

**DECLARATION
OF PROTECTIVE COVENANTS, CONDITIONS,
& RESTRICTIONS FOR THE
“BENCHES” AT SOUTH RIM SUBDIVISION**

RECITALS

THIS Declaration of Covenants, Conditions, and Restrictions (hereinafter referred to as the “Declaration”), is made and executed as of the 22nd day of June, 2006, by L & B Development Company, Inc., a Utah Sub-Chapter S Corporation, (“Declarant”); in contemplation of the following facts and circumstances:

A. Declarant is the fee title owner of certain real property situated at South Rim, Tooele County, State of Utah, upon which real property the Declarant intends to develop a Subdivision, and which is more particularly described as follows; (See Exhibit “A” Attached)

B. Declarant intends to develop and convey all of the Lots contained in the Benches at South Rim Subdivision, subject to certain protective covenants, conditions, restriction, reservations, easements, equitable servitudes, all running with the title to said Lots, as hereinafter set forth.

THEREFORE, to further the general purposes herein expressed, Declarant for itself, its successors and assigns, hereby declares that all of the Lots (property) shall at all times, be owned, held, used, and occupied subject to the provisions of the Declaration and subject to: (i) the covenants, conditions, and restrictions herein contained; and (ii) the easements herein reserved or granted.

1. DEFINITIONS

1.1 **“Declarant”** shall mean and refer to L & B Development Company, Inc., a Utah Sub-Chapter S Corporation, its successors and assigns, so long as Declarant assigns such rights of Declarant hereunder to any such person by an express written agreement.

1.2 **“Declaration”** shall mean this instrument as it may be amended from time to time.

1.3 **“Improvement”** shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, out buildings, walkways, sprinklers pipes, carports, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior fixtures or equipment.

1.4 **“Lot”** shall mean any area of real property within the Subdivision designated as a Lot on any subdivision plat caused to be recorded by Declarant or its successor in interest.

1.5 **“Owner”** shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot. If there is more than one owner of record of legal title to a Lot then notice to any one of such owners of record shall be deemed notice to all owners of record of that Lot.

1.6 **“Park Strip and/or Shoulder”** shall mean the area in front of a Lot bordering a street beginning at the front property line of the Lot and extending to the public asphalt roadway. The Park Strip/Shoulder shall include the drainage swale (ditch) and parking shoulder.

1.7 **“Plat Map”** shall mean and refer to that plat of “Benches At South Rim Subdivision”, which will be recorded in the official records of the Tooele County Recorder concurrently with the recordation hereof.

1.8 **“Public Utility Easement”** shall mean any easement as shown on the “Plat Map” of the subdivision.

1.9 **“Subdivision”** shall mean, Benches At South Rim, which parcel will be subdivided into lots as shown on the Plat Maps.

1.10 **“Architectural Review Committee”** the following individuals are permanent members of the architectural review committee: Leland J. Hogan, Joyce R. Hogan, William J. Hogan, and Jill J. Hogan. Only those four individuals or a designated replacement unanimously approved by the remaining members of architectural review committee shall serve on this committee.

1.11 **“Screened from View”** shall mean, the use of privacy fence or locating items in the back /rear half of the lot. The use of the term “screened from view” shall be interpreted in all cases to enhance the aesthetics of the subdivision. Any vehicles, trailers, containers, equipment, tools, boats, motor homes, snowmobiles, racks, rubbish should be screened from view as defined above.

2. **EACH OWNER IS BOUND BY THE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF THIS DECLARATION.** Each Owner, by their acceptance of a deed to a Lot, is deemed to have read and agreed to be bound by the terms and conditions of the Declaration.

3. **MAINTENANCE**

3.1 **Purpose of Maintenance.** In order to create, maintain and improve the Subdivision as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of the Subdivision, each Owner covenants and agrees to maintain its Lot in accordance with the terms of this declaration.

3.2 **Maintenance of Drainage Facilities.** Each lot Owner has a responsibility to ensure the continuous and uninterrupted flow of storm water within the drainage swales located on each side of the roadway, along certain side yard property lines and within certain areas of the “open space” as indicated on the plat map. The lot Owner shall be responsible for any damages suffered by other lot or adjacent property Owner’s caused by any alteration of any drainage facilities within the subdivision.

3.3 **Maintenance of the Front Yard Public Utility Easement.** Each Owner shall be responsible to maintain the area of the public utility easement within and along the frontage of the Owner’s lot. This maintenance shall include maintaining a reasonable smooth grade and clearing of debris.

