

WHEN RECORDED , MAIL TO: Gemstone Homes
258 North 2620 West
Hurricane, Utah
84737

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RUSSELL SHIRTS & WASHINGTON CO RECORDER
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FOR: FIRST AMERICAN TITLE CO

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SKY RIDGE PHASE 2-6**

FIRST AMERICAN TITLE CO
ACCOMMODATION RECORDING ONLY
NOT EXAMINED



DEVELOPED BY:
Gemstone Homes

MARKETED BY:
Gemstone Properties

RESTRICTIVE COVENANTS

SKY RIDGE

PHASE II -VI

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KNOW ALL MEN BY THESE PRESENTS: That Rando Homes L.L.C., a Limited Liability Company d.b.a. Gemstone Homes, is the owner and developer of the tracts of land know as **SKY RIDGE SUBDIVISION PHASE II - VI** in Washington County, State of Utah, does hereby subject said land to the following covenants, restrictions, and conditions; and the acceptance of any deed or conveyance thereof by the Grantee(s) herein, and their and each of their heirs, executors, administrators, successors, and assigns, shall constitute their covenants and agreements with the undersigned and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance subject to said covenants, restrictions and conditions as follows, to wit:

1. **USE OF LAND.** No lot shall be used EXCEPT for single-family residential purposes and no lot shall contain more than one (1) habitable structure. The Structure shall be in accord with prevailing zoning land ordinances in effect.
2. **MINIMUM SQUARE FOOTAGE AND MULTILEVEL RESTRICTIONS.** In no event shall the total finished-square living area on the main floor of any residence constructed on any lot within the subdivision, exclusive of porches, balconies, patios and garages, be less than 1000 square feet. Finished square footage of living area shall be defined as heated/cooled living area containing lighting fixtures, permanent floor coverings and painted or papered or vinyl covered walls and ceilings.
3. **PREFABRICATED, TEMPORARY STRUCTURES AND MOBILE HOMES:** No prefabricated, temporary or mobile-home type structures shall be located on any lot. The developer may, during marketing efforts, maintain a temporary structure sales trailer or construction/storage building upon any lot until such time as the developer concludes marketing/sales activities associated with the project.
4. **GARAGES, CARPORTS & SHEDS:** All residences constructed on any lot in the subdivision shall be constructed with a fully enclosed, private attached or detached garage, built to accommodate not less than two (2) vehicles. The height of the garage door headers shall not exceed 10 feet, subject to the following: one garage door header may exceed 10 feet if there are at least two garage headers not exceeding 10 feet subject to ordinances in effect. All garages or sheds shall be constructed of the same exterior materials as the home and in harmony and be architecturally compatible with the residence constructed on the lot or of materials approved by the A.C.C. and in compliance with Hurricane City Building Codes.
5. **LOT SIZES:** Lot sizes as described on the recorded plat of the subdivision are considered minimum lot sizes and no person shall further subdivide any lot other than shown on the recorded plat of said subdivision.

6. **BUILDING LOCATION:** Each building shall be located on each lot so as not to be in violation of Hurricane City ordinances with respect to minimum setbacks. The above notwithstanding, in no event shall any portion of any building, including eaves or steps, encroach upon any other lot.
7. **DRIVEWAYS AND WALKWAYS:** The driveway leading from the street to the garage or RV Pad, and walkways, shall be constructed of concrete, tile or brick pavers. All other driveways and walkways shall be constructed of a material commonly used for such purposes. In no event shall a driveway or walkway be constructed of dirt, sand, clay, road base material or asphalt.
8. **ROOFING MATERIAL:** Roofing material shall be limited to tile varieties approved by the developer or ACC. No asphalt shingles or other roof covering will be allowed in any form.
9. **NUISANCES:** No noxious or offensive activity shall be carried on, upon, or about any lot, part or portion of the property, nor shall anything be done thereon which may become an annoyance to the neighborhood including but not limited to barking dogs.
10. **ANIMALS:** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot part or portion of the property except dogs, cats or other domesticated household pets. Such animals as are permitted shall be kept in a residence constructed on a lot, or on a lot in a suitable enclosure, provided they are not kept on any lot so as to be visible from other lots or residences, and they are not kept, bred or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled by leash or fence and kept pursuant to all applicable laws and ordinances.
11. **GARBAGE AND REFUSE DISPOSAL:** No lot, part or portion of the property, shall be used or maintained as dumping ground for rubbish rubble, trash garbage or other waste. Such trash, rubbish, rubble, garbage or other waste shall be kept in the sanitary containers provided by the City of Hurricane, all other containers must be approved by the developer or ACC. No rubbish, trash, papers, junk or debris, shall be burned upon any lot, part or portion of the property.
12. **BUILDING MATERIALS:** No lot, part or portion of the property shall be used or maintained as a storage for building materials except during a construction phase as approved by the developer. Once a dwelling is occupied or made available for sale, all building materials shall be removed or stored inside such dwelling.
13. **SEWAGE DISPOSAL:** No individual sewage disposal system shall be permitted on any lot, part or portion of the property. No discharge of oil or other harmful substance shall be allowed.

