

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF LA ESTANCIA SUBDIVISION

This Declaration of Covenants, Conditions and Restrictions is recorded in connection with a planned unit development subdivision known as La Estancia.

RECITALS

Declarant is the owner of certain real property (the "Property") in Kanab, Kane County, Utah, which is more particularly described on Exhibit A attached hereto.

Declarant will convey the Property subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth.

It is the desire and intention of Declarant to divide the Property for the construction of residential dwellings and sell and convey the same to various purchasers. Certain common and limited common area will be conveyed to an association established pursuant to this Declaration, in which the Owners will be members.

DECLARATION

Declarant hereby declares that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat of La Estancia Subdivision, recorded concurrently herewith. This is for the purpose of protecting the value and desirability of the Property. This Declaration and the plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof or their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE 1 - DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, may not be capitalized in this Declaration.

Section 1.1. Association means the La Estancia Homeowners Association, its successors and assigns.

Section 1.2. Board of Directors means the governing body of the Association.

Section 1.3. Common Area means all real property (including the improvements thereto) owned or hereafter acquired by the Association for the common use and enjoyment of the Members and includes that portion of Property owned by the Association, shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners as further described herein, and is not dedicated for the use of the general public, except as otherwise set forth in this Declaration or as specifically determined by the Directors. Specifically exempted from Common Area are Lots, Pads, Limited Common Area and dedicated public streets that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

Section 1.4. Declarant means La Estancia Development, LLC, a Utah limited liability company, and the Declarant's heirs, successors and assigns.

Section 1.5. Declaration means this instrument, and any amendments thereto.

Section 1.6. Directors means the members of the governing body of the Association.

Section 1.7. Entire Membership means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for Class A1, Class A2, and Class B Members.

Section 1.8. Front Yard means that portion of the Limited Common Area between a line formed by the front walls of any home built on a Pad and the public or private street in front of and adjacent to such Pad.

Section 1.9. Limited Common Area means that portion of Property owned by the Association, shown on the Plat as Limited Common Area. The Owner of the Pad to which such Limited Common Area is adjacent and/or appurtenant has the use and enjoyment of that Limited Common Area to the exclusion of other Owners. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 1.10. Lot means a separately numbered and individually described plot of land shown on the Plat designated for private ownership and which is not surrounded by nor associated with Limited Common Area, but specifically excludes the Common Areas and Limited Common Areas. Lots are designated on the Plat as numbers 38 through 46, inclusive.

Section 1.11. Pad means a separately numbered and individually described plot of land shown on the Plat designated for private ownership and surrounded by and associated with Limited Common Area, but specifically excludes the Common and Limited Common Areas. Pads are designated on the Plat as numbers 1 through 19 and 21 through 37, inclusive.

Section 1.12. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.14. Owner means the entity, person, or group of persons owning fee simple title to any Lot or Pad which is within the Property. Regardless of the number of parties participating in ownership of each Lot or Pad, the group of those parties shall be treated as one "Owner."

Section 1.15. Plat means the subdivision plat recorded herewith entitled "La Estancia Subdivision" consisting of two sheets, prepared and certified by Talbot Land Surveyors, by Lanny Talbot, a Utah Registered Land Surveyor or any replacements thereof, or additions thereto.

Section 1.16. Property or Properties means that certain real property described on Exhibit A hereto, and such additions and annexations thereto as may hereafter be subjected to this Declaration.

ARTICLE 2 - PROPERTY RIGHTS

Section 2.1. Title to the Common Area. Declarant will convey fee simple title to the Common Area and Limited Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot or Pad, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards.

Section 2.2. Members' Easements of Enjoyment. Every Member has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Lot or Pad, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service of the Association or provided upon the Common Area or parking facilities situated upon the Common Area. No fees shall be charged for parking specifically designated on the Plat as appurtenant to a Lot or Pad;

(b) The right of the Association to limit the number of guests of Members using the Common Area;

(c) The right of the Association to suspend the voting rights, use of Common and Limited Common areas, and/or common utility service of a Member for any period during which any assessment or portion

thereof against the Member's Pad remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations;

(d) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association or its members in consideration for use of the Common Areas and facilities of the other Association, for cash consideration, or for such other consideration as the Association may determine;

(e) The right of the Association, if there is no Class B membership, with the approval of sixty-seven percent (67%) of the Entire Membership, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;

(f) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association;

(g) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure;

(h) The terms and conditions of this Declaration;

(i) The right of the Declarant or the Association, through its Directors, to adopt rules and regulations concerning use of the Common Area; and

(j) The right of the Declarant to take such actions as it may deem necessary so long as the expansion of the Project shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

Section 2.3. Additional Limitations on Class A1 Members' Easements of Enjoyment. In addition to the limitations on the Class A1 Members' right and easement of use and enjoyment in and to the Common Area as set forth in Section 2.2, such right and easement shall also be subject to the right of the Class A2 members of the Association, who choose to do so and pay the agreed upon fees for such use, to use the recreational facilities of the Association.

Section 2.4. Additional Limitations on Class A2 Members' Easements of Enjoyment. In addition to the limitations on the Class A2 Members' right and easement of use and enjoyment in and to the Common Area as set forth in Section 2.2, such right and easement shall specifically exclude the right to use any of the improved recreational facilities of the Association. In order for the Class A2 Members to use such facilities, the Class A2 Members must make an affirmative election to do so at the time of initial purchase of the Lot. In order to use such recreational facilities, the Class A2 Member must execute and deliver to the Association an agreement for such use as dictated by the Association, must pay the fees associated therewith, and must strictly adhere to all terms of the use agreement and any rules or regulations of the Association promulgated with regard to the recreational facilities. The initial fee for use of the recreational facilities is \$540.00 per Lot per year and is in addition to any other assessments of the Association upon the Class A2 Members made in accordance with this Declaration. Such fee may be adjusted by the Association from time to time as deemed appropriate by the Directors. The agreement to use the Association's recreational facilities shall run with the Member's Lot, shall be irrevocable by the Member, and shall be binding upon the Member and the Member's heirs, devisees, agents, representatives, transferees, successors and assigns. In the event that a Member fails to abide by applicable rules and regulations related to, or fails to pay the fees associated with, the use of the Association's recreational facilities, not only may the Member's right to use such facilities be suspended but the Association shall have the right to suspend all rights of the Member in the Association, assess penalties and fees for such noncompliance or nonpayment, and collect the amounts due in the same manner as the collection of other assessments by the Association.

Section 2.5. Limited Common Area. A Class A2 Member is entitled to use of the Limited Common Area adjacent and appurtenant to the Pad, if any, all to the exclusion of other Owners and Members. This right of use specifically includes, among other uses, the placement of HVAC units on Limited Common Areas directly adjacent to the residential dwelling in locations approved by the ACC as part of the plans for the construction of such residential dwelling. The Declarant, or the Association through its Directors, may adopt rules and regulations concerning use of the Limited Common Area. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

Section 2.6. Delegation of Use. An Owner or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Area and facilities to family Members, tenants, or contract purchasers who reside on the Property. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be an assessment charged to the Lot or Pad Owner.

Section 2.7. Rules. The Declarant or the Board of Directors shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules shall be compiled and copies shall be made available for inspection and copying by the any Members.

Section 2.8. Pad. Each Pad is owned in fee simple by the Owner. However, area within the surveyed Pad boundaries, but outside of the exterior walls of any dwelling constructed on the Pad, even though part of the Pad and owned in fee simple by the Owner, shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a Pad larger than the residential dwelling is to allow flexibility in the original dwelling construction. After the initial construction on a Pad, subsequent construction, if any, may occupy any portion of the surveyed Pad, subject to all other provisions of this Declaration. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the residential dwelling and within the rear area of the surveyed boundaries of the Pad, subject to approval of the Architectural Control Committee, as outlined in Article 6 herein.

Section 2.9. Lot. Each Lot is owned in fee simple by the Owner. An Owner may construct a residential dwelling and appurtenant structures and personal landscaping within the surveyed boundaries of the Lot, subject to approval of the Architectural Control Committee, as outlined in Article 6 herein.

ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner is a Member of the Association. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot or Pad ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

Section 3.2. Voting Rights. The Association has three classes of voting membership:

CLASS A1 AND CLASS A2. Class A1 Members shall be all Owners of Pads, with the exception of the Declarant. Class A2 Members shall be all Owners of Lots, with the exception of the Declarant. Class A1 and Class A2 Members are entitled to one vote for each Lot or Pad owned. When more than one person holds an interest in any Lot or Pad, the group of such persons shall be a single Member. The vote for such Lot or Pad shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Pad. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot or Pad concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot or Pad. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS B. The Class B Member shall be the Declarant, who shall be entitled to ten (10) votes for each Lot or Pad owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) upon conveyance of one hundred percent (100%) of all Lots and Pads to purchasers; or

(b) the expiration of seven (7) years from the first Lot or Pad conveyance to a purchaser; or

(c) the surrender of Class B membership status by the express written action of the Declarant. In the case of expansion (as provided under Article 10 hereof) the Declarant's memberships appurtenant to the Lots and Pads in the expansion area shall be Class B memberships.

The Declarant shall have the right to exercise control over all substantive issues regarding the Association or arising under this Declaration until such time as the Declarant shall lose its Class B voting status.

If Declarant exercises its option to add additional Lots or Pads by platting additional phases or by other permitted expansion, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, so that Declarant regains Class B voting status for all Lots and Pads owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

ARTICLE 4 - FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Owner of any Lot or Pad, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (c) any other amount or assessment levied or charged by the Association or Board of Directors pursuant to this Declaration; and (d) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the Lot or Pad and shall be a continuing lien upon the Lot or Pad against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the Owner of such Lot or Pad at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used: (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; (b) for the improvement and maintenance of Properties, services, and facilities devoted to this purpose; (c) for the improvement, maintenance, repair, replacement and preservation of the Common Areas; and (d) for the maintenance, repair, resurfacing, striping, seal coating and replacement of the paved and unpaved portions of the private streets, shoulders, drainage areas and slope areas within the Property. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common and Limited Common Areas; the payment of the cost of repairing, replacing, and maintaining the exteriors of each Pad as required by the Association hereunder; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those Common and Limited Common Areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board of Directors, for the payment of other charges, including, without limitation, maintenance, management, professional services, utilities, cable television, trash collection, sewer, and water charges.

Section 4.3. Maximum Annual Assessment. Until January 1 following recording of this Declaration, the maximum annual assessment with regard to Class A1 Members shall be One Thousand Eight Hundred Dollars (\$1,800.00) per Pad. Until January 1 following recording of this Declaration, the maximum annual assessment with

regard to Class A2 Members shall be One Thousand Dollars (\$1,000.00) per Lot, exclusive of any assessment charged in relation to the use of the recreational amenities of the Association. These amounts shall be the basis of calculation for future maximum annual assessments. From and after the date referred to above, the maximum annual assessment may be increased each year by ten percent (10%) above the maximum assessment for the previous year, without a vote of the membership. The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period. Such change may be made by the Board of Directors if there is Class B membership. If there is no Class B membership, any such change shall have the assent of sixty percent (60%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose. The actual annual assessment need not increase annually, however, the ability to increase assessments shall be cumulative with each passing year. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each owner as provided in Article 11. The Board must set the actual annual assessment to be an amount at or less than the maximum annual assessment.

Section 4.4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures and personal property related thereto. If there is no Class B membership, special assessments must have the assent of sixty percent (60%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 4.5. Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members required to be called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.6. Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Pads, respectively; provided, however, that no assessments shall accrue against the Declarant so long as the Declarant has Class B membership. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Directors determine.

Section 4.7. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days prior to the commencement of each new assessment period, the Directors shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a prerequisite to the validity of the assessment. In the absence of a determination by the Directors as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the Directors. The Directors may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The Board shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it sets the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times. The Association shall, upon demand, and for a reasonable charge as allowed by law, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot or Pad has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

Section 4.8. Effect of Non-Payment of Assessment - Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of twelve percent (12%) per annum (or such lesser rate as the Directors shall

determine appropriate) until paid. In addition, the Directors shall assess a late fee of \$100.00 for each delinquent installment. The Directors may, in the name of the Association: (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) may foreclose the lien against an Owner's Lot or Pad in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law; (c) may restrict, limit, or totally terminate any or all utility and other services provided by the Association in behalf of the delinquent Owner; (d) may restrict, limit, or totally terminate the Owner's right to use any Common Areas or Limited Common Areas; and/or (e) whenever the assessment is delinquent more than sixty (60) days, may collect from any tenant of the Owner any rent due the Owner and use such rent to pay the delinquent assessments and other charges, all as allowed by Utah law. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees, together with an amount for the reasonable rental for the Lot or Pad from the time of commencement of any foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot or Pad of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were a beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of exercising the power of sale. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of the Lot or Pad.

Section 4.9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot or Pad shall not affect the assessment lien. However, the sale or transfer of any Lot or Pad pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Pad Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

Section 4.10. Books, Records and Audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot and Pad Owners and insurers as well as by holders, insurers and guarantors of first mortgages, in accordance with Utah law. Charges shall be made for copying, researching or extracting from such documents as allowed by Utah law. A Lot or Pad Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

Section 4.11. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein:

- (a) All property dedicated to and accepted by any local public authority;
- (b) All Common Area and Limited Common Area;
- (c) All Lots and Pads owned by Declarant.

ARTICLE 5 - INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area. The Directors shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Directors may deem desirable. The Directors may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Directors may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance

proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Directors may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Directors deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the homes and other structures constructed upon any Lot or Pad, including the structural portions and fixtures thereof. Insurance premiums for any such blanket insurance, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to structures on any Lot or Pad shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners. The funds received under such policy shall be used to reconstruct the damaged or destroyed structures and improvements of the Lot or Pad. In the event any claim is made against an Association policy which is for the benefit of a specific Lot or Pad, the affected Lot or Pad Owner shall be responsible to pay any deductible involved with the claim.

Section 5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot and Pad Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot or Pad Owners.

Section 5.3. Liability Insurance. The Directors shall obtain a comprehensive policy of public liability insurance covering all of the Common and Limited Common Areas for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

Section 5.4. Fidelity Insurance. The Directors may elect to obtain fidelity coverage against dishonest acts, negligence, breach of fiduciary duties, or such other acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall seek a policy which shall: (a) name the Association as obligee or beneficiary; (b) be written in an amount not less than the sum of (i) three months' operating expenses, plus (ii) the maximum reserves of the Association which may be on deposit at any time; and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5. Costs and Annual Review of Policies. The costs of all insurance obtained by the Association shall constitute common expenses of the Association which shall be included in the regular annual assessments made by the Association. All insurance policies shall be reviewed at least annually by the Directors in order to ascertain whether the coverage contained in the policies is sufficient to insure against claims, losses, and to make any necessary repairs or replacements of the Property which may be damaged or destroyed.

ARTICLE 6 - ARCHITECTURAL CONTROL COMMITTEE

Section 6.1. Declarant Exemption The Declarant shall not be required to comply with the provisions of this Article in the initial construction of the Properties.

Section 6.2. Creation of Architectural Control Committee The Declarant shall fulfill all functions of the Architectural Control Committee ("ACC") under this Declaration until the Declarant expressly surrenders this right by written instrument, or until each Lot and Pad in the Properties (including all expansion areas) has a home constructed on it. At such time as the Declarant surrenders its right to fulfill the functions of the ACC, or such right

terminates as provided above, the Directors shall appoint the members of the ACC, which shall consist of three persons, one of whom shall be knowledgeable in the area of residential development. The initial committee members shall be appointed for terms of one, two, and three years each, and thereafter committee members shall be appointed for terms of three years. No member of the ACC shall receive any compensation or make any charge for services rendered. The ACC shall, by majority vote, adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties, may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The initial rules and regulations, subject to amendment, are attached as Exhibit B. After surrender or termination of the Declarant's right to fulfil the functions of the ACC, by majority vote of the ACC or by vote of a majority of the Owners, by one vote for each Lot or Pad, any rule or regulation may be amended, adopted or repealed. The ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. The ACC shall meet on a regular basis as determined by the ACC and based upon the amount of business to be transacted by the ACC.

Section 6.3. Approval Required No structure, building, fence, wall, patio, pool, deck, landscape or hardscape, and no addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or Pad or building be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or by an ACC, as the case may be. In the event the Declarant or the ACC fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this Article will be deemed to have been made. Without the prior written approval of at least sixty-seven percent (67%) of the Entire Membership, neither the Association nor the ACC shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of buildings and Lots and Pads, and the maintenance of the Common Areas, including walls, fences, driveways, lawns and landscaping. The approval of the Declarant or the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Declarant or the ACC to disapprove any similar plans and specifications subsequently submitted.