3.4 Repair of Improvements. No improvements on any Lot shall be permitted to fall into disrepair. Such improvements shall at all times be kept in good condition and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, such building or structure shall be repaired or rebuilt or shall be demolished at the sole expense of the owner of such Lot, within a reasonable amount of time.

3.5 Improper Maintenance. Each Lot within the Subdivision shall be maintained by its Owner without regard to whether or not any improvements have been constructed thereon by said Owner. In the event that: (a) any Park Strip of Lot that is not maintained or repaired as set forth herein, (b) any portion of any Lot is so maintained as to present a public or private nuisance; or as to substantially detract from the appearance or quality of the surrounding Lots; or (c) any portion of a Lot is being used in a manner which violates this Declaration; then the Architectural Review Committee may bring a civil action against the party in violation as provided by law.

4. COVENANTS, CONDITIONS, AND RESTRICTIONS

4.1 Building Permit Required. No grading, excavation, building, fence, wall, residence or other structure of any kind, or alteration, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications thereof along with a topographical plan showing the location of all improvements, which has been approved by The Architectural Review Committee and Tooele County be provided in accordance with Tooele County Building permit requirements.

4.2 Use of Lots. All Lots within the Subdivision shall be used only for the construction and occupancy of one single family dwelling. Lots may also be used for the construction of typical residential amenities such as a family swimming pool, tennis court, etc. All Lots shall be used, improved and devoted exclusively for such single-family residential use. No nonresidential use as outlined by Tooele County Ordinance shall be conducted on any such Lot. No “manufactured” homes will be allowed.

4.3 Completion Required Before Occupancy. No Building within the property shall be occupied until and unless the owner of such Building shall have completed the building in accordance with, and complied with, all approved plans, and specifications and a certificate of occupancy has been issued by Tooele County.

4.4 Construction Time. The construction time for the exterior portion of any structure shall not exceed twelve (12) months from start to finish. “Start” shall be the instant any foliage is cut or removed in anticipation of construction or landscaping to be undertaken. Failure to complete construction within the above time frame violates this Declaration. The Architectural Review Committee may bring a civil action against the party in violation as provided by law.

4.5 Construction Methods. Any and all construction shall proceed in a manner as to not cause damage, harm or nuisance to neighboring lots or public street improvements or utilities. Construction materials and debris, including excavations and surplus dirt must be contained at all times and removed upon completion of all construction or 12 months after the “start” date whichever is sooner. The Owner must regulate the construction site and its contractors so as not to cause any erosion of native, undisturbed areas, both on and off the Owner’s lot. Such debris and dirt shall not be permitted on any of the streets in the Subdivision.

4.6 Driveways. Permanent driveway locations shall be selected at the beginning of construction. Only the permanent driveway locations may be used for access to the Owner's lot from the roadway both during and after construction. At each location where the driveway will cross the roadway drainage swale (ditch), a storm drainpipe shall be placed in the flow line of the drainage swale. Each pipe must be a minimum 15-inch (inside diameter) reinforced concrete or ADS pipe.

4.7 Restoration Of Vegetation. Within 12 months of occupancy, all disturbed areas in front of the Owner's home shall be restored with formal landscaping i.e., xeriscape plant materials, or traditional lawns.

4.8 Trees. A minimum of three trees are required to be planted between the paved road and front of the house within 12 months of occupancy. Trees are not to be planted within the Front Yard Utility Easement.

4.9 Fencing. Front fencing must be a minimum of 10 feet back (utility easement) from the front lot property line. Rear fencing should enhance the open space. Barbwire fences are not allowed. Wire fencing, (i.e. chicken wire, field fence, plastic mesh, tee post) are not allowed. All fencing, when fencing the perimeter of the lot, must be permanent in nature and meant to enhance the beauty of the subdivision. Fencing design and a list of materials must be submitted and approved by the Architectural Review Committee.

4.10 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to the owners of any other Lot in the vicinity thereof, or to the occupants of such other Lot. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration. However, all Lots shall be kept in a neat and orderly condition during construction periods. Trash and debris shall not be permitted to accumulate.

4.11 Parking or Storage of Vehicles. No articles, material, equipment or vehicles of any nature shall be stored on any street located within the Subdivision. Licensed, regularly used passenger vehicles including visitor vehicles may be parked in the street of the Subdivision for brief periods of time (i.e. less than twenty-two hours). Overnight parking of licensed vehicles is restricted to the driveway of the owner's residence. Unlicensed vehicles must be screened from view and are subject to Tooele County ordinances.

