Wangsgard, being the Vice President of the Newpark Owners Association, Inc. a Utah non-profit corporation, hereby certifies that this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions was approved by the members of Newpark Owners Association at a meeting of members duly called.

STATE OF UTAH )

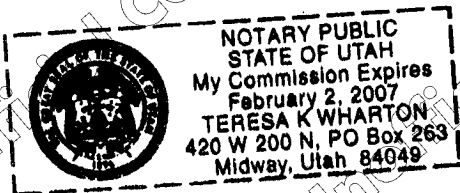
: ss.

COUNTY OF SUMMIT )

On the 17<sup>th</sup> day of December, 2004, personally appeared before me Marc Wangsgard, the Vice President of Newpark Owners Association, who being first duly sworn, acknowledged that he signed the foregoing document in that capacity.

*Teresa K. Wharton*

Notary Public



BK1667 PG0689



EXHIBIT "A"  
to  
NEWPARK CC&R'S

**BK1667 PG0690**

BEGINNING at the intersection of the extension of the East Line of The Village at Kimball Junction, a subdivision recorded March 11, 1992, as Entry No. 355411 on file at the Summit County Recorder's Office and the Southerly right-of-way line of I-80, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 4.13 feet from the Northwest Corner of Section 19, Township 1 South Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19); and running thence along said Southerly right-of-way line of I-80 the following three (3) courses: 1) thence South 68°45'09" East 61.64 feet to a Right-of-Way Brass Cap; 2) thence South 70°15'49" East 121.75 feet to a Right-of-Way Brass Cap; 3) thence South 72°09'40" East 853.08 feet; thence South 17°50'20" West 160.83 feet; thence South 44°50'21" West 274.42 feet; thence South 276.32 feet; thence South 44°59'21" West 222.70 feet; thence South 44°59'32" East 112.82 feet; thence South 00°00'28" West 88.14 feet; thence South 45°00'28" West 222.44 feet; thence South 00°00'16" East 47.66 feet; thence South 44°59'32" East 142.15 feet; thence South 00°00'28" West 224.85 feet; thence South 45°00'28" West 108.12 feet; thence South 00°00'28" West 44.51 feet; thence South 45°00'00" East 111.12 feet; thence South 00°02'15" West 225.00 feet; thence South 30°38'35" West 94.22 feet; thence West 89.67 feet; thence South 45°00'28" West 107.25 feet; thence South 25°14'08" West 186.89 feet to a point of curvature of a 165.41 foot radius curve to the right, the center of which bears North 64°45'52" West; thence Southwesterly along the arc of said curve 384.81 feet through a central angle of 133°17'30" to the East Line of said the Village at Kimball Junction Subdivision; thence North 00°16'14" West along said East Line and its extension 2545.07 feet to the POINT OF BEGINNING.

Summit County Tax Serial No: <PP-79-F

### RECORDER'S NOTE

LEGIBILITY OF WRITING, TYPING OR  
PRINTING UNSATISFACTORY IN THIS  
DOCUMENT WHEN RECEIVED.

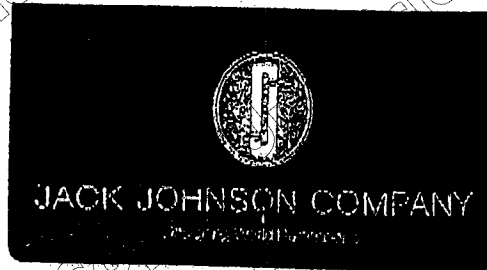
BK1667 PG0691

**STEWARTTITLÉ**<sup>®</sup>  
GUARANTY COMPANY



EXHIBIT "B"  
to  
NEWPARK CC&R'S

**BK1667 PG0693**



**PROPOSED SBSRD PARCEL**  
**Legal Description**  
**Revised February 04, 2003**

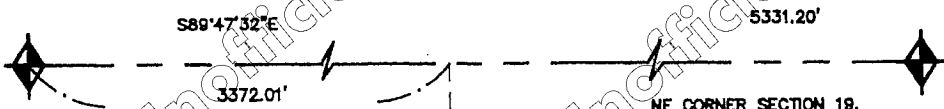
Beginning at a point which is South 89°47'32" East along the Section Line 3372.01 feet and South 958.44 feet from the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19) and running thence South 72°09'40" East 131.42 feet to a point of curvature of a 458.98 foot radius curve to the right, the center of which bears South 17°50'20" West, thence Easterly along the arc of said curve 73.27 feet through a central angle of 09°08'48" to the point of reverse curvature of a 458.98 foot radius curve to the left, the center of which bears North 26°59'08" East, thence Easterly along the arc of said curve 73.55 feet through a central angle of 09°10'54"; thence South 17°50'20" West 89.16 feet; thence South 44°50'21" West 274.42 feet; thence South 26.46 feet; thence West 81.65 feet to a point on a 75.00 foot non-tangent curve to the left, the center of which bears South 81°34'36" West; thence Northerly along the arc of said curve 47.88 feet through a central angle of 36°34'36"; thence North 45°00'00" West 196.00 feet; thence North 44°58'29" East 219.74 feet; thence North 35°00'00" East 80.55 feet more or less to the Point of Beginning.

Containing 103,092 Sq. Ft or 2.367 Acres more or less

Subject to and together with any and all easements, restrictions, conditions and/or instruments of record.

JJCo.#039.0103.00(005)  
02-04-2003/RJSr.

BK1667 PG0694



NW CORNER SECTION 19,  
T.1S., R.4E., S.L.B.&M.  
FOUND BRASS CAP

NE CORNER SECTION 19,  
T.1S., R.4E., S.L.B.&M.  
FOUND ALUM. CAP ON PIPE

SOUTH  
898.44'

PARCEL T

COMMON PARCEL 1

P.O.B.

S72°09'40"E  
131.42'

**PROPOSED  
SBSRD  
PARCEL**

103,092 Sq. Ft.  
2.367 Ac.

PARCEL "A"

N44°58'28"E  
219.74'

N45°20'00"W  
196.00'

L=47.88  
R=75.00  
Δ=36°34'36"

WEST  
81.65'

26.46'  
SOUTH

S41°50'21"W  
274.42'

S17°50'20"W  
88.18'

L=60.27  
R=68.98  
Δ=10°08'45"

L=43.50  
R=48.98  
Δ=10°54'

PARCEL V

PARCEL P

PARCEL W



**JACK JOHNSON COMPANY**  
Designing World Destinations

EXHIBIT MAP

**SBSRD PARCEL**  
**REDSTONE NEWPARK**

SUMMIT COUNTY, UTAH

SUE DATE: FEB. 04, 2003

This document has been recorded in the office of the Summit County Recorder. Please see the attached copy to view the County Recorder's stamp as it now appears in the public Record.

Date 8/31/06 Entry No: 709752  
Book 1814 Page 1035-1063

Submitted by High Country Title

**FOURTH AMENDED AND RESTATED  
DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS  
OF  
NEWPARK OWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF NEWPARK OWNERS ASSOCIATION, INC. is executed and effective as of the 18th day of August, 2006 by Newpark Owners Association, Inc., a Utah corporation.

RECITALS

A. MJM5, L.C., a Utah limited liability company, is Declarant under that certain Declaration of Covenants, Conditions and Restrictions of Newpark Owner Association, Inc., as subsequently amended by First Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated June 23, 2003, and Second Amendment to Declaration of Covenants, Conditions and Restrictions of Newpark Owners Association, Inc., dated July 29, 2004 (collectively the "CC&Rs").