14. **BOATS, RECREATIONAL AND MOTOR VEHICLES:** No boats, motorcycles, trailers, buses, motorhomes, campers or other vehicles shall be parked or stored upon any lot except in the side yard area after a wall minimum 5' tall and a gate in the front has been installed. Covered RV storage shall be allowed, but only with approval from the Developer or A.C.C. and the City of Hurricane if needed. In no event shall any such vehicles be parked on the driveway or in the front yard area of any lot or on any street located within the subdivision. All such vehicles shall be properly registered and licensed, or meet such other governmental approvals as may be required.
15. **ANTENNA:** No external radio, television, dish or other antenna of any kind or nature, including solar panels, or device for the reception or transmission of radio, microwaves or other similar signals shall be constructed or maintained on any lot or residence on the lot or in such as to extend above the height of the residence on the lot nor shall such devices be located on any lot or on any residences on any lot so as to be visible from the street fronting said lot. Satellite dishes shall only be allowed if less than 21" in diameter and must be screened as much as possible from view of other lots. No amateur radio antennas allowed. The ACC may grant variances for antennas & satellite dishes if physical conditions makes is impossible to comply with the above restrictions.
16. **SAFE CONDITIONS:** Without limiting any other provision of this declaration, each owner shall maintain and keep such owners lot at all times in a safe, sound and sanitary condition and repair. The owner shall correct any condition or refrain from any activity, which might interfere with the reasonable enjoyment by other owners of their respective lot.
17. **LANDSCAPING:** Before occupancy of the residence or issuance of a occupancy permit, the owner shall complete the landscaping in the front yard and side yards of the lot and within one year the owner shall complete the landscaping in the backyard of the lot. Landscaping shall include, but not be limited to, the planting of lawn, grass, trees or other appropriate ground cover or shrubbery approved by the developer. No poisonous or noxious plants or vegetation shall be allowed. Landscaping using a desert or arid motif is permitted with 25% of the front landscaping being grass and minimum one tree, subject to compliance with the restrictions contained herein and developers or ACC approval. All landscaping in yard shall be kept and maintained in an orderly and slightly manner, free of weeds and garbage.
18. **DOMESTRUCTURES:** No dome structures of any type are allowed.
19. **WALLS AND OTHER BARRIERS:** Walls, fences and barriers shall be constructed of masonry materials manufactured for such purposes and erected in a proper and safe manner. Permitted materials shall be, concrete block, red in color similar to the block walls installed by the developer. No wire mesh, or chain link

fencing is allowed as a fencing material. Walls and fences shall not exceed three (3) feet in height in the front yard, with the exception of the wall or fence along the side lot line in the front yard set back area, which shall not exceed four (4) feet in height. Walls and fences in the side (beyond the front set back) and the back yard shall not exceed six (6) feet in height except if needed for retaining AND then only with the developers or ACC approval. All walls, fences and barriers shall be kept and maintained in a visually pleasing manner and a state of good repair. The owner's failure to do so may result in action by any owner within the Subdivision to enforce the conditions herein contained.

20. **TIME SHARE PROHIBITED:** Neither the developer nor the owner of any lot shall allow or permit any form of time-share ownership.
21. **LEASES:** In the lease or rental agreement between a lot owner and the lessee, lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and that any failure by lessee to comply with the terms of this Declaration or rules and regulations shall be a default under the terms of the lease. Furthermore, all such leases shall be in writing and shall include language to the effect that the lessee has received a copy of the Declaration and has read and understand them, and agrees to be bound by their terms. In no event shall a lease agreement be for a term less than 90 days.
22. **SIGNS:** No billboards or sign of any character shall be erected, posted, painted or displayed upon or about any lot, part or portion of the property. Subject to Article 32 Section E below, no sign of any kind, except signs used for the advertisement of a lot or residence for sale or rent, limited to one sign per lot that is offered for sale or rent, of not more than 18" by 24" in size shall be used, placed, or displayed to the public view on any lot, part or portion of the property. The above notwithstanding, signs used by the Developer, Gemstone Homes, or their assigns, to advertise the development and/or initial sale of any lot, part or portion of the property shall be excluded from this restriction. During the construction of a residence on a lot, one sign, not more than 24" by 24" advertising or publicizing the contractor of the residence, shall be allowed. Any such sign shall be removed upon completion of construction, as defined herein.
23. **INOPERABLE MOTOR VEHICLES:** No type of motor vehicles, which is inoperable for any reason, shall be allowed to be parked upon any street, lot, part or portion of the property, except in an approved, enclosed garage. In the event any inoperable motor vehicle remains outside upon any street, lot, part or portion of the property for a period exceeding 10 days the developer, or any lot owner in the Subdivision may remove the inoperable motor vehicle after a 10 day written notice. The cost and expenses of such removal shall be borne by the lot owner on which or in front of which the inoperable vehicle was parked. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle which is unable to be operated in a normal and legal manner upon the streets under its own power, or is unlicensed or unregistered for a period of not less than 90 days.

24. **TRUCKS, TRAILERS AND BOATS:** Trailers and motorhomes with a length in excess of 40' or boats in excess of 30' and trucks and busses of a gross vehicle weight over 10,000 pounds are not allowed to be placed, parked, or stored upon any street, lot, part or portion of the property.
25. **SITE REVIEW:** Prior to the commencement of construction of any dwellings, garage, storage building, fence wall, pool, or other improvements on any lot in this subdivision, plot-plans and/or construction drawings shall be submitted and approved by the City of Hurricane and the ACC. The cost of gaining such approval shall be borne by the seeker of such approval.
26. **ROOF MOUNTED HEATING/AC:** Roof mounted heat pumps, A/C or evaporative coolers, and solar panels are not allowed.
27. **DAMAGES:** Any damage inflicted on existing improvements such as curb, streets, gutters, concrete sidewalks, etc. by the purchaser of any particular lot or his contractor, must be repaired at the expense of the purchaser. This also includes any damage to landscaping. Any dirt, mud or gravel spilled or dumped on the sidewalks and/or streets during any construction or landscaping shall be removed at the cost and/or expense of lot owner and/or his contractor, and returned to the then pre-existing condition of the sidewalk and/or street within eight (8) hours.
28. **THE ARCHITECTURAL CONTROL COMMITTEE (ACC):** No building, fence, wall, other structure or major landscaping improvements shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration therein 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 Architectural Control Committee.

The Architectural Control Committee shall consist of three (3) members to be designated by the developers of the land. After Ninety Five percent (95%) of the lots have been sold or by January 1st. 2010 whichever occurs first, the three (3) members shall be elected by the then property owners of the Sky Ridge Subdivision Phases II & subsequent added phases. The elections are by simple majority and new elections may be held at any time. The committee members will elect one of their group as the chairman and all inquiries shall be made through him or her.

In the event said ACC, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to

it, approval will not be required and compliance with article will be deemed to have been made.

Interpretation. All questions of interpretation or construction of any of the terms or conditions of this Article shall be resolved by the ACC, and its decision shall be final, binding and conclusive on all of the parties affected.

Reimbursements. The members of the ACC shall receive no compensation for services rendered, other than reimbursements by the Owner applying for approval, for expenses incurred by them in the performance of their duties hereunder.

Liability. Neither Declarant nor the ACC, nor any member thereof, nor their duly authorized ACC representatives shall be liable to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ACC's duties hereunder, unless due to the willful misconduct or bad faith of the ACC. The ACC shall review and approve or disapprove all plans submitted to it for any proposed improvements, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The ACC shall take into consideration the aesthetic aspects of the Architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Declarant Exemption. The ACC shall have no authority or power of jurisdiction over Lots/Homes owned by Declarant, and the provisions of this Article shall not apply to Lots/Homes owned by Declarant until such time as Declarant conveys title to the Lot/Home to a purchaser thereof. This Article shall not be amended without Declarant's written consent.

29. **DISCLAIMER OF LIABILITY:** Notwithstanding any information given by Declarant regarding soils and subsurface water conditions, whether it be oral or written, declarant hereby disclaim any responsibility for soils conditions, surface flooding and/or subsurface water condition, and hereby advises buyers and subsequent owners to obtain the necessary engineering information regarding same, before constructing a dwelling or improving said property, and hereby denies any liability therefore. The lot owner agrees to indemnify and hold harmless declarant, their successors or assigns from any liability therefore.
30. **RIGHTS TO ENFORCE CC&R'S.** Should any lot owner fail to comply with provisions of these CC&R's, the Developer, any owner or owners within the Subdivision shall have the right to seek injunctive relief or an order from a court

of proper jurisdiction requiring specific performance to comply with the provisions hereof, and shall also have the authority to complete, repair, remove or clean up whatever might be needed to rectify the non-compliance. Any and all reasonable expenses incurred in connection with enforcing these CC&R's including reasonable Attorney fees, shall constitute a lien on such lot owner's lot, and shall also be a personal obligation of said lot owner, enforceable at law, until such payment is therefore made. Failure to enforce any of said restrictions shall in no way prevent enforcement of any or all other restrictions herein. The declaration of any restrictions to be invalid by court proceedings shall not invalidate any other restrictions unless specifically specified.

31. **DURATION:** All the covenants and restrictions set forth in this declaration shall take effect at all times against said property and the owners thereof or any subsequent owner(s) thereof, for a period of twenty (20) years from the date of adoption. Said covenants shall then be automatically renewed for successive periods of ten (10) years, except that following the initial twenty year period, said requirements may be altered or changed or modified by a written agreement of more than three fourths of the lot owners of said subdivision. Said changes shall not include easements or other area dedicated to the public-use. In addition, at the sole discretion of the Declarant, the Declarant may from time to time subject additional restrictions or covenants as may be deemed necessary to and for the protection of other property owners in the subdivision, and such additions shall be binding upon all Owners and shall not require their acceptance or signature.

32. **SPECIAL DECLARANT'S RIGHTS.** Declarant hereby reserves unto itself and or its assigns, the right to:

- A. **CONSTRUCTION OF HOMES BY DEVELOPER:** The Developer has the exclusive right to construct homes in the Sky Ridge Subdivisions. Buyer must arrange for plans and financing that will allow for the start of construction to be no later than twelve (18) months following the date of purchase of the lot. The Developer may assign the right to build to other builders and may also extend or shorten the time frame for start of construction of homes. Such assignments and/or change of start of construction time shall be given in writing and can be done on the Real Estate Purchase Contract, and it shall be deemed binding AFTER closing of the lot purchases. If a Buyer fails to comply with the agreed upon start of construction date the buyer must either pay the Developer \$100 a day from the day of non-compliance or buy the right to build you own home for 20% of the lowest priced home offered for sale by the Developer in the Sky Ridge Home Site Subdivision or put the lot up for sale with a Realtor selected by the Developer at a price not to exceed market value of a comparable lot offered for sale in Sky Ridge.
- B. **EXPANSION:** Declarant reserves the right at its sole election to expand the Properties to include additional property including but not limited to the more particularly described properties listed below by unilateral action of Declarant without the consent of owners for a period of ten (10) years from the date of

recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The properties or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

Beginning at the North Quarter Corner of Section 32, Township 41 South, Range 13 West, Salt Lake Base and Meridian, Said Quarter Corner being the True Point of Beginning and running thence South 89°41'05" East along the Section line 66.00 feet, said point being on the Easterly line of a 66.00 foot easement; thence South 00°12'45" West, along said easement 1890.20 feet; thence N 89°40'28" W, 1207.69 feet; thence North 00°12'45" East 1890.19 feet to a point on the North Section Line of said Section 32; thence along said Section line South 89°40'28" East 1141.69 feet to the True Point of Beginning

Containing 52.315 acres more or less.

Expansion shall occur by the Declarant filing:

1. An additional subdivision plat or plats creating additional Lots on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Amended Declaration upon the filing of a Declaration of Annexation; and
2. 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 dwellings, architecturally compatible to the existing Homes, substantially identical to the Homes already constructed, constructed out of similar materials, with substantially similar lot size. The maximum number of units to be added shall be (200).

The improvements in an expansion area shall be substantially completed prior to recordation of the Declaration of Annexation. Owners in the original and expansion areas shall all have equal membership status in the Association.

- C. Sales Office,** Maintain at least one (1) sales office, management office, and as many model homes as Declarant feel necessary within the Property which may be relocated from time to time.

- D. Signs and Advertising.** Maintain signs and flags of any size deemed proper by the Declarant, advertising the Project, which signs may be maintained anywhere on the Project, excluding Lots owned by Owners other than Declarant;
- E. Resales.** Declarant shall have the right in its sole discretion to designate a licensed real estate broker to transact all re-sales within the Project. The posting or installation of all signage with respect to resale activity within the Project requires the prior written consent of Declarant at its sole discretion. Commissions charged shall not exceed the prevailing rate in Washington County.

These Declarant's Special Rights shall remain in effect until either of the following happens:

- (i) Sixty days after conveyance of ninety-five percent (95%) of all Homes/Lots to Owners other than Declarant; or
- (ii) Two (2) years after Declarant has ceased to offer for sale in the ordinary course of business any lot/Home within the Property; or
- (iii) Five years after any right to annex the Annexable Area has last been exercised pursuant to Article 32B hereof.

33. ASSIGNMENT OF POWERS

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Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 8 day of March 2000

by:

R. Arbogast

Declarant Rando Homes L.L.C. d.b.a. Gemstone Homes
Rodney Arbogast, Managing Member

STATE OF UTAH)
)SS.
COUNTY OF WASHINGTON)

On this 8 day of March 2000 before me personally appeared Rodney Arbogast, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.

Michelle L. Holmstead
3-1-2002