4.12 Garbage and Refuse Disposal. No Lot shall be used as or maintained as a dumping ground for rubbish, trash, garbage, dirt, soil, compost, construction waste, construction materials, or other waste, and such materials shall not be kept on any Lot except in covered containers. All trash containers shall be covered and kept screened from view from the street in suitable enclosed areas, except during public collection. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects are to be stored on any Lot in view of the general public.

4.13 Signs. Lot owners are subject to Tooele County ordinances.

4.14 Livestock and Pets. No more than 4 animal units per acre shall be allowed on any lot. An animal unit is defined as follows: A horse, cow or other similar large domestic animal shall be counted as one animal unit. Medium size domestic animals such as sheep, swine or goats shall also be counted at a ratio of two (2) per animal unit. Small domestic animals and fowl shall be counted at a ratio of five (5) per animal unit. Household pets, dogs and/or cats shall be governed according to the Tooele County Ordinance. There will be no dog kennels allowed. All owners of pets or livestock shall provide adequate fences, pens, barn, or houses for such animals in order to keep them maintained safely and from straying onto others property. Best animal husbandry practices are expected to be used. All animals and their habitation shall be maintained so as not to be a nuisance, in accordance with Tooele County ordinances.

4.15 Restriction on Further Subdivision, Property Restrictions and Re-zoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no easement, shall be conveyed or transferred by any Owner. No application for re-zoning of any Lot, and no applications for variances shall be filed with any governmental authority unless the proposed use otherwise complies with the provisions of the Declaration.

4.16 Water. Culinary and irrigation water will be furnished by South Rim Water System, state approved system #23079.

4.17 House Number. Each lot shall have a 6-inch, lighted or reflective house number displayed on the front east corner of the lot. This is required to facilitate any emergency vehicle's ability to quickly locate individual lot addresses. It is the lot owner's responsibility to make sure that this house number is not obstructed from view of the street.

5. ARCHITECTURAL STANDARDS FOR LOTS OF 1.00 ACRES – 4.00+ ACRES

5.1 General Configuration. Homes are to be designed in an aesthetically pleasing style using normally acceptable architectural elements. Homes that are built on Lots that are:

- 1.00 -- 1.49 acres shall be required to utilize a minimum of 1200 sq ft.
- 1.50 -- 1.99 acres shall be required to utilize a minimum of 1350 sq ft.
- 2.00 -- 2.99 acres shall be required to utilize a minimum of 1450 sq ft.
- 3.00 -- 3.99 acres shall be required to utilize a minimum of 1650 sq ft.
- 4.00 acres or greater shall be required to utilize a minimum of 1750 sq ft.

on the "main" ground level living floor area. Single rectangular shape homes or rooflines are not allowed. The front facade shall have a minimum of one (1) major relief of no less than 6 feet and one (1) minor relief of no less than 2 feet. All roof areas shall overhang the outside walls by no less than 12 inches, except where allowed by the express written consent of the Architectural Review Committee. Homes of the same plan, orientation and colors must be located no less than 3 lots apart from each other.

5.2 Attached Garage. Attached garages are required and shall not be less than two vehicles or less than 484 square feet. Additional enclosed parking may be constructed as a detached out building located behind the main residence.

5.3 Materials & Colors. Homes should be designed utilizing materials and colors compatible with nature. Lots that are:

- 1.00 -- 1.49 acres are required to have 25% of their exterior surface
- 1.50 -- 1.99 acres are required to have 35% of their exterior surface
- 2.00 -- 2.99 acres are required to have 35% of their exterior surface
- 3.00 -- 3.99 acres are required to have 40% of their exterior surface
- 4.00 acres or greater are required to have 40% of their exterior surface

be brick, stucco, or textured concrete. Inferior materials, (wood siding, wood products) will not be allowed and will be determined by the Architectural Review Committee. Earth tone colors are required (likewise, bright reds, chartreuse, pinks, purples, turquoise, or bright yellows, etc. will not be allowed). All colors must be approved by the Architectural Review Committee.

5.4 Roofing Materials. Roofing materials shall be fire resistive as approved by Tooele County. Wood shingles and shakes are strongly discouraged for purposes of increased fire safety. All asphalt shingles used must be a “30 Year or longer architectural type” shingle.