B. Newpark Corporation, a Utah corporation, is the successor in interest to the Declarant under the CC&Rs.

C. A special meeting of the members of the Newpark Owners Association was duly called and held on August 18, 2006, for the purpose of presenting this Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions, and all members were present in person or by proxy. In accordance with Article X below, this Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions was approved by the Association upon the affirmative vote of greater than two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at the August 18, 2006.

D. The real property which is the subject of the CC&Rs is more particularly described in Article II.

E. These CC&Rs are intended to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, representing 100% of the votes entitled to be cast by Members of the Association, and there being no Eligible Mortgage Holders, (as those terms are defined in the CC&Rs), hereby adopt this Fourth Amended and Restated Declaration Of Covenants Conditions And Restrictions of Newpark Owners Association, which shall replace all

previously dated and filed Declaration Of Covenants Conditions And Restrictions of Newpark Owners Association and amendments thereto.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations and conditions, all of which shall constitute covenants which run with the land and shall be binding on, and enure to the benefit of, the Declarant, its successor and assigns and all Owners of all or any part of the Property together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

#### ARTICLE I. DEFINITIONS.

When used in this Declaration, capitalized terms appearing in quotation marks shall have the meaning attributable hereto and the following terms shall have the meanings indicated:

1. "Article" or "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

2. "Association" shall mean and refer to Newpark Owners Association, Inc., a Utah nonprofit corporation.

3. "Billable Square Foot—Active" shall mean each square foot of floor space of buildings (consisting of the greater of the area of Buildings or other improvements (i) actually constructed, or (ii) in accordance with final plans for any such construction), whether at, above or below ground level, measured from exterior surfaces (or in the case of property divided by a party wall, from the center of such wall), and shall include outside areas within controlled access or fenced enclosures reserved for exclusive use of the Owner or permittee of the Owner, such as ice skating rinks, swimming facilities and patios, as measured from the outside surfaces of such controlled or fenced areas. That portion of the Property that is developed as a nature preserve, including all areas within access control devices associated with any such nature preserve, shall not be included in the calculation of Billable Square Feet. Billable Square Foot—Active shall become effective on the soonest to occur of:

A. Twelve (12) months after final site plan approval by the County, with all contingencies imposed with respect to such approval having been removed or satisfied;

B. Delivery to the Association of a notice of intent to commence construction;

C. Issuance of a certificate of occupancy by the local government agency charged with issuance of such certificates; and



**D. Actual occupancy or commencement of use of improvements constituting Billable Square Footage.**

4. "Billable Square Foot—Passive" shall mean each square foot of floor space of buildings (excluding structured parking), whether at, above or below ground level, as shown in the Newpark Schematic Architecture Approval Package prepared by Cottle Greybeal Yaw Architects, as approved by the County at the time of recording of this Declaration, totaling per all plats 819,360 Square Feet, as per page 10, Land Use section of the Development Agreement Book of Exhibits, as amended from time to time with County approval or as shown on site and schematic architectural plans that are subsequently approved by the Association, less Billable Square Foot—Active. Any modifications to the number of square feet of Billable Square Foot—Passive shall be calculated consistently with the definition of floor space of buildings used in defining Billable Square Foot—Active.

5. "Board of Directors" or "Board" shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with this Declaration, the Articles of Incorporation and Bylaws of the Association.

6. "Building" shall mean and refer to structures on the Property.

7. "Building Exterior" shall mean and refer to those portions of Buildings which are open to the elements such as roofs, exterior walls, exterior doors, footings and foundations.

8. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

9. "CAAP" shall mean common area activity programs planned, managed and administered by the Association or a User Group on Common Areas, easements held by the Association, areas accessible to all persons or for the common benefit of all persons associated with the Association or a User Group, as applicable, that may include, but are not limited to, art displays, music and other entertainment productions, farmers' market, public activities, outdoor features, e.g., plant baskets, fountains and lighting. CAAP shall also include the cost of construction and maintenance of capital improvements freely accessible to the public, such as "pocket parks."

10. "COLA" shall mean an adjustment to charges or credits that are the subject thereof, based on an increase in cost of living, as determined by an index that is the "Consumer Price Index – U.S. City Average for All Items for All Urban Consumers (1982-84 = 100)" as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau of Labor Statistics discontinue the publication of said index, or publish the same less frequently, or alter the same in some other manner, then a substitute index or substitute procedure which reasonably reflects and monitors consumer prices shall be used in lieu of the index herein identified. Further, if the base year "1982-1984 = 100" or other base year used in computing the Consumer Price Index is changed, the figures used in making the adjustments

required herein shall be changed accordingly so that all increases in the Consumer Price Index are taken into account notwithstanding any such change in the base year. The amount which is subject to adjustment shall be increased (but not decreased) by multiplying the amount which is subject to adjustment by a fraction, the numerator of which is the Consumer Price Index for the adjustment date, and the denominator of which is the Consumer Price Index for the date on which such change or credit amount is initially established.

11. "Common Areas" shall mean and refer to that part of the Property, including without limitation all roadways, sidewalks, trailways, parking areas, landscaped areas, and common utility services located on real property owned by the Association or on which the Association has an easement or other right of use over such areas within the Project, and all improvements now or hereafter constructed or located thereon. The initial cost of construction of all Common Areas shall be the responsibility of Declarant or other third party that has accepted the responsibility for such costs.

12. "Common Expense Fund" shall mean and refer to the fund created or to be created pursuant to the provisions of this Declaration and into which all monies of the Association shall be deposited.

13. "Common Expenses" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Common Areas and Association as described herein.

14. "County" shall mean and refer to Summit County, Utah.

15. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may hereafter be modified, amended and supplemented.

16. "Declarant" shall mean and refer to MJM5,LC and/or any successors thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or any portion thereof) as did its predecessor.

17. "Eligible Mortgage" shall mean a First Mortgage held by an Eligible Mortgagee.

18. "Eligible Mortgagee" shall mean any Person holding an Eligible Mortgage, including without limitation, any insurer or guarantor of an Eligible Mortgage.

19. "First Mortgage" shall mean a Mortgage having priority as to all other Mortgages encumbering any portion of the Property or interest therein which is held by or vested in an Owner.

20. "First Mortgagee" shall mean any Person holding a First Mortgage, including without limitation, any insurer or guarantor of a First Mortgage

21. "Limited Common Areas" shall mean Common Areas, if any, designated as reserved for use by certain Owners to the exclusion of the other Owners in the Project, such as restaurant patio dining areas or private parking. Limited Common Areas shall be constructed and maintained by the individual owners of such Limited Common Areas.

22. "Member" or "Membership" shall mean and refer to every person who holds a Membership in the Association, and the rights and obligations pertaining thereto, provided the Association shall not be considered a Member.

23. "Mortgage" shall mean any mortgage, deed of trust or other security instrument (including a seller's rights under a contract for deed) by which any portion of the Property or interest therein which is held by or vested in an Owner is encumbered in good faith as security for the payment of a debt or obligation.

24. "Mortgagee" shall mean a Person named as the Mortgagee, beneficiary, or holder of the seller's interest under any Mortgage by which the interest of any Owner of any portion of the Property or interest therein, is encumbered, or any successor to the interest of such Person under such Mortgage.

25. "Owner" shall mean the person or persons, including the Declarant, and in the case of joint ownership such owners jointly, owning, in fee simple, real property in the Project, as such ownership is shown by the records of the County Recorder of Summit County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple pursuant to a judicial or non-judicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure), or to any person or persons purchasing property within the Project under contract until such contract is fully performed and legal title conveyed of record, provided the Association shall not be considered an Owner.

26. "Parcel A" shall mean that portion of the Property that is more particularly described as Parcel A on Exhibit "B" attached hereto. Parcel A shall be used only for recreation purposes. The fee structure for use of SBSRD's public facilities within the Project shall allow residential property owners, renters, resort residential patrons, and office tenants and their employees within the Project to access such public facilities for the same fee or charge as residents of the County. The covenants in this section shall run with the land constituting Parcel A, and are subject to modification or termination pursuant to an amendment or modification of this Declaration as provided in Article X below.

27. "Parcel B" shall mean that portion of the Property that does not include Parcel A.

28. "Parking and Roadway Related Expenses" shall mean all expenses associated with costs of operation, enforcement of rules related to parking areas and roadways, maintenance and replacement of roadways and parking areas including, but not limited to, costs associated with lighting, marking, clean up, snow removal and reserves for periodic resurfacing and replacement of permanent improvements to parking areas and roadways.

29. "Peak Parking Demand" shall mean the higher of (a) peak parking demand on a daily basis with respect to any particular use of any parcel of property within the Project, or (b) the greatest number of parking stalls reserved, on a regular basis, exclusively for the use of the Owners or occupants of any particular parcel of property within the Project. The Association shall determine Peak Parking Demand as in its reasonable judgment it determines to reflect the intent hereof, and in conjunction therewith will rely on parking studies or counts and such other matters as the Association reasonably deems appropriate.

30. "Project" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

31. "Property" shall mean all of the real property that is the subject of the SPA and this Declaration, more particularly described in Article II hereof.

32. "SBSRD" shall mean Snyderville Basin Special Recreation District, a Utah special service district.

33. "SPA" shall mean Redstone Parkside Specially Planned Area and Development Agreement, as adopted by Summit County Ordinance No. 427.

34. "User Group" shall mean a group of Members owning property in the Project that have similar use, for example: office, retail, recreation center, hotel, residential, and financial institution.

35. "Voting Power of the Association" shall mean all votes entitled to be cast at any point in time as computed in accordance with paragraph 3 of Article III hereof.

## ARTICLE II. PROPERTY DESCRIPTION.

The property associated with the Project, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions, easements and restrictions of this Declaration, consists of the following described real property situated in Summit County, State of Utah as described in Exhibit "A" attached hereto.

### ARTICLE III. THE ASSOCIATION

1. **Membership.** Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically on becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to real property within the Project is held by more than one person, the Membership appurtenant thereto shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title is held, provided that liability for Annual Assessments shall be joint and several as between such Members and such Members must act unanimously to cast votes in respect to their membership. Each Membership shall be appurtenant to the real property within the Project to which it relates and shall be transferred automatically by conveyance thereof. Ownership of real property within the Project cannot be separated from the Membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such real property within the Project shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association.

2. **Board of Directors.** The initial Board of Directors of the Association shall be appointed by Declarant. Such directors shall serve until their replacements are elected and qualified in accordance with the By-Laws.

3. **Votes.** Members shall be entitled to voting rights calculated in respect of such Members' real property within the Project, which voting rights shall be the sum of:

- A. One vote per Billable Square Foot—Passive.
- B. Ten votes for each Billable Square Foot—Active.

C. Notwithstanding any provision of this Declaration to the contrary, Declarant shall have three (3) times the votes as calculated in accordance with paragraph 3.A. and 3.B., as applicable, until the sooner of:

- (i) Expiration of five (5) years from the date of recording of the Declaration, and
- (ii) Total votes as calculated in accordance with paragraph 3.A. and 3.B. meets or exceeds 4,700,000 total votes.

The votes cast at any Association meeting by any of the Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the real property of such Owner(s), unless an objection is immediately made by another Owner of the same real property. In the event such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. Cumulative voting is not permitted.

4. Association Rights and Duties.

A. The Association shall maintain Common Areas, other real property to which it takes title, and all personalty owned by the Association, in good condition and repair, in a first-class, high quality manner, clean and free of rubbish, snow, ice or other hazards to persons using the Project, and otherwise in compliance with all applicable ordinances, laws and regulations of any governmental entity having jurisdiction thereof, and provide for the maintenance of the common roadways and utilities located thereon or therein, to replace, repair and reconstruct any improvements related to such Common Areas, roadways or utilities, or other infrastructure which may from time to time exist on real property owned by the Association, all in a manner consistent with a first-class, high quality commercial and/or residential real estate development. Further, the Association shall construct and maintain such storm drainage and wetlands mitigation systems as may be required by separate agreement relating to storm drainage and wetland mitigation facilities constructed offsite and to the east of the Property. The Association shall pay any other utility or other costs and expenditures associated with such activities. Without limiting the foregoing, the Association shall also maintain roadways and parking areas, which the Association owns or over which it has an easement or other right of use, and to pay all Parking and Roadway Related Expenses associated therewith.

B. The Association shall maintain commercial general liability insurance insuring the Association, its Members, and such other persons who hold other interests in any real property comprising all or any portion of the Project against all claims for personal injury, bodily injury, death or property damage occurring on the Common Areas, or in association with such other property, real or personal, as may be held by the Association. Such insurance shall be carried by a responsible company and shall afford at least the coverage provided by a "combined single limit" policy of not less than \$2 million per occurrence, and not less than \$5 million in the aggregate, for personal injury, bodily injury, death and property damage, which may be increased by the Association in its reasonable discretion from time to time, to the extent the Association deems advisable. The Association may maintain casualty insurance on the improvements owned by it or located on, under or within the Common Areas or other real or personal property owned by the Association, subject to commercially reasonable deductibles, and shall pay all taxes on the Common Areas, roadways and real and personal property owned by the Association.

C. The Association shall have the right to establish rules respecting use of the Common Areas, parking rules and regulations, including provisions for Limited Common Areas designated as reserved for private parking by certain Owners to the exclusion of other Owners in the Project, along with rules relating to the size or configuration of vehicles parking within the Project, and may require that the Owner of real property within the Project, at its sole expense, provide adequate parking to be constructed concurrently with any proposed changes to Buildings or other improvements, as provided in section III.4.F., within the Project so as to accommodate

parking needs or uses to which such real property will be put. All such rules, when adopted by the Association, shall be binding on the Owners.

D. It is the Association's intent to facilitate the development of a mass transit hub(s) to be located on the Property. The Association shall have the right to evaluate, determine and make such expenditures as the Association in its reasonable discretion deems appropriate to study and solicit governmental funding for the development of a mass transit hub(s) and related system(s) be located on the Property. The Association's participation in the cost of construction of a mass transit hub(s) and related system(s) or in conjunction therewith, the right to create special service districts, special improvement districts and special service areas, shall require the approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

E. The funds derived from CAAP Assessments (as defined hereafter in section V.2.C. of this Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions) shall be allocated one-half (1/2) to the benefit of the Association ("Association CAAP Fees") and one-half (1/2) to benefit of each User Group that funded the CAAP Assessments ("User Group CAAP Fees"). The Association shall establish, design, plan, manage, operate, make acquisitions and expenditures for and administer CAAPs using Association CAAP Fees. Each User Group shall establish, design, plan, manage, operate, make acquisitions and expenditures for and administer CAAPs using User Group CAAP Fees. Notwithstanding the foregoing, the use of User Group CAAP Fees must be presented to and approved by the Board of Directors of the Association

F. The Declarant and its successors shall have the sole discretion to determine the uses, appearances and configuration of any construction of Buildings or other improvements undertaken as a part of the build out of the project pursuant to its development agreement with Summit County, and the Declarant is not required to submit any such development plans to the Association for review and approval. The completion of phase 2 of the SBSRD public facility, the Cottonwood at Newpark Building One and Cottonwood at Newpark Building Two are projects to be constructed pursuant to the development agreement with Summit County and shall be deemed to be part of Declarant's and its successors' initial build out of the project and not subject to Association review and approval. For construction activities that are not part of the initial build out of the project, the Association shall have the right to approve, disapprove or give conditional approval to all changes in uses, exterior appearance and exterior configuration of any Buildings or other improvements located within the Project, and to the extent deemed necessary by the Association, the Association may develop guidelines relating to requests for approval of changes to Buildings or other improvements. Approval of any plans for construction of changes to Buildings or other improvements located in the Project may be conditioned upon such assurances as the Association deems appropriate to ensure that any such construction is completed in a timely fashion, and that adequate parking will be constructed concurrently with any such construction to reasonably accommodate the parking needs or uses associated with such Buildings or other improvements.

G. "Construction," as that term is used herein, means construction of the Buildings or other improvements upon the land, structural changes to improvements, as well as remodeling and changes to esthetic aspects associated with Buildings or other improvements which are either new or materially change the appearance or configuration of any Buildings or other improvements on the Property.

H. The Association shall establish budgets for all expenditures, on a yearly basis, which shall be presented to the Members by the Board of Directors at the annual meeting of Members and shall include sub-budgets for costs and expenses anticipated to be incurred for the following:

(i) Items associated with the Association's right and duties, as set forth in paragraphs 4.A and 4.B. of this Article.

(ii) Items associated with costs and expenses of the Association relating to its rights and duties, as set forth in paragraphs 4.C. and 4.D. of this Article.

(iii) Items associated with costs and expenses of the Association relating to its rights and duties, as set forth in 4.E. of this Article.

I. The Association shall be obligated to accept from Declarant title to such property as Declarant shall reasonably determine to be used as Common Areas within the Project at no purchase cost to the Association in connection with such acceptance of title. The Association may take title to such other property as it deems appropriate in furtherance of the purposes of this Declaration.

J. The Association shall have the right to enter into contracts for any purpose related to the rights or duties set forth in this Declaration, to borrow money, and to maintain investments as the Association deems appropriate, and in such form as the Association shall approve to mortgage, lease, encumber, sell, dedicate, or otherwise dispose of, alienate or acquire interests in property, real or personal, and to otherwise do all things, perform all acts and enter into all arrangements that it deems reasonable and prudent in furtherance of the rights and duties of the Association contained in this Declaration. The foregoing notwithstanding, the Association shall not make any expenditures or incur any indebtedness in an amount in excess of 120 percent of the amount of the budgets for all expenditures, as the same may have been established in accordance with paragraph 4.H. of this Article, for the current year if budgets have been approved or for the year prior to the year in which such expenditures or indebtedness is to be undertaken, except upon approval of a majority the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

K. Public Transportation and parking structures are contemplated in the Newpark Town Center. The Declarant and others holding fee title to the parking areas within the Property ("Parking Fee Title Holders") are subject to parking right easements held by the Association for the benefit of the Members/Owners. The Members/Owners have the right to the



use of the parking areas for parking and related uses enjoyed in common, subject to the rules and regulations of the Association. Parking Fee Title Holders have the right, but not the obligation, to convey easements or fee title to the parking areas to facilitate transit oriented development grants or other forms of public transportation and/or parking improvement financial assistance to a public agency pursuant to such issuing grants or loans, but any conveyance shall be subject to satisfying the parking requirements of the Members/Owners. If structured parking is constructed within the project, the parking requirements of the Members/Owners would be met through a combination of surface parking and parking in the structures. In the event the Parking Fee Title Holders have transferred title to the parking areas by deed to the Association, the Association has the right to convey easements or fee title to the parking areas to facilitate transit oriented development grants or other forms of public transportation and/or parking improvement financial assistance to a public agency pursuant to such issuing grants or loans. However, any such conveyance shall be subject to an appropriate reservation or restriction as appropriate to meet the parking demands of Members/Owners.

#### ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS/EASEMENTS

1. Easement of Enjoyment. Subject to the Association's right to designate Limited Common Areas, and to promulgate any rules or regulations contemplated by this Declaration or the Bylaws, each Member shall have an undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress over and across such Common Areas. Each Owner shall also have the exclusive right, subject to any other easements, to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to the land and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any invitee, guest, tenant, lessee, contract purchaser, or other person who occupies or utilizes such Member's land.

2. Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the Buildings or other improvements causes any part of such Buildings or other improvements, if built in substantial accord with the boundaries and approvals given by the Association for such improvements, to encroach upon the Common Areas, or upon adjoining land, or if any part of the Common Areas encroaches or shall encroach for any such reason(s), an easement for such encroachment and for the maintenance of the same shall and does exist.

3. Easement for CAAPs. All of the exterior surfaces of all Buildings and other improvements now or hereinafter located within the Project shall be burdened with an easement in favor of the Association to conduct CAAPs which easement shall include without limitation the right to append materials to the exterior surfaces of such Buildings and other improvements and make such penetrations and alterations of such surfaces as are reasonably necessary to the exercise of the rights herein created. The Association shall have the responsibility to restore to

its prior condition and repair any damage caused by this easement. CAAP activities shall not interfere with normal use of Members' property. This easement shall not apply to Parcel A.

#### ARTICLE V. ASSESSMENTS.

1. Agreement to Pay Assessments. Declarant for itself and each Owner by the acceptance of instruments of conveyance and transfer of property within the Project, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all Assessments made by the Association for the purposes provided in this Declaration. Such Assessments shall be established and collected from time to time as provided in this Declaration.

2. Annual Assessments. "Annual Assessments" or "Assessments" shall mean and be computed and assessed by the Association as follows:

A. Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of capital improvements as permitted hereunder and all estimated costs and expenses of the Association arising out of or connected with the maintenance and operation of the Common Areas, CAAPs, and furnishing common utility services and other common items to the real property within the Project and all other costs and expenses of the Association respecting the rights and duties of the Association as herein created, however, the initial cost of construction of all Common Areas shall be the responsibility of Declarant or other third party that has accepted the responsibility for such costs. Wetland mitigation facilities were installed or are being installed by the Boyer Company by agreement between the Declarant and the Boyer Company. Such estimated expenses may include, without limitation: real property taxes and special assessments on the Common Areas; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance, restoration and cleaning of the Common Areas; landscaping; snow removal; wages of Association employees, including fees for managers, independent contractors and consultants; trash removal; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, maintenance reserves and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis; expenses associated with CAAPs; capital improvements and any other expenses and liabilities which may be incurred by the Association under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses, not including capital improvements, shall be apportioned among and assessed to all Owners based on the relationship between the total number of votes entitled to be cast by Members, but without regard to the weighted voting rights set forth in Article III, paragraph 3.C. hereof, and the number of votes to which each Owner is entitled to cast as set forth in paragraph 3 of Article III hereof. Declarant shall be duly liable for the amount of any Assessments against it calculated without regard to the weighted voting rights set forth in Article III, paragraph 3.C. hereof.

Common Expenses for capital improvements shall be determined at the time the assessment for such expenses is made, and shall be apportioned among and assessed to all Owners in proportion to each Owner's share of the total of the Billable Square Footage—Active and Billable Square Footage—Passive.

The intent of apportionment of common expenses for capital improvements is that all parcel Owners should pay a share for a portion of common expenses for capital improvements without regard to whether the parcel is vacant, the parcel is partially developed, or the parcel is fully developed with residential, commercial, retail or other improvements constructed thereon.

The Association shall not undertake capital improvements in any single instance where the cost of such improvements is in excess of the budgets for all expenditures, as the same may have been established in accordance with paragraph 4.H of this Article for the current year if a budget has been established or in the case of emergency expenditures not to exceed the prior year budget, if a current year budget has not been approved, except upon approval of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

The Declarant shall be responsible for the cost of providing all Project parking throughout the complete build out of the Project, except for: i) parking on parcels where a third party has accepted the responsibility for such costs and ii) transit related parking provided under the terms of section III.4.D above. Upon completion of the build out of the Project, the cost of developing additional parking will be the responsibility of the Association, subject to the vote of three-fourths (3/4) of the Members, or by third parties that have accepted the responsibility for such costs.

If the Association incurs Common Expenses for capital improvements related to the construction of structured parking on the Property, the SBSRD share of such expenses and costs shall be as follows:

(i) SBSRD shall fund its proportionate share of the cost of constructing structured parking on the Project to the extent that SBSRD's peak parking demand from all of SBSRD's facilities within the Project exceeds 241 parking spaces.

(ii) If the Declarant, its successor, or the Association proposes that a regional transit hub be located within the Project, the transit hub and the structured parking may be funded, in part, through federal subsidies under the Transit Oriented Development ("TOD") grant system. SBSRD shall act as co-applicant for any such TOD subsidies for the Project, provided that SBSRD does not incur any material cost or any actual or potential liability. If SBSRD provides such co-applicant assistance and Declarant, its successor, or the Association is successful in obtaining such TOD subsidies, SBSRD's financial obligation to fund parking structures to meet demands in excess of 241 spaces shall be reduced by fifty (50%).

C. CAAP Assessments. Anything else in this Article V to the contrary notwithstanding, the Owner of each parcel of real property within the Project shall be assessed and pay not less than \$.03 plus COLA for each vote that such Owner is entitled to cast, calculated in accordance with the sum of paragraph 3.A. and paragraph 3.B. of Article III hereof, to fund CAAPs ("CAAP Assessments"); provided, however, the Association may allow a credit of up to 75% of any CAAP Assessment for activities approved in advance (as used in this paragraph "Qualifying Activities") which, in the Association's discretion, contribute to the purposes of CAAPs. CAAP Assessments shall be allocated and administered in the manner set forth in section III.4.E. of this Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions.

(i) For purposes of the maximum 75% credit referred to above, the following shall be deemed Qualifying Activities to the extent conducted by the SBSRD on Parcel A (or by other Owners on other parcels for cost referred to in paragraph V.2.C.(i) (a) of this Article V):

- (a) Cost of construction and maintenance of capital improvements freely accessible to the public, such as "pocket parks."
- (b) Incremental cost of initial improvements made to a field house to accommodate use of such facility as a convention center.
- (c) Incremental cost of initial improvements made to a swimming pool to accommodate year round operation, as compared to seasonal operations only.
- (d) Incremental cost of operation and maintenance of a swimming pool to accommodate year round operation, as compared to seasonal operations only.

(ii) The cost of such Qualifying Activities described in paragraphs 2.C.(i)(a), (b) and (c) of this Article V shall be divided by ten (10) plus COLA to determine the yearly credit hereunder and shall be available perpetually as such credit until disqualified as hereinafter provided. Such credit shall begin in the first full year after completion of such Qualifying Activities and shall continue for each successive year until the year of cessation of use of such capital facilities for the purposes for which such credit was given. Such credit shall resume in the first full year after such capital facilities resume the use for the purposes for which such credit is provided. Respecting 2.C.(i)(b), the facility must be utilized ten (10) days per calendar year for non-athletic events such as concerts and conventions to qualify for the credit. Respecting 2.C.(i)(c) and (d), and the swimming pool must be available for use 90 days during the period between

Thanksgiving and Easter, inclusive to qualify for the credit. In any year, credit for Qualifying Activities in excess of 75% of CAAP Assessments shall not carry forward to successive years.

D. The provisions set forth in paragraph 2.C. of this Article V shall not be amended except upon approval of three-fourths (3/4) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present, and any amendment reducing SBSRD Qualifying Activities or credit shall require consent of SBSRD.

E. Notice and Payment. Except with respect to the first year, the Association shall notify each Owner in writing as to the amount of the Annual Assessment at the annual Owners' meeting, or as soon as reasonably practical after the annual Association meeting. Except as otherwise provided by the Association, each Annual Assessment shall be payable in one (1) annual installment, due on or before February 15 of the year for which such Annual Assessment is payable; provided, however, the Annual Assessment for the first year shall be prorated to reflect the portion of the first year that shall have elapsed prior to the date of assessment. All unpaid installments of any Assessments shall bear interest at the rate established by the Association, which rate shall not exceed the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum rate permitted by applicable law, from fifteen (15) days after the date each such installment becomes due until paid. The Association shall also have the right to assess a late fee of up to five percent (5%) of any Assessment installment not paid within fifteen (15) days following the due date thereof. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment.

F. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including without limitation non-payment of any Owner's Assessment, the Association may levy additional Assessments in accordance with the procedure for special Assessments set forth in Article V, section 3 below, except that the vote therein specified shall be unnecessary.

3. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy, at any time, and from time to time, upon the approval of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present, which shall be payable over such periods as the Association may determine, for the purpose of defraying in whole or in part, the cost of any conversion, expansion, construction or reconstruction, unexpected repair or replacement of the Project or any part hereof, or for any other expense incurred or to be incurred as provided in this Declaration. Notice in writing of the amount of each such special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special Assessment shall bear interest at the rate established by the Association, which shall not

exceed the lesser of (i) eighteen percent (18%) per annum and (ii) the maximum rate permitted by applicable law, from the date such portions become due until paid. All funds received from special Assessments under this section shall be part of the Common Expense Fund.

4. Lien for Assessments. Except with respect to parcels owned at any point in time by any governmental entity, all sums assessed to Owners of real property within the Project pursuant to the provisions of this Article, together with penalties and interest thereon as provided herein, shall be secured by a lien on the respective Owner's real property within the Project in favor of the Association. To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner and a description of the parcel owned by such Owner. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Summit County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of power of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by applicable law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including without limitation reasonable attorneys' fees and related costs), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessment which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in some or all of the amount so secured at any foreclosure sale and to hold, lease, mortgage or convey the parcel in the name of the Association following such foreclosure if the Association is the successful bidder.

5. Personal Obligation of Owner. The amount of any Annual Assessment or special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including without limitation reasonable attorneys' fees and related costs.

6. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid Assessments shall not pass to successors in title unless assumed by them; provided, however, that the lien to secure unpaid Assessments shall not be affected by the sale or transfer of the parcel so encumbered.

7. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner, the Association within a reasonable period of time thereafter shall issue to such Owner a written certificate stating (a) that all Annual and special Assessments have

been paid as of the date of such certificate, or (b) if all Annual and special Assessments have not been paid, the amount of such Annual and special Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificate, which charge must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated.

8. Parking and Roadway Related Expenses. Anything in this Article V to the contrary notwithstanding, Parking and Roadway Related Expenses shall be assessed to Association Owners in accordance with this paragraph 8. The total Parking and Roadway Related Expenses shall be determined by the Association and each Owner shall be assessed an obligation to pay a share of such expenses equal to an amount determined by multiplying the total Parking and Roadway Related Expenses by a fraction, the numerator of which is Peak Parking Demand for the applicable period associated with such Owner's uses of its parcel within the Project and the denominator of which is the total Peak Parking Demand by all Owners associated with all parcels within the Project for such period.

#### ARTICLE VI. OWNER MAINTENANCE

1. Maintenance. All Buildings and other improvements shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect, adversely, the value or use of the Project or any portion thereof. The Owner of each parcel in the Project shall maintain, or cause to be maintained, in a safe, clean and tenantable condition, and in good order and repair, consistent in manner and appearance with a first-class, high quality commercial and/or residential real estate development, all Buildings and other improvements located on such Owner's respective parcel.

2. Association's Right to Maintain. The Association shall have the right, but not the obligation, to maintain and repair the Buildings and other improvements of any Owner, after written notice of not less than thirty (30) days to such Owner of his failure to repair or maintain as required by this Declaration, specifying in reasonable detail the items not performed by such Owner. In the event the Owner fails to cure such failure to repair or maintain following delivery of such notice, the Association may undertake, on behalf of such Owner, those items of repair or maintenance therein specified, in which event the Owner shall reimburse the Association for all costs and expenses incurred by the Association in performing such repair or maintenance, plus 15% of all such amounts, within thirty (30) days following demand for payment.

The cost of any such repair or maintenance by the Association shall be treated and enforceable in accordance with provisions herein relating to Assessments for which such Owner is liable and to which such Owner's real property within the Project is subject.

3. Destruction. In the event of destruction or damage from fire or any other casualty to any Buildings or other improvements, the Owner whose Building or other improvements is destroyed or damaged shall within six (6) months following the date of such fire or casualty have

started to rebuild or repair the same, or to remove debris and level the same. If an Owner elects to rebuild or repair such Building or other improvements, the same shall be repaired and rebuilt to at least substantially the same size and condition as existed immediately preceding such fire or casualty within 12 months following such fire or casualty. If the Owner elects to remove the debris and level the Buildings or other improvements so destroyed or damaged, the same shall be leveled so that the affected area conforms substantially to the Common Areas around it. The Owner shall retain the right to rebuild such Building or other improvements provided that such Owner comply with all of the terms and conditions of this Declaration. However, if the Owner fails to rebuild or repair such Building or other improvements within 12 months following the fire or casualty, the Association shall have the right to construct parking or landscaping improvements on the property and the right to use the property as if it were a Common Area, until such time as Owner proceeds with such rebuilding and repair of the Building and other improvements.

4. Utilities. The Owner shall pay for all utility services furnished to each parcel of real property within the Project except utility services, which are not separately billed or metered to individual parcels by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Owner as part of the Common Expenses.

#### ARTICLE VII. ARCHITECTURAL CONTROL

1. Association Approval. Except for routine maintenance which does not substantially alter the appearance of Buildings and developments of Declarant as described below in section III.4.F. and this section VII.1, no improvement of any sort whatsoever, or other structure or improvement, shall be erected, altered, moved, removed or maintained on any parcel of real property within the Project, nor shall any exterior, addition to, or change or alteration to any exterior of any Building or other improvement be made, unless the plans and specifications showing the color, nature, kind, shape, height, materials and location of the same, along with such other specifications as the Association shall request, shall have been submitted to, and approved in writing by, the Association which approval shall not be unreasonably withheld or delayed. The Association shall use its best judgment to ensure that all constructions and alterations within the Project conform to and harmonize with the requirements of this Declaration and the external design, color, texture and quality of existing Buildings and other improvements. Notwithstanding the foregoing or any other provision in these Declarations to the contrary, the Association shall not have the right to require its approval to any uses, appearances and configuration of any construction of Buildings and improvements upon the land in which Declarant or its successors and assigns undertakes as part of the development of build out of the project.

2. Procedure. In the event the Association fails to approve or disapprove plans and specifications within sixty (60) days after said plans and specifications, in complete detail, have been submitted to it, approval shall be deemed to have been given, and the provisions of this Article VII shall be deemed to have been fully complied with. The Association may establish



such rules as in its discretion it deems appropriate, including without limitation rules governing the form and content of submissions for consideration, as provided hereunder.

3. No Liability. Neither the Association, nor any Member thereof, nor any officer or director of the Association, nor any representative of the Association, shall be liable for damages by reason of any action or inaction or approval or disapproval by the Association, or by such other person, which occurs, or is taken, given or refused with respect to any matter relating to this Declaration.

4. Repair Work. All construction, alteration and repair work shall be accomplished in an expeditious manner in compliance with all laws, rules, regulations, orders, permits, approvals and licenses of governmental authorities having jurisdiction thereof. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party or any other parcel of real estate within the Project. The Owner undertaking such work shall repair, at his own cost and expense, any and all damage to Common Areas or third party property caused by such work and shall restore any such damaged property to a condition which is equal to, or better than, the condition which existed prior to the beginning of such work. The Owner undertaking such work shall indemnify and hold all other Owners and the Association harmless from all damages, loss or claims, including without limitation reasonable attorneys' fees and related costs attributable to the performance of such work.

#### ARTICLE VIII. ENFORCEMENT/MISCELLANEOUS

1. Rights of Enforcement. The right to enforce the terms, restrictions, covenants and easements contained herein and rules adopted by the Association shall belong only to the Owners, those holding real property within the Project through the Owners, and the Association.

2. Injunctive Relief. In the event of any violation or threatened violation of any of the terms, restrictions, covenants or easements contained herein, and any rules adopted by the Association, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, if any, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

3. Force Majeure; Attorneys' Fees. If the performance of any act or obligation of any party is prevented or delayed by an act of God, war, labor disputes or other causes beyond the reasonable control of such party, the time for the performance of the act or obligation shall be extended for a period that such act or performance is actually delayed or prevented by such cause. In the event any suit is brought for the enforcement of any provision of this Declaration, or as the result of any alleged breach thereof, or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered shall include an award thereof.

4. No Termination. It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

5. Cumulative Remedies; Waiver. The remedies to which any person entitled to enforce this Declaration may resort under the terms hereof are cumulative and are not intended to be exclusive of any other remedies to which such person may be entitled. Failure to insist upon the strict performance of any of the covenants of this Declaration, or to exercise any remedy herein contained, in any one or more cases shall not be construed as a waiver or a relinquishment for the future of such covenant or remedy.

6. Severability. If any clause, sentence or other portion of the terms, covenants or restrictions of this Declaration shall be determined to be illegal, null or void for any reason, or is held by a court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

#### ARTICLE IX. DURATION

This Declaration, and each easement, covenant, condition and restriction hereby created, shall continue for a period of fifty (50) years from the date of recording of this instrument with the Office of the Summit County Recorder, State of Utah, or for such longer period as may be provided for by amendment to this Declaration.

#### ARTICLE X. AMENDMENTS OR MODIFICATIONS

Except as otherwise provided respecting certain provisions hereof, this Declaration, and any term, covenant, restriction or easement contained herein, may be terminated, extended, modified or amended by the Association upon the affirmative vote of at least two-thirds (2/3) of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present.

#### ARTICLE XI. MORTGAGE PROTECTION CLAUSE

1. Mortgage Protection. The Board of Directors shall maintain a roster containing the name and address of each Eligible Mortgagee. A First Mortgagee may become an Eligible Mortgagee by providing the Board of Directors with a certified copy of its recorded First Mortgage and the name and address of the First Mortgagee, together with a written statement that the Mortgage is a First Mortgage and a request that it receive notice of the matters and actions described in this Article below. An Eligible Mortgagee shall be stricken from the roster of Eligible Mortgagees upon written request by such Eligible Mortgagee or upon receipt by the Board of Directors of a certified copy of a recorded full release or satisfaction of the applicable Eligible Mortgage. Notice of such removal shall be given to the Eligible Mortgagee unless the Eligible Mortgagee has requested such removal. Upon the Association's receipt of a written

request from an Eligible Mortgagee in the manner set forth herein to receive notice of the matters and actions described in this Article below, an Eligible Mortgagee shall be entitled to written notice of:

A. Any condemnation loss or any casualty loss which materially affects a significant portion of the Property on which there is a Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of Assessments or charges owed by an Owner a portion of the Property is subject to a First Mortgage held, insured or guaranteed by such Mortgagee, insurer or governmental guarantor, which delinquency or default remains uncured for a period of sixty (60) days;

C. Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association; and

D. Any default by an Owner of a portion of the Property in the performance of such Owner's obligations under these Declarations, the Articles, or the Bylaws which default is not cured within sixty (60) days.

2. Subordination of Lien. A First Mortgagee who comes into possession of a portion of the Property or an interest therein (a) pursuant to the remedies provided in such First Mortgage, or (b) by foreclosure of the First Mortgage, or (c) by way of deed or assignment in lieu of foreclosure, shall take such portion of the Property or interest therein free of any claims for unpaid assessments or charges which accrued prior to the time such First Mortgagee comes into possession of such portion of the Property or interest therein, except for claims for a pro rata share of the applicable assessments or charges resulting from a pro rata reallocation of such assessments or charges to all or portions of the Property, including the portion of the Property or interest therein which is subject to such First Mortgage. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any portion of the Property or interest therein which have been suspended with respect to the defaulting Owner shall be reinstated. The provisions of this section XI.3 shall be in addition to the rights of a First Mortgagee under section XI.4 below.

3. Prior Written Approval of Eligible Mortgagee. The approval of both three-fourths (3/4) of the Voting Power of the Association, as provided for in these Declarations, and by Eligible Mortgagees holding First Mortgages on portions of the Property the Owners of which have at least three-fourths (3/4) of the votes in the Association allocated to Owners of portions of the Property subject to First Mortgages held by Eligible Mortgagees shall be required before the Association is entitled to:

A. By act or omission, seek to abandon or terminate this Declaration or the Project;

B. By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, if such act or omission would materially decrease the value of an Owner's portion of the Property encumbered by a First Mortgage. The granting of easements for

public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this subsection;

C. Use hazard insurance proceeds for losses to the Common Areas for any purpose other than the repair, replacement or reconstruction of the Common Areas; and

D. Modify the rights granted to Mortgagees under this Article XI.

4. Right of Inspection. First Mortgagees shall have the right to inspect Association documents and records on the same terms as the Owners.

#### ARTICLE XII INFORMAL ACTION BY MEMBERS

1. Written Consent. Any action required to be taken at a meeting of the Members of the Association, or any action which may be taken at such meeting of the Members, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, shall be signed by Members having not less than the number of votes that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote thereon were present and voted. The following additional provisions shall govern any application of this section:

A. The Board of Directors shall provide the proposed written consent to all Members of record entitled to vote thereon no less than ten (10) days prior to when the vote can be counted and in accordance with section III.5. Methods of Providing Notice of the By-Laws of the Association.

B. All necessary consents must be obtained prior to the expiration of sixty (60) days after the proposed written consent was deemed to have been delivered.

C. Unless the consents of all Members having an ownership interest in the same parcel are secured, the consent of none of such owners shall be effective.

2. Form of Participation in Meetings. Members of the Association may participate in any meeting of Members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting can hear each other during the meeting. A Member participating in a meeting by this means shall be considered to be present at such meeting.

#### ARTICLE XIII. INTERPRETATION TO AVOID CONFLICTS OF LAW

These Declarations shall be interpreted and enforced to comply with the Utah Revised Nonprofit Corporation Act, state or federal laws, or legal restrictions of any governmental or quasi-governmental state or federal entity.



EXHIBIT "A"  
to  
NEWPARK CC&R'S

BEGINNING at the intersection of the extension of the East Line of The Village at Kimball Junction, a subdivision recorded March 11, 1992, as Entry No. 355411 on file at the Summit County Recorder's Office and the Southerly right-of-way line of I-80, said point being South 89°47'32" East along the Section Line 2665.60 feet and South 00°05'40" East 662.65 feet and South 68°45'09" East 4.13 feet from the Northwest Corner of Section 19, Township 1 South Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19); and running thence along said Southerly right-of-way line of I-80 the following three (3) courses: 1) thence South 68°45'09" East 61.64 feet to a Right-of-Way Brass Cap; 2) thence South 70°15'49" East 121.75 feet to a Right-of-Way Brass Cap; 3) thence South 72°09'40" East 853.08 feet; thence South 17°50'20" West 160.83 feet; thence South 44°50'21" West 274.42 feet; thence South 276.32 feet; thence South 44°59'21" West 222.70 feet; thence South 44°59'32" East 112.82 feet; thence South 00°00'28" West 88.14 feet; thence South 45°00'28" West 222.44 feet; thence South 00°00'16" East 47.66 feet; thence South 44°59'32" East 142.15 feet; thence South 00°00'28" West 224.85 feet; thence South 45°00'28" West 108.12 feet; thence South 00°00'28" West 44.51 feet; thence South 45°00'00" East 111.12 feet; thence South 00°02'15" West 225.00 feet; thence South 30°38'35" West 94.22 feet; thence West 89.67 feet; thence South 45°00'28" West 107.25 feet; thence South 25°14'08" West 186.89 feet to a point of curvature of a 165.41 foot radius curve to the right, the center of which bears North 64°45'52" West; thence Southwesterly along the arc of said curve 384.81 feet through a central angle of 133°17'30" to the East Line of said the Village at Kimball Junction Subdivision; thence North 00°16'14" West along said East Line and its extension 2545.07 feet to the POINT OF BEGINNING.

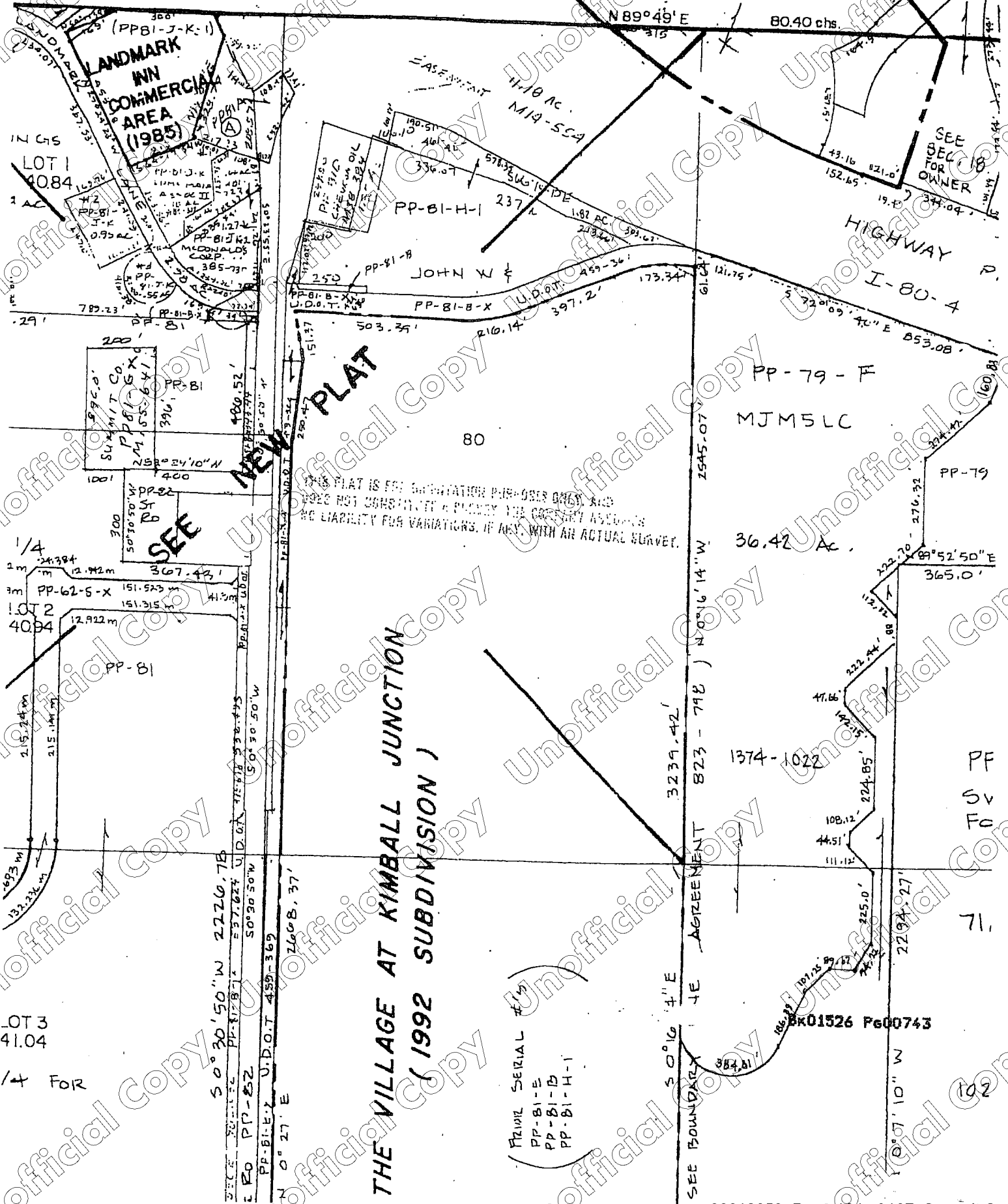
Summit County Tax Serial No: ~~PP-79-F~~ PP-79-F

**STEWART TITLE®**  
GUARANTY COMPANY

(A) WEALTHY CORP.  
 302-684 587-4245  
 217-536 1.52 AC.  
 316-524  
 461-226

SALT LAKE BASE & MERIDIAN  
 SCALE

SPRING CREEK SUB. 18



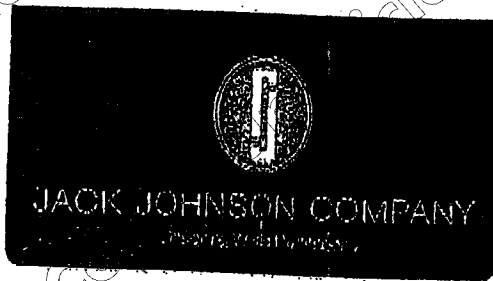
THIS PLAT IS FOR INFORMATION PURPOSES ONLY, AND DOES NOT CONSTITUTE A PROMISE OR WARRANTY AND NO LIABILITY FOR VARIATIONS, IF ANY, WITH AN ACTUAL SURVEY.

**THE VILLAGE AT KIMBALL JUNCTION  
 ( 1992 SUBDIVISION )**

PLAT SERIAL #19  
 PP-81-E  
 PP-81-B  
 PP-81-H-1



EXHIBIT "B"  
to  
NEWPARK CC&R'S



**PROPOSED SBSRD PARCEL**  
**Legal Description**  
**Revised February 04, 2003**

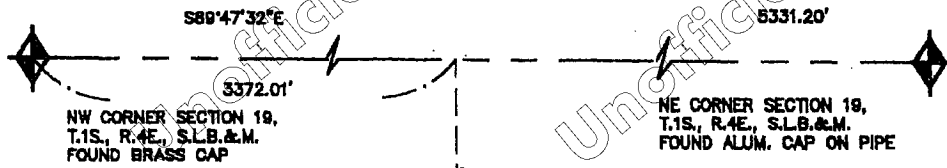
Beginning at a point which is South 89°47'32" East along the Section Line 3372.01 feet and South 958.44 feet from the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'00" East 2662.16 feet between said Northwest Corner and the West Quarter Corner of said Section 19) and running thence South 72°09'40" East 131.42 feet to a point of curvature of a 458.98 foot radius curve to the right, the center of which bears South 17°50'20" West, thence Easterly along the arc of said curve 73.27 feet through a central angle of 09°08'48" to the point of reverse curvature of a 458.98 foot radius curve to the left, the center of which bears North 26°59'08" East, thence Easterly along the arc of said curve 73.55 feet through a central angle of 09°10'54"; thence South 17°50'20" West 89.16 feet; thence South 44°50'21" West 274.42 feet; thence South 26.46 feet; thence West 81.65 feet to a point on a 75.00 foot non-tangent curve to the left, the center of which bears South 81°34'36" West; thence Northerly along the arc of said curve 47.88 feet through a central angle of 36°34'36"; thence North 45°00'00" West 196.00 feet; thence North 44°58'29" East 219.74 feet; thence North 35°00'00" East 80.55 feet more or less to the Point of Beginning.

Containing 103,092 Sq. Ft or 2.367 Acres more or less

MPK-S

Subject to and together with any and all easements, restrictions, conditions and/or instruments of record.

JJCo.#039.0103.00(005)  
02-04-2003/RJSr.



PARCEL T

COMMON PARCEL 1

P.O.B.

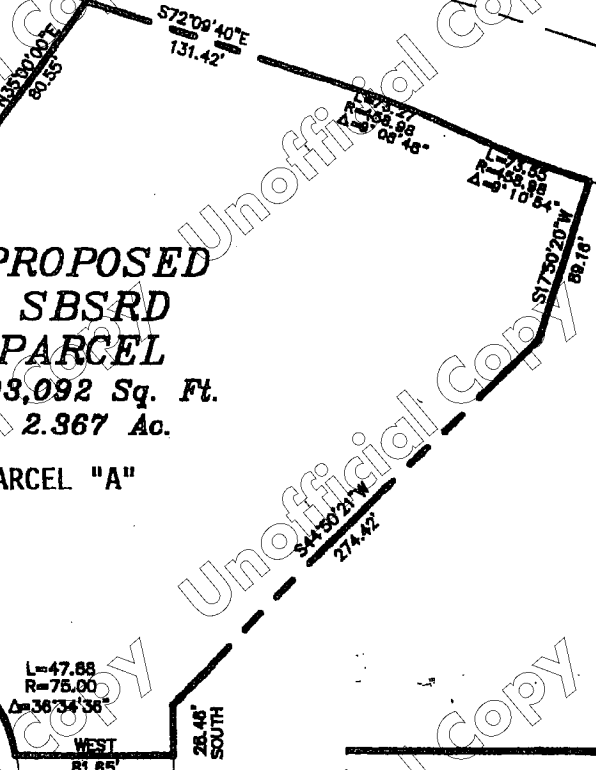
**PROPOSED  
 SBSRD  
 PARCEL**  
 103,092 Sq. Ft.  
 2.367 Ac.


PARCEL "A"

PARCEL V

PARCEL P

PARCEL W





**JACK JOHNSON COMPANY**  
 Designing World Destinations

---

EXHIBIT MAP  
**SBSRD PARCEL**  
**REDSTONE NEWPARK**  
 SUMMIT COUNTY, UTAH

SUE DATE: FEB. 04, 2003