Section 6.4. Required Submittals Three (3) complete sets of building plans and specifications shall be filed with the Declarant or ACC, together with a site, Lot or Pad plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover. A fee of \$1,000.00 shall also be submitted at that time along with an application and such supporting materials (such as samples of building materials) as the Declarant or the ACC deems necessary. No work shall commence unless and until the Declarant or ACC shall endorse on all sets of such plans and specifications its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said ACC pursuant hereto. One set of plans and specifications shall be provided by the Owner to the City of Kanab, one set shall remain at the construction site for reference, and the third set shall be filed as a permanent record of the ACC.

Section 6.5. Approval by Kanab City No dwelling unit, accessory building, addition to a dwelling unit or accessory building, or any other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural topography or natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot or Pad until all required permits or required approvals are obtained from Kanab City or such other appropriate governmental entity, following submission to Kanab City or such other appropriate governmental entity of such information as may reasonably be required. The granting of a permit or approval by Kanab City or any other governmental entity with respect to any matter shall not bind or otherwise affect the power of the Declarant or the ACC to refuse to approve any such matter.

Section 6.6. No Liability Neither the Declarant nor the ACC shall be held liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this Declaration. Any errors or omissions in the design, construction, improvement or landscaping of any structure or property and any violation of this Declaration or of any law or regulation are the sole responsibility of the Lot or Pad Owner and the applicable designer, architect, or contractor. The Declarant's and the ACC's review of plans shall in no way be

concerned with structural, engineering or mechanical integrity or soundness, nor compliance with applicable laws or regulations.

Section 6.7. Remedies Available The Owner(s) and/or the Owner(s) agents and contractors shall be jointly and severally liable for compliance with the requirements of this Declaration in the construction of any improvements. The costs of any required changes to floor plans, colors, materials, etc., by reason of violations of this Declaration, or the rules, regulations or design standards of the ACC shall be the responsibility of such Owner(s), agents and contractors. Purchasers or Lot or Pad Owners within La Estancia acknowledge that any construction, remodeling, addition or modification of any kind of any structure and any excavation, grading or modification of the topography of any Lot or Pad which occurs without the written consent of the Declarant or a majority of the ACC will cause irreparable harm to other Owners and purchasers within La Estancia. Based thereon, any violation of this Article 6 by any person shall entitle the ACC, the Declarant, or the Owner of any Lot or Pad within any phase of La Estancia to enforce this provision through immediate injunctive relief through the appropriate court. By purchasing a Lot or Pad within La Estancia, such purchaser or Lot or Pad Owner, for themselves and their agents, representatives, successors and assigns, waives any and all defenses to the granting of such injunctive relief. Additionally, any purchaser or Owner of any Lot or Pad within La Estancia agrees that such injunctive relief is in addition to any other damages or claims which the ACC, the Declarant, or any Lot or Pad Owner within La Estancia may have hereunder or pursuant to law. In addition to all other remedies available, the Declarant or the ACC may levy a fine not to exceed \$500.00 for each violation, against any Owner(s), agent, contractor and/or other responsible party who violates these covenants or a rule, regulation or standard of the ACC, after three (3) days written notice, and opportunity for hearing. A fine may be levied for each day of a continuing violation. All enforcement costs, attorney fees and other expenses incurred in relation to such violations, and any fines levied, shall constitute a lien on such violating Owner's Lot or Pad, shall be a personal obligation of the Owner, and may be collected and the Lot or Pad foreclosed in the same manner as provided for the collection of delinquent assessments.

ARTICLE 7 - EXTERIOR MAINTENANCE

Section 7.1. Exterior Maintenance by Owners of Pads. Each Pad Owner shall be responsible for maintenance to the exterior of the residential dwelling owned and in the Limited Common Area adjacent and appurtenant to the Pad, except with respect to the Front Yard. Each Owner shall also be responsible for the maintenance, repair and replacement of any walls separating Limited Common Area to which the Owner is entitled to exclusive use, from any other Limited Common Area, Common Area, or private ownership. In the event that the wall divides Limited Common Area or areas under private ownership, such maintenance, repair and replacement obligation shall be divided between or among all Owners with rights in the property adjoining the walls in proportion to the length of wall adjoining the property in which each has an interest. In the event that the wall divides Limited Common Area or areas under private ownership from Common Areas, such maintenance, repair and replacement obligation shall be divided between or among all Owners with rights in the property adjoining the walls and the Association in proportion to the length of wall adjoining the property in which each has an interest. The Directors shall, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, and after a two-thirds (2/3) vote, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each residential dwelling and Pad, and the Limited Common Area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Pad and/or residential dwelling.

Section 7.2. Exterior Maintenance by Owners of Lots. Each Lot Owner shall be responsible for maintenance of the entire Lot and any structures thereon.

Section 7.3. Exterior Maintenance of Pads by Association Except with regard to the obligations for maintenance, repair and replacement set forth in Section 7.1, the Association shall be responsible for maintenance upon the Front Yard, the Common Area, and the Limited Common Area which is not adjacent to any Pad. The cost of such maintenance shall be a common expense.

Section 7.4. Access at Reasonable Hours For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right to enter upon any Pad or Limited Common Area at reasonable hours.

Section 7.5. Alteration of Certain Maintenance Duties by Rule The duty of maintenance for the area of a Pad outside the walls of the residential dwelling, and the Limited Common Areas adjacent and appurtenant to the residential dwelling, may be altered by rules of the Association.

ARTICLE 8 - USE RESTRICTIONS

Section 8.1. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots, Pads and homes during the period of construction and sale of said Lots, Pads and homes and upon such portion of the Property as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices.

Section 8.2. General Use Restrictions: Pads All of the Pads, Common and Limited Common areas which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the Common Property. All buildings or structures erected on the Pads shall be of new construction and no buildings or structures shall be removed from other locations to the Pads. Exterior colors for improvements must be earthtone, as approved by the ACC and as set forth on the Declarant's Color Palette. After the initial construction on a Pad, no subsequent building or structure dissimilar to that initially constructed shall be built on that Pad, unless built of the same components as the original residential dwelling, and approved in writing by the ACC prior to any construction. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Pad at any time.

Section 8.3. General Use Restrictions: Lots All of the Lots which are subject to this Declaration are hereby restricted to the construction of one detached single family dwelling per Lot, not to exceed the height indicated on the Plat with regard to each Lot, and one additional "casita" guest house. All structures and improvements shall be of a "Southwest," "Territorial," or "Tuscan" design, approved by the ACC. All construction on the Lot shall be of new materials, except that used brick or stone may be used with the prior written approval of the ACC. No buildings or structures shall be removed from other locations and relocated on the Lots. Exterior colors for improvements must be earthtone, as approved by the ACC and as set forth on the Developer's Color Palette. The design of any structures to be constructed on any Lot shall, in the sole determination of the ACC, be architecturally compatible with, and of a consistent design, color and style to, the structures constructed or to be constructed on Pads or in the adjoining subdivision of El Pueblo at La Estancia. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that Lot, unless built of the same components as the original residential dwelling, and approved in writing by the ACC prior to any construction. No structure of a temporary character, trailer, mobile home, basement with no upper structure, pre-manufactured home, tent, shack, garage, barn or any outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No lumber, material or building materials shall be kept, stored or allowed to accumulate on any Lot except building or other materials to be used in connection with any construction, alteration or improvement approved in accordance with the terms hereof and stored as allowed herein.

Every dwelling shall have, as a minimum, a fully enclosed two car garage which, if detached from the dwelling, shall constitute the accessory building. All residences shall have a single colored concrete driveway of no more than sixteen feet (16") in width, connecting the garage and parking on the Lot to the street in such a way as to allow safe ingress and egress. Guest parking for at least two vehicles shall be included in the design of the driveway. Such guest parking shall be designed to minimize impact to other Lots or roadways within the subdivision. Driveways, walkways, parking areas and areas of similar nature shall be designed and constructed so as to minimize the scarring of the terrain and removal of tree, vegetation, boulders, or other natural features. All driveways, walkways, parking areas and other areas of similar nature, shall be constructed of such materials and be of such

color as approved in writing by the ACC. Construction of all driveways, walkways, parking areas and other areas of similar nature must be completed in accordance with ACC approved plans and specifications concurrently with the substantial completion of the dwelling on the Lot.

Section 8.4. Ground Disturbance on Lots All dwellings must be located within the "lot area" as described on the subdivision plat. All utility lines from the street to the home shall be underground and located within the driveway right-of-way. Natural features and natural landscape of the Lot shall be maintained to the fullest extent possible. All proposed grading, cuts, fills, or other ground disturbance must be indicated on the plans submitted for approval by the ACC. Other than with regard to the construction of buildings, driveways, and utilities as approved by the ACC, no disturbance of any kind of the natural landscape or natural vegetation shall be permitted.

Section 8.5. Site Work on Lots No excessive excavation or fill shall be permitted. Where soil is exposed during the construction process, it shall be recontoured as needed and appropriately landscaped. All exposed openings shall be backfilled, the skirt ground shall be graded, and the site appropriately landscaped. No wholesale removal of vegetation will be allowed; rather the selective removal of vegetation only as necessary for construction will be permitted. Every effort shall be taken to avoid disturbing boulders, rock outcroppings or trees. Specific rock outcrops and trees which may not be disturbed under any circumstances are identified on the Plat. Owners shall make every reasonable effort to integrate existing rocks and trees into the design of the constructed environment. Site grading and drainage must occur with minimum disruption, without altering natural drainage patterns, and without causing conditions that could lead to unnecessary soil erosion. Cut slopes required for driveway construction may be left exposed earth and rock. Any retaining walls shall be constructed of or surfaced with stone consistent with the natural stone existing on the Lot.

Section 8.6. Soils Report on Lots The Lot purchaser shall obtain a soils test and foundation recommendation from a Utah registered engineer prior to submitting plans and specifications for construction to the ACC for approval. The ACC may condition final approval of plans and specifications upon the condition that the Owner follow the recommendations set forth in the soils report.

Section 8.7. Storage of Materials During construction of buildings or improvements on any Lot or Pad, and for a period of sixty (60) days after completion thereof, a Lot or Pad may be used for the storage of materials used in the construction of the building or improvement. In no event shall the total storage period exceed one hundred and eighty (180) days unless otherwise approved in writing by the ACC.

Section 8.8 Walls Courtyard walls constructed to shield landscaping shall not exceed five feet (5') in height. Walls surrounding swimming pools shall comply with applicable laws, ordinances and regulations. All courtyard and other walls shall be constructed of stone, block covered by stucco, or other masonry material approved in writing by the ACC. All courtyard and other walls shall be of a style and material compatible with the dwelling constructed or to be constructed on the Lot or Pad. No construction of any walls shall commence until the plans and specifications therefor have been approved in writing by the ACC. No wall shall be constructed or maintained in such manner as, in the opinion of the ACC, shall create a potential hazard or aesthetically offensive appearance.

Section 8.9. Slope and Drainage Control No structure, planting or material shall be placed or permitted to remain and no activities shall be undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. No change in the elevation of a Lot or Pad shall be made and no change in the condition of the soil or level of the land of a Lot or Pad shall be made which results in any permanent change in the flow and drainage of surface water which is detrimental to any other Lot or Pad. Construction of improvements and installation of landscaping shall be done in such a way that drainage water is retained on the Lot or Pad and/or conveyed to appropriate drainage facilities and as not to detrimentally drain onto or across any other Lot or Pad. The slope control areas of each Lot and Pad and all improvements in them shall be maintained continuously by the Owner of the Lot or Pad, except for those improvements for which a public authority, utility company or the Association is responsible.

Section 8.10. Swimming Pools and Spas Swimming pools and spas shall be designed as a visual extension of the dwelling through the use of walls and courtyards. No above ground swimming pools shall be permitted. All

swimming pools and spas shall be constructed in strict compliance with all laws, ordinances and regulations governing the same, and shall be appropriately fenced.

Section 8.11. Planting and Gardening on Pads No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any Pad except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Architectural Control Committee.

Section 8.12. Landscaping of Lots Landscaping of the front and side yards of Lots must be completed prior to occupancy. A fee of \$1,000.00 shall be tendered by the Owner of any Lot to the ACC at the time of submission of an application for approval of plans for improvement of any Lot. The \$1,000.00 fee shall be held, used, forfeited and/or refunded, all in accordance with the terms and conditions contained in the rules and regulations of the ACC, a copy of which is attached hereto as Exhibit B and by reference incorporated herein. La Estancia is a xeriscape community. Xeriscape is a landscape concept which emphasizes water conservation through the use of low water demand plant material. By using plants which survive in the arid climate and blend with the surrounding desert foliage, plant material, once established can survive with little or no watering. Guidelines shall be established for landscape plan approval by the ACC. The ACC shall have discretion to allow variance from the landscape guidelines where deemed appropriate by the ACC in its sole discretion. A maximum of twenty-five percent (25%) of the front yard area may be landscaped with grass or turf. Landscaping shall be maintained at a reasonable standard compatible with other homes in the subdivision. Landscaping on corner lots shall be located so as not to create a hazard for the movement of vehicles along streets. No fence, wall, hedge, or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within a triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines. The removal of boulders and natural vegetation shall be minimized. Courtyard walls shall be required where non-indigenous vegetation is planted to entirely shield such vegetation from view from any point outside of the Lot. Lots shall be kept free of all tall, noxious or offensive weeds and plant growth by the owner of said Lots. Should excessive growth occur on any Lot, the Owner shall be notified by the ACC, in writing, of such condition and shall be given thirty (30) days to correct the same, after which time the ACC may order such correction affected, the expense of which shall be charged to the Owner of the Lot or Lots.

Section 8.13. Outside Lighting All outside lighting will be maintained by the Owner so that light will be visible. At a minimum, the Owner shall maintain two lights on the exterior of the garage area of the home activated by a photo electric cell and with bulbs of no less than 100 watts. No high intensity lighting is allowed.

Section 8.14. Re-subdivision or Combining of Lots No Lot in this subdivision shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units. In the event any person desires to combine two or more Lots, either by use or plat amendment, approval shall first be obtained from the ACC. The responsibility to comply with all legal requirements and pay all costs associated with such combination shall be borne exclusively by the person desiring such combination of Lots.

Section 8.15. Damages Any damage inflicted upon existing natural vegetation or existing improvements, such as curbs, gutters, streets, sidewalks and such, by the Owner of any Lot or Pad and/or their agents or builders, must be restored or repaired within ninety (90) days after such damage is discovered. The expense of such restoration or repair shall be the joint and several liability of the Owner, the Owner's agents and the person causing such damage.

Section 8.16. Commercial Activities Prohibited Except with regard to the activities of the Declarant, Pads and Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind, except home occupations as may be permitted by Kanab City ordinances.

Section 8.17. Signs No signs of any kind shall be displayed to the public view on any Lot or Pad except one sign of not more than one square foot for identification (numbering) purposes. One sign of not more than two

(2) square feet on each side may be used for advertising the Lot or Pad for sale or rent or identifying the home during construction. Any sign used for advertising the Lot, Pad or home thereon for sale or rent, or for identifying the home during construction, shall be of the style, size, color and design, and shall strictly conform in all respects with the sign depicted on Exhibit C attached hereto and made a part hereof. Except as specifically provided in this Section 8.17, no signs, including but not limited to banners, flags or streamers of any nature, shall be allowed on any Lot or Pad. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 8.18. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

Section 8.19. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or Pad, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Lot or Pad Owners. All pets must be kept on the pet owner's Lot or Pad or on a leash when in the Common Areas, except when such animal is within the fenced dog park within the Property. This provision may be made more restrictive by rules of the Association.

Section 8.20. Use of Common Area Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of said Common Area, other than as permitted in this Declaration or as may be allowed by the Directors. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots and Pads in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area. As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon, including any community buildings, without charge, during the sales and construction period to aid in its marketing activities.

Section 8.21. Motorcycles and OHVs All motorcycles, trail bikes, three-wheel powered devices, off highway vehicles, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only on established streets, parking areas, and trails designated for such use. Such vehicles are specifically prohibited from operation within any other portions of the Property. Streets are to be used by such vehicles only for ingress, egress, and access purposes and not for recreational purposes anywhere within the Project. This provision may be modified by rule of the Association.

Section 8.22. Vehicles Motor vehicles that are inoperable shall not be permitted to remain upon any Lot, or any street or road areas adjacent thereto. No automobile, recreational vehicle, commercial vehicle, other motorized vehicle, or any portion thereof, shall be dismantled, rebuilt, serviced, repaired or painted on or in front of any Lot or Pad unless performed within a completely enclosed garage or other permitted structure located on the Lot or Pad which screens the sight and sound of such activity from the streets and neighboring Lots and Pads. The foregoing restriction shall not be deemed to prevent temporary parking for loading or unloading of such vehicles. However, such temporary parking shall be limited to a twenty-four (24) hour period. No boats, trailers, buses, motor homes, campers, recreational vehicles or other such vehicles shall be parked or stored upon any Lot or Pad except within an enclosed garage. Any parking of vehicles, boats or other equipment must be in compliance with all ordinances of the City of Kanab. Any motor vehicle found in violation of this Section shall be subject to removal by the Association, at the vehicle Owner's expense. Any expense incurred by the Association in connection with the removal of any vehicle shall be paid to the Association upon demand by the owner of the vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Lot or Pad and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments. If parking spaces are designated on the Plat with numbers corresponding to Lot or Pad numbers, each

such space is for the exclusive use of the Lot or Pad Owner with the corresponding number. If parking areas are not designated on the Plat with Lot or Pad numbers, the Directors may assign vehicle parking space for each Lot or Pad. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the Owner or the Owner's immediate family or guests for personal use and not for commercial use, and for guest parking.

Section 8.23. External Apparatus and Equipment No Lot or Pad Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Architectural Control Committee. All electrical service equipment, all subpanels, and all mechanical equipment, including but not limited to, air conditioning units, pool equipment and solar panels, shall be approved by the ACC prior to installation and shall, based upon the background against which they are most visible, be painted to match the surrounding wall color, or painted and screened to blend with the surrounding natural terrain. Roof mounted equipment and vents shall be painted to match the roof or adjacent wall color, and screened or integrated into the design of the structure.

Section 8.24. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna or one satellite dish not to exceed two feet (2') in diameter, to the extent not prohibited by law, which shall not exceed four feet in height, shall be placed, allowed or maintained upon any Lot or Pad or upon any structure or portion of the improvements situated and located upon the Properties without prior written approval of the Architectural Control Committee.

Section 8.25. Garbage Refuse and Disposal All rubbish, trash and garbage shall be regularly removed from the Lots and Pads and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. No unsightly materials or other objects are to be stored on any Lot or Pad in the view of the general public or neighboring Lot or Pad Owners.

Section 8.26. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties.

Section 8.27. Interior Utilities All utilities, fixtures and equipment installed within a Lot or Pad, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot or Pad, shall be maintained and kept in repair by the Owner of the Lot or Pad. An Owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots, Pads or Owners,

Section 8.28. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Except with regard to the activities of the Declarant, no home, dwelling or structure shall be leased or rented for any term less than seven (7) consecutive days.

Section 8.29. Violation Constitutes a Nuisance Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by Declarant or affected Property Owners and such remedy shall be deemed to be cumulative and not exclusive.

ARTICLE 9 - EASEMENTS

Section 9.1. Encroachments Each Pad and the Property included in the Common and Limited Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure contained on any Pad is partially or totally destroyed, and

then rebuilt, the Owners of the Pads so affected agree that minor encroachments of parts of the adjacent Pads or Common or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 9.2. Utilities There is hereby created an easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common and Limited Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Properties. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or owners associations the right to use Common and Limited Common Areas and common facilities, including (without limitation) recreational facilities. Structures of any type are prohibited within any of the easements referred to in this Section. Plants or other materials may be placed or permitted to remain within such easements as long as the same will not damage utilities, change the direction of flow of drainage channels in the easements, or obstruct or retard the flow of water through drainage channels in the easements. Kanab City shall be responsible for maintenance and repair of water and sewer lines, including laterals, within the street right of way and for the replacement of asphalt upon completion of repairs. The Association shall be responsible for maintenance and repair of water and sewer laterals from the back of curb to the Pad and long term maintenance of asphalt, curb and sidewalks. The easement area of each Lot or Pad and all improvements in it shall be maintained continuously by the Owner of the Lot or Pad except for those improvements for which a public authority or utility is responsible.

Section 9.3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Area in the performance of their duties.

Section 9.4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common and Limited Common Areas and any Lot or Pad to perform the duties of maintenance and repair.

Section 9.5. Trails The Association may grant easements to the public for right of access to trails on the Property.

Section 9.6. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE 10 - EXPANSION

For a period of seven (7) years from the date of recording of this Declaration in the office of the County Recorder, Kane County, State of Utah, Declarant reserves the right, at its sole election, to expand the Properties to include, as part of this Declaration, additional property located in Kane County, Utah and in the general vicinity of the Property, which is within one mile of any phase of the development, measured in a straight line from the nearest boundary of the development. The additional property may be included in one or more expansions.

Expansion shall occur by the Declarant filing:

a. an additional subdivision plat or plats creating developments on the additional property, stating on each plat the intention to have the property described on said plat bound by the terms, covenants, conditions and restrictions of this Declaration upon the filing of a Declaration of Annexation: and

b. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration. Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings and/or Common and Limited Common areas, architecturally compatible to the existing residential dwellings, similar to the residential dwellings already constructed, constructed out of similar materials, and with similar Lot and Pad size. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association. The Common Area and Limited Common Area in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, concurrently with the recording of the Declaration of Annexation, and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of Association property and facilities. Declarant's Class B ownership status shall extend to all Lots and Pads in the expansion area. Otherwise, Owners in the original and expansion areas shall all have membership status in the Association in accordance with the terms of this Declaration and based upon their Class A1 or Class A2 membership. The liability for assessments of each Lot or Pad and Lot or Pad Owner in any expansion area shall be equal to the liability of each Lot or Pad and Lot or Pad Owner as set forth in this Declaration with regard to the original Properties.

ARTICLE 11 - GENERAL PROVISIONS

Section 11.1. Enforcement The Association, the Declarant, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Directors may levy a fine or penalty not to exceed \$500.00 for each occurrence against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing. Such fine may be imposed for each day of a continuing violation. All enforcement costs, attorney fees and other expenses incurred in relation to such violations, and any fines levied, shall constitute a lien on such violating Owner's Lot or Pad, shall be a personal obligation of the Owner, and may be collected and the Lot or Pad foreclosed in the same manner as provided for the collection of delinquent assessments.

Section 11.2. Declarant Immunity. By purchasing property within the subdivision, the purchaser and Owner accepts such Lot or Pad **AS IS** and **WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE** and assumes any and all risk of damage and personal injury and waives any and all known or unknown claims of whatever nature against the Declarant and Kanab City and their respective agents, employees, officers, representatives, successors and assigns with regard to the property purchased. Such waiver specifically includes, but is not limited to, any claims, damages, expense or loss caused by or related to any unforeseen surface or subsurface soil condition, soil compaction or lack thereof, floods, rock falls, rock, block or other walls, or any other condition that may be associated with, or directly or indirectly related to, the purchase of such property or defects in design, construction, installation or management of improvements on such property. A waiver and release agreement in the form set forth on Exhibit D and incorporated herein by reference shall be executed by all purchasers at the time any Lot or Pad is first sold to any purchaser and shall be recorded as part of the closing of such sale. However, the

assumption of liability and waiver and release set forth in this paragraph shall be effective against any and all purchasers or Owners of any Lot or Pad within the subdivision whether or not the waiver and release shown on Exhibit D is signed and recorded.

Section 11.3. Use of Name. No Owner or Member shall use the name “La Estancia” or “Ladera at La Estancia” or any derivative or form thereof for any purpose other than identification of such Owner’s or Member’s address, without the prior written consent of the Declarant.

Section 11.4. Interference with Declarant. Except with regard to activities which may violate the covenants contained in this Declaration or which may be illegal under applicable law, no Owner or Owner’s agents, representatives, guests, successors, assigns, or invitees shall, in any way, directly or indirectly interfere with the activities of the Declarant in the development, marketing, or sale of any of the Property.

Section 11.5. Limitation upon Construction. No home may be built on Lots 1 or 27 through 37, inclusive, until such time as a conditional letter of map revision from FEMA is received by Kanab City.

Section 11.6. Trails. Title to all property designated as trails on this plat are owned by Dos Pollos, LLC and shall be open to use by the lot owners and the general public for foot and equestrian travel only. Dos Pollos, LLC shall be free to grant a conservation easement upon all or any portion of such areas as deemed desirable by Dos Pollos, LLC. In the event that such a conservation easement is granted, the easement to Owners and to the general public to use such areas under this Section shall terminate and the rights of Owners and the general public shall be subject to, and determined by reference to, such conservation easement.

Section 11.7. Severability All of the covenants, conditions and restrictions contained in this Declaration shall be construed together, but if any one of said covenants, conditions or restrictions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other covenant, condition or restriction, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 11.8. Duration The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Declarant, the Association, or the Owner of any Lot or Pad subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument, signed by two-thirds (2/3) of the then Owners of Lots and Pads, has been recorded agreeing to terminate this Declaration.

Section 11.9. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than the Owners of two-thirds (2/3) of the Lots and Pads in the subdivision, including expansion areas. Any amendment must be properly recorded in the records of Kane County, Utah, to become effective. Notwithstanding the foregoing, the Declarant reserves the right for so long as it shall have Class B membership status, to solely and unilaterally amend the Declaration.

Section 11.10. Declarant’s Exemption The Developer is exempt from all constraints in this Declaration applicable to commercial activities, signs and restraints on use of property during actual construction and marketing of Lots and Pads.

Section 11.11. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 11.12. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 11.13. Waivers No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 11.14. Conflict with City Ordinances In the event of a conflict between any standards or procedures established in or under this Declaration and those established by the ordinances of the City of Kanab, the more restrictive standard or procedure shall govern.

Section 11.15. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE 12 - ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned in the Declarant's sole discretion.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this ____ day of December, 2005.

Declarant

La Estancia Development, LLC

Milo McCowan, Sole Manager

STATE OF UTAH)
 : ss.
COUNTY OF WASHINGTON)

On this ____ day of December, 2005, before me personally appeared Milo McCowan, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the sole Manager of La Estancia Development, LLC, a Utah limited liability company, and that the foregoing document was signed by him on behalf of the company by authority of its Operating Agreement or a resolution of its Members, and he acknowledged before me that the company executed the document and the document was the act of the company for its stated purpose.

Notary Public

EXHIBIT A

PROPERTY DESCRIPTION

BOUNDARY DESCRIPTION

Beginning the Corner of Sections 21, 22, 27 and 28, Township 43 South, Range 6 West, Salt Lake Base & Meridian, Utah; and running thence North 89°52'19" East along the line between said Sections 22 and 27, 710.72 feet; thence North 00°07'41" West 105.32 feet; thence North 32°16'23" East 47.69 feet; thence North 54°21'42" West 61.58 feet; thence North 19°43'48" East 71.87 feet; thence North 49°13'35" West 230.29 feet to a curve; thence along a curve to the right, concave northwesterly, with an arc length of 214.93 feet, radius of 783.00 feet and a long cord that bears South 48°39'22" West a distance of 214.25 feet; thence South 56°31'11" West 135.98 feet to a curve; thence along a curve to the right, concave northwesterly, with an arc length of 29.66 feet, a radius of 483.00 feet and a long cord that bears South 58°16'44" West a distance of 29.66 feet; thence North 10°53'51" West 184.28 feet to a curve; thence along a curve to the left, concave northerly, with an arc length of 7.72 feet, a radius of 317.00 feet and a long cord that bears North 78°24'16" East a distance of 7.72 feet; thence North 12°17'37" West 34.00 feet; thence North 00°24'34" East 415.45 feet to a curve; thence along a curve to the right, concave southerly, with an arc length of 9.68 feet, a radius of 90.63 feet and a long cord that bears North 86°44'07" East a distance of 9.68 feet; thence North 00°52'27" East 42.01 feet; thence North 00°24'34" East 255.63 feet; thence North 26°03'44" East 42.80 feet; thence North 33°55'57" East 120.47 feet; thence North 10°13'13" East 90.00 feet; thence South 79°46'47" East 49.32 feet; thence North 10°13'13" East 216.11 feet; thence North 66°44'09" East 22.07 feet; thence North 56°44'54" West 20.00 feet; thence North 02°13'59" West 235.24 feet; thence North 35°52'38" East 119.29 feet; thence North 06°38'08" West 105.03 feet; thence North 52°20'20" East 99.53 feet to a curve; thence along a curve to the left, concave southerly, with an arc length of 48.04 feet, a radius of 481.00 feet and a long cord that bears North 51°18'23" West a distance of 48.02 feet; thence North 35°49'57" East 38.00 feet to a curve; thence along a curve to the left, concave southerly, with an arc length of 25.60 feet, a radius of 519.00 and along cord that bears North 55°34'51" West a distance of 25.60 feet; thence North 56°59'39" West 6.35 feet to a curve; thence along a curve to the left concave southerly, with an arc length of 38.07 feet, a radius of 109.00 feet and a long cord that bears North 66°59'57" West a distance of 37.87 feet; thence North 05°59'45" West 270.67 feet; thence North 00°07'53" West 224.18 feet to the east-west centerline of said Section 22; thence South 89°52'07" West along the east-west centerline of said Section 22, 418.99 feet to the $\frac{1}{4}$ Corner of said Sections 21 and 22; thence South 00°07'51" West along the line between said Sections 21 and 22, 1313.05 feet to the Angle Point of said Sections 21 and 22; thence South 00°24'34" West 2.92 feet to the South $\frac{1}{16}$ Corner of said Sections 21 and 22; thence South 00°24'34" West 1315.84 feet to the point of beginning containing 22.57 acres.

EXHIBIT B

RULES AND REGULATIONS OF LA ESTANCIA ARCHITECTURAL CONTROL COMMITTEE

While the controls exercised by the Architectural Control Committee (hereafter referred to as the "Committee") must be maintained, the Committee does not intend to stifle innovative designs or architectural freedom. If any design elements of a prospective home appear to be in conflict with the controls or recommendations set forth, such conflicts must be resolved by the Committee and will, whenever possible, be resolved in favor of aesthetic and design quality.

The guidelines and restrictions contained herein are consistent with the provisions of the recorded covenants of the La Estancia subdivision. The protective covenants for La Estancia subdivision are on record in the office of the County Recorder, Kane County, Utah, at 76 North Main, Kanab, Utah. Any violations of these guidelines, or the restrictions or protective covenants may result in required changes to floor plans, colors, materials, etc. at the owner's and/or contractor's expense.

No construction may begin in La Estancia without the issuance of a building permit issued by the City of Kanab. A set of drawings and specifications signed as approved by the La Estancia Committee must be presented to the building inspector to obtain a permit. This stamp of approval will be given upon compliance with all provisions stated in the protective covenants and conditions and these rules and regulations and by execution of the final agreement page of these rules by the owner(s) and/or contractors legally responsible for the proposed construction.

1. SUBMISSION AND CONTENTS OF PLANS

THREE (3) complete sets of plans shall be submitted to the Committee and shall contain, at a minimum, the items and detail as listed below. Two (2) sets will be stamped and returned, one for the City building inspector and one for construction use.

A. SITE PLAN

1. Scale 1/8" = 1' or 1" = 10'. Scale must be noted.
2. Indicate lot number and street name.
3. Indicate adherence to lot boundaries.
4. Indicate grade elevations at front corners of lot and finished floor elevations.
5. Location of the HVAC unit shall be noted.

B. FLOOR PLAN

1. Scale 1/4" = 1'0". Show over-all dimensions.
2. Indicate window and door locations and sizes.
3. Show location of all HVAC units, satellite dishes, and any other mechanical and/or non-mechanical devices. Location of these items must be in the rear of the house or out of street view. (Special consideration will be given when rear installation is not feasible. In such a situation, the unit must be screened from the street view with materials compatible with materials used in the construction of the house.)

C. ELEVATIONS

1. Scale 1/4" = 1'.

D. COLOR SCHEMES AND EXTERIOR MATERIALS

1. Colors shall be selected from the Developer's Color Palette. The committee reserves the right to reject any scheme it deems not consistent with the area.
2. The general design expressed in the front of the house must continue to each side elevation. Standard acceptable designs are designated by the Developer. Innovative designs used on the front of the house using cedar siding, stone, stucco or other materials

will be considered on an individual basis. Mirrored or reflective surfaces or any treatments that change ordinary glass into mirrored surfaces are prohibited. Metallic surfaces shall be treated to avoid reflections. Materials used for exterior surfaces shall blend in color, hue, and tone with the characteristics of the surrounding natural terrain to avoid high contrast. Approximating the colors of natural surroundings allows for a wide variety of earth tones including muted greens and grays in additions to browns and rust reds. The major surfaces of structures must employ these earth tones although colors shall have a Light Reflection Value (LRV) consistent with standards set by the Developer. In no case will colors approaching the primary range (red, blue and yellow) be permitted, nor will drastic contrasts (light to dark) be allowed. It is the intent the preserve the appearance of the natural landscape and preclude the use of colors that would appear out of place, and therefore, would be offensive to the eye.

E. ACCEPTABLE ROOFING MATERIALS

1. Roofing materials must be concrete tile of colors selected by the Developer.

F. HEIGHT OF HOUSE

1. No house will exceed thirty-five (35) feet in height from street frontage view.
2. No house or other structure exceeding one story may be built except on the outside perimeter lots of the subdivision. All houses proposed to be over one story in height will be examined by the Committee as to the aesthetic value for adjoining houses, lots and/or their views. The Committee has the right to restrict the height of a house if it unduly restricts a neighbors' view.

G. SIZE OF HOUSE, LANDSCAPING, AND SPECIAL RESTRICTIONS

1. The outside measurement of each house on the main floor (exclusive of garages, porches, patios, and/or storage) containing::
 - a. a single level, or of each house containing a ground level and a basement level, will not be less than one thousand four hundred and fifty (1,450) square feet.
 - b. a ground level and an upper level (commonly considered a "two-story house") will not be less than one thousand two hundred (1,200) square feet .
 - c. an entry level and one or two levels which are one half story in height different from the entry level (known as a 1.5 story or split level house) will not be less than eighteen hundred (1,800) square feet. The main floor of such a house shall be all portions which have a roof directly overhead, and no story above.
2. All storage units, detached garages, etc., are to have the same design and materials as the main dwelling.
3. All homes are to have as a minimum a TWO-CAR fully enclosed garage attached or detached.
4. Courtyard walls to contain the landscape must be built of compatible material to the home and be no higher than five feet four inches (5'4") feet in height. Swimming pools will follow applicable laws, ordinances and regulations for construction including fencing.
5. All required landscaping (as outlined in the Declaration) will be completed prior to occupancy.
6. Campers, boats, pickups and other recreational and commercial vehicles must be kept in an enclosed garage and not displayed at the side or in the rear of the house.
7. All courtyard walls shall be of stucco, stone or other masonry materials. No chain link or wire fences/walls will be allowed.

H. LANDSCAPING: La Estancia is designed as a xeriscape project and as such:

1. A maximum of twenty-five percent (25%) of the entire lot area may be planted with turf.
2. Shrubs and trees may be planted and watered with a drip or bubbler system.
3. All non-indigenous plants and trees (non approved) must be planted within a courtyard wall to eliminate visibility and be of a dwarf size.

4. All visible plants not on the approved list must be submitted to the Committee for approval.
5. Prior to issuance of a building permit; the house, outbuildings, driveway and landscape/courtyard plans shall be provided to the Committee for the review and approval process.
6. Landscaping shall be maintained at a reasonable standard compatible with other homes in the subdivision.

2. CONSTRUCTION REQUIREMENTS

DURING THE COURSE OF CONSTRUCTION, APPLICANT AND CONTRACTOR WILL COMPLY WITH THE FOLLOWING CONDITIONS AND AGREEMENTS.

A. Construction Trailers. Upon commencement of construction, a construction trailer or portable field office may be located on the building site. The type, size, and color of any portable office must be approved by the Committee. A construction trailer may not remain on a site for a period of time exceeding six months.

B. Trash Receptacles and Debris Removal. Owners and builders shall clean up all trash and debris at the end of each day; an approved trash receptacle must remain on the site at all times for this purpose to contain all lightweight materials or packaging. Trash receptacles must be emptied at least once a week (and more often if necessary) at an appropriate off-site facility.

C. Concrete Trucks. Concrete trucks may be washed out only on the lot inside the construction area. The owner and contractor are responsible for containing all washout to preclude this water from entering washes and contaminating tree roots.

D. Maintenance of Construction Site. During the construction period, each construction site shall be kept neat and shall be properly policed to prevent it from becoming a public eyesore, or affecting other parcels or any easement. Any cleanup costs incurred in enforcing these requirements shall be payable by the owner and/or contractor. Dirt, mud, or debris resulting from activity on each construction site shall be promptly removed.

E. Materials Storage. Construction materials shall be stored on the lot, only for such time as reasonably needed and in orderly array.

F. Sanitary Facilities. Each owner or builder shall be responsible for providing adequate sanitary facilities for construction workers. Portable toilets must be provided.

G. Construction Access. The approved access drive will be the only construction access to any lot.

H. Vehicles and Parking Areas. Construction crews will not park on, or otherwise use, undeveloped portions of any lot. All construction vehicles shall be parked within the lot.

I. Conservation of Native Landscape. The Committee shall have the right to flag major terrain features, rocks, or plants which are to be fenced for protection. Protected trees that cannot be moved must be marked and protected by flagging, fencing or barriers. Any trees or branches removed during construction must be promptly cleaned up and removed from the construction site.

J. Dust and Noise Control. The owner and contractor shall be responsible for controlling dust and noise from the construction site, including the removal of dirt and mud that is the result of construction activity on the site and the owner shall ensure that the contractor undertakes such responsibilities. The volume of stereos, radios or any equipment must be maintained at a LOW LEVEL that does not disturb the quiet peace and enjoyment of adjoining property owners or the surrounding neighborhood.

K. Material Deliveries. All required building materials, equipment and machinery must be delivered to and remain within the lot. This includes all building materials, earth moving equipment, trailers, generators, mixers, cranes, and any other equipment or machinery.

L. Firearms. Carrying any type of firearms on the property by construction crews is prohibited.

M. Alcohol, Tobacco and Controlled Substances. The consumption of alcohol, smoking or use of tobacco products, or use of any controlled substance on any construction site or by any member of any construction crew is prohibited.

N. Fires and Flammable Materials. Careless disposition of flammable materials, as well as the build-up of potentially flammable materials constituting a fire hazard on the construction site, are prohibited. At least one 10-pound ABC-Rated Dry Chemical Fire Extinguisher shall be present and available in a conspicuous place on the construction site at all times.

O. Restoration of Property. Upon completion of construction, each owner and contractor shall clean the construction site and repair all property which has been damaged, including but not limited to, restoring natural contours, rocks, trees, and natural vegetation as required by the Committee, and repair all damage to roadways, driveways, pathways, drainage, and culverts.

P. Construction Signage. Construction signs shall meet the requirements set forth in the Declaration of Covenants, Conditions and Restrictions and Exhibit C attached thereto, and shall be located within the site as approved by the Committee. Attachment of signs or similar material to trees or rocks is strictly prohibited.

Q. Daily Operation. Daily working hours for each construction site shall be from 30 minutes before sunrise to 30 minutes after sunset.

3. REFUNDS OR FORFEITURES OF DEPOSITS

A. A deposit of ONE THOUSAND DOLLARS (\$1,000.00) will be included with each submittal for consideration by the Committee.

B. FIFTY DOLLARS (\$50.00) will be used by the Committee to compensate for secretarial and bookkeeping fees and other expenses.

C. The remaining NINE HUNDRED FIFTY DOLLARS (\$950.00) will be returned to the depositor at the completion of construction and front yard landscaping, providing all of the conditions contained herein and in the recorded covenants have been met.

D. If any Committee inspections reveal any violations as noted in Section 2, above, a fine in an amount determined by the Committee and not to exceed ONE THOUSAND DOLLARS (\$1,000.00) may be charged for each violation issued. A notification and a 24 HOUR LIMIT shall be given to rectify the situation, after which time, the Committee may impose the penalty after hearing and 72 hours advance notice, which sum may be withdrawn from the Applicant's deposit.

E. If (a) exterior features or (b) interior features which affect compliance with these standards or the covenants deviate or vary from approved plans, advance approval is required by the Committee. If an unapproved deviation from the Applicant's approved plans occurs a fine as defined above may be levied against the owner and/or contractor and the deviation must be remedied within the time set by the Committee.

F. At completion of construction, the contractor or owner will call for a final inspection by the Committee.

G. The \$950.00 deposit will be refunded if it is determined that all provisions have been complied with, that the house plans as originally approved have been followed, that the premises have been cleaned up and the front yard has been landscaped as approved by the Committee.

H. If it is determined that any conditions have not been met, the contractor and/or owner will be given THIRTY (30) days to remedy any noncompliance, after which time the deposit will be forfeited and legal action may result.

I. TIME LIMIT on DEPOSIT REFUNDS is one hundred twenty (120) days from the date of completion. The date of completion is when final power is approved and turned on or a certificate of occupancy is issued, whichever occurs first.

J. Issuance of Committee approval of plans obligates the contractor or owner to carry construction to a stage of substantial completion within six (6) months from date construction commenced. Substantial completion means that the exterior of the house is complete as approved by the Committee.

K. After plans are approved, construction must be started within NINETY (90) calendar days, or the deposit will be forfeited.

EXHIBIT C

SIGN STANDARDS

EXHIBIT D

WAIVER AND RELEASE AGREEMENT

_____ (“Owner”) of Lot(s) _____, La Estancia Subdivision, Phase ____, according to the official plat thereof recorded in the office of the Kane County Recorder, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree that it is their sole responsibility to obtain and comply with recommendations from competent geotechnical and engineering professionals with regard to the inspection of Lot(s) within the subdivision prior to purchase of such Lot(s). Owner acknowledges and agrees that, except for warranties of title as set forth in the sales contract between the Owner and the developer, the developer makes no warranties whatsoever with regard to the Lot(s) or the sale or transfer thereof, and Owner is specifically purchasing the Lot(s) **“AS IS” AND WITHOUT WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.** In purchasing a Lot(s) within the subdivision, Owner represents that Owner has inspected the Lot(s) as deemed advisable by the Owner, is relying upon its own inspection of the Lot(s) in making a purchase of the same, and accepts the Lot(s) in its current condition. Owner, for themselves and their heirs, representatives, successors and assigns, waives, releases and agrees to hold harmless the developer and Kanab City and their respective agents, employees, officers, representatives, successors and assigns, from any and all known or unknown claims of whatever nature in any way related to such Lot(s), including, without limitation, claims or damages caused by or related to any floods, rock falls, landslides, unforeseen surface or subsurface soil condition, soil compaction or lack thereof, rock, block or other walls installed by or for the developer, claims related to or associated with the slope, elevation, or drainage of the Lot(s) and/or any adjoining lots or properties, or any other condition that may be associated with, or directly or indirectly related to, defects in design, construction, installation or management of improvements within the subdivision.

All rock retaining walls built by or for the developer and all masonry or rock walls built by or for any lot owner shall be owned and maintained by the owner of the lot on or adjacent to which the wall is located, or the La Estancia Homeowners Association, as the case may be. Neither the City of Kanab nor the developer shall have any responsibility or liability whatsoever with regard to any aspect of any such walls, including defects therein.

This waiver and release is hereby made a part of the sale of the Lot(s) and the real estate purchase contract for the purchase and sale of such Lot(s) dated _____, 20 ____, shall survive the closing of any purchase transaction or transfer with regard to such Lot(s), and constitutes a covenant running with the land. The burdens and benefits under this waiver and release shall be binding upon the undersigned and their successors, representatives and assigns. Should any term or provision of this Waiver and Release Agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect. Should any action be brought to enforce the terms of this agreement, the prevailing party shall be entitled to recover their costs and attorney fees incurred in such action, whether or not suit is commenced, and at trial or on appeal.

By signing below, the undersigned acknowledges that they have carefully read and reviewed the terms of this Waiver and Release Agreement and agree to its provisions.

OWNER(S)

Date

Date

(See attached acknowledgment)

EXHIBIT C

SIGN STANDARDS

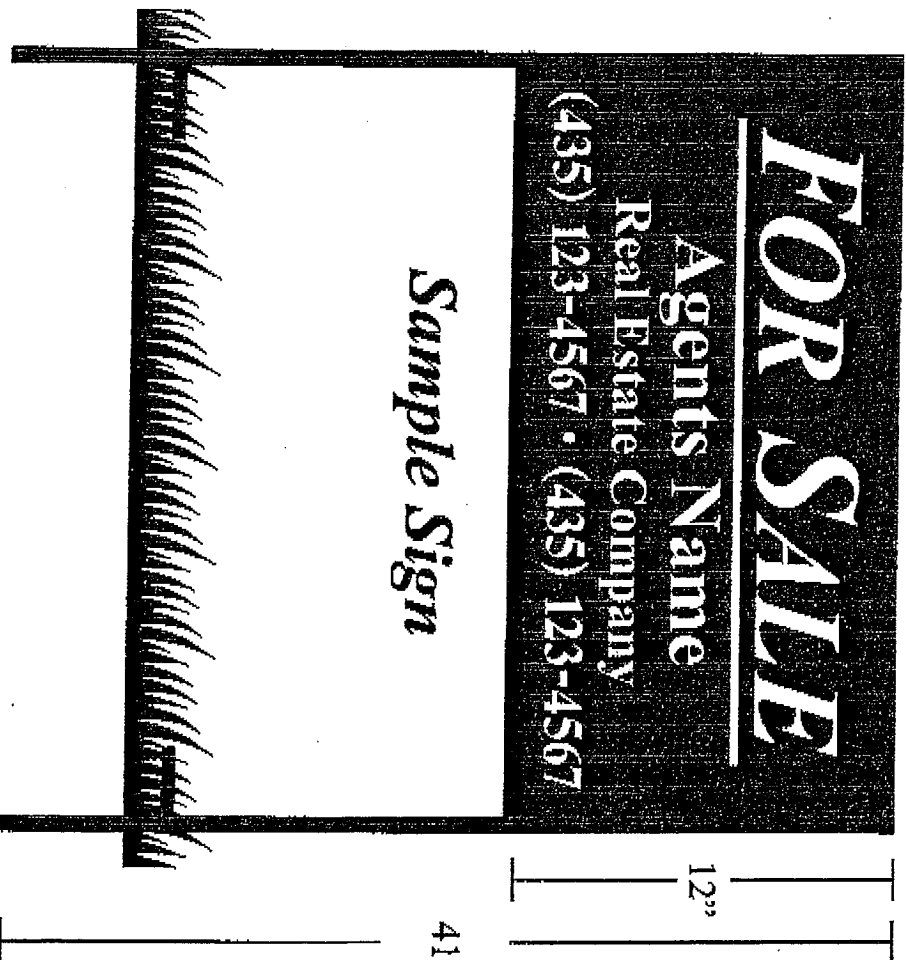


Real Estate Sign Standards

All signs within La Estancia must comply with the following guidelines:

- Background shall be a .032" steel panel 12 X 24 sign painted dark blue (pantone 3006).
- Copy color shall be white.
- All signs shall comply with these standards (ie. Open House, For Rent, etc.).
- If a flyer box is used, it must be a clear faced flyer box attached directly to the sign frame.
- No additional signs, riders, banners, or permanent signs will be allowed within La Estancia, other than one Kanab City building inspection sign of identical design as set forth above, no more than 24" x 36" in size.
- Signs shall be installed approximately 10' from the back of the sidewalk.
- Signs meeting the above requirements are available from Star Sign & Banner (435) 628-7806.
- Any sign not meeting this standard will be removed from the property, without notice, and destroyed.

24"



756

EXHIBIT B

SIGN STANDARDS



Real Estate Sign Standards

All signs within El Pueblo at La Estancia must comply with the following guidelines:

- Background shall be a .032" steel panel 12 X 24 sign painted dark blue (Pantone 300c).
- Copy color shall be white.
- All signs shall comply with these standards (ie. Open House, For Rent, etc.).
- If a flyer box is used, it must be a clear faced flyer box attached directly to the sign frame.
- No additional signs, riders, banners, or permanent signs will be allowed within El Pueblo at La Estancia, other than one Kanab City building inspection sign of identical design as set forth above, no more than 24" x 36" in size.
- Signs shall be installed approximately 10' from the back of the sidewalk.
- Signs meeting the above requirements are available from Star Sign & Banner (435) 628-7806.
- Any sign not meeting this standard will be removed from the property, without notice, and destroyed.

24"