5.5 Exposed Mechanical Units (Antennas, Satellite Receivers, Air Conditioning Units, Etc). Mechanical units of every type and kind located outside the structure shall be located on the structure or on the lot in a manner as to minimize the visibility and easiveness to other homeowners. Air conditioning units of any type shall not be installed on any part of the roof or in windows or through exterior walls.

6. EASEMENTS

6.1 Drainage and Public Utility Easements. Easements for installation and maintenance of utilities and drainage facilities and other uses are reserved as shown on the Plat Maps. Within these easements no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the area, or which may obstruct or retard the flow of water through drainage channels or easements. The easement area of each of the Lots and all improvements in such easement area shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

6.2 Trees. Trees are encouraged, but may not be planted within the Front Yard Utility Easement.

6.3 No Fencing In Front Yard Utility Easement. No fencing is allowed on the front property line or within the front yard public utility easement as indicated on the plat map. Fencing must be a minimum 10 feet back from the front lot line.

6.4 Reservation of Easements. Declarant further expressly reserves for itself, its agents, employees, easements of access, ingress and egress, over the Lots, for the purpose of maintaining, repairing and installing water and other utility lines, drainage structures, sewer pipelines and laterals if necessary, in accordance with the provisions of this Declaration, and as otherwise provided by law.

7. **DECLARANT'S EXEMPTION:** Nothing contained in the Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary for the development, marketing or sale of Lots within the Subdivision.

8. **TERM AND AMENDMENTS**

8.1 **Term: Method of Termination.** This Declaration shall be effective upon the date of record hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date of record. From and after said date, this declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners (based upon one vote per Lot) casting seventy-five (75%) of the total votes cast at an election held for such purpose, within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension thereof. This Declaration may be terminated at any time if at least ninety percent (90%) of the votes cast by all Owners shall be cast in favor of termination at an election duly held for such purpose. No vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period of six (6) months prior to such vote, to six (6) months after such vote, from the owners of record of seventy-five (75%) of the Lots.

8.2 **Amendments.** This Declaration may be amended by recording in the Tooele County records a "Certificate of Amendment", duly signed and acknowledged. Any amendment shall be effective only if the written consent is obtained from 75% of owners of record.

8.3 **Additional Property.** Notwithstanding any other provisions of this Declaration, Declarant shall have the right to unilaterally provide for the amendment of this Declaration for the purpose of causing additional property to become subject to the terms and conditions hereof. Such right shall be exercised in the sole and absolute discretion of Declarant and may be exercised on one or more occasions. The right herein reserved shall be exercised without the requirement of any vote of consent of any Owner, by the recording of an amendment to this Declaration, executed by Declarant (and the fee owner of the real property to be annexed hereto, of other than Declarant), which shall provide a legal description of the real property to be annexed, a statement that such additional property shall thereby be made subject to the terms and conditions hereof, and such other matters as Declarant shall determine to be necessary, provided, however, that no such unilateral amendment shall materially impair the right of any existing Owner of a Lot in the Subdivision.

9. **MISCELLANEOUS**

9.1 **Severability.** Any determination by any court of competent jurisdiction that any provision of this declaration is invalid or unenforceable shall not affect the validity or enforceability or any of the other provisions hereof.

9.2 **General Reservations.** Declarant reserves the right to grant, convey, sell, establish, amend, release and otherwise deal with easements, reservations, exceptions and exclusions which do not materially interfere with the best interests of Owners including, but not limited to, access and utility easements, road easements, pedestrian and equestrian easements, pedestrian and hiking trails and easements, mountain bike easements and drainage easements.

9.3 Declaration to Run with the Land. Declarant for itself, its successors and assigns, hereby declares that all of the Subdivision shall be held, used and occupied subject to the provisions of this Declaration, and to the covenants and restrictions contained herein, and that the provisions hereof shall run with the land and be binding upon all persons who hereafter become the Owner of any interest in a lot in the Subdivision.

IN WITNESS WHEREOF, Declarant has hereunto caused its name to be signed by the signature of its duly authorized representative as of the day and year first hereinabove written.

DECLARANT:
L & B DEVELOPMENT COMPANY, INC.
By Leland Hogan, President

STATE OF UTAH)
):**ss.**
COUNTY OF)

The foregoing instrument was acknowledged before me this ___ day of _____, 2006, by Leland Hogan, who is the President of L & B Development Company, Inc., a Utah Sub-Chapter S Corporation organized under the laws of the State of Utah, who acknowledged to me that the foregoing instrument was signed by him in behalf of said company.

Notary Public
Residing at:

My Commission Expires:
