Instrument # 296048
REXBURG, MADISON, IDAHO
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is dated as of May 6, 2002, by WESTATES HOLDINGS, LC, a Utah limited liability company (the "Declarant").

RECITALS:

A. Certain capitalized terms in this Declaration are defined in Article 1.

B. Declarant is the owner of a parcel of real property located in Rexburg, Idaho, which is referred to in this Declaration as the "Subject Parcel." The Subject Parcel is more fully described on the attached Exhibit "A," which is incorporated herein by this reference.

C. Declarant intends to sell portions of the Subject Parcel, subject to the covenants, conditions and restrictions set forth herein.

NOW, THEREFORE, Declarant hereby covenants and declares the Subject Parcel and every portion or interest therein, is now held and shall hereafter be held, transferred, sold, leased, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth, each and all of which is and are for, and shall inure to the benefit of and pass with the Subject Parcel and every portion of or interest in the Subject Parcel, and shall apply to every owner and occupant thereof, and their successors and assigns. These covenants, conditions and restrictions shall run with the Subject Parcel and every part thereof, and shall inure to the benefit of every owner and occupant thereof.

ARTICLE 1
DEFINITIONS

1.1 Definitions. The following terms shall have the definitions ascribed to them below.

(a) "Declarant": Westates Holdings, LC, a Utah limited liability company, or any of its successors or assigns. Declarant's current address is c/o Jay M. Jenks, 3800 North 60 West, Suite C, Hyde Park, Utah 84318.

(b) "Environmental Laws": The Comprehensive Environmental Response Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respective Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(c) "Hazardous Materials": Underground storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

(d) "Lienholder": Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on the Subject Parcel. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to the Subject Parcel, or any portion thereof, by foreclosure, trustee's sale or otherwise.

(e) "Lot": A unit of real property within the Subject Parcel, as identified on the official plat of the Subject Parcel.

(f) "Owner": The record holder of fee simple title to any Lot on the Subject Parcel (including its heirs, personal representatives, successors and assigns).

(g) "Person": Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(h) "Restrictions": The covenants, conditions, restrictions, liens and encumbrances contained in this Declaration.

ARTICLE 2
ARCHITECTURAL STANDARDS

2.1 Architectural Review.

(a) No construction (which term shall include, without limitation, staking, clearing, excavation, grading and other site work) or improvements (which term shall include, without limitation, buildings, streets, driveways, parking areas, sidewalks, lighting, curbs, gutters, utilities, facilities, fences, walls, plantings, stairs, decks, poles, signs (including freestanding signs), fixtures and all other structures, features, equipment and landscaping installations of every type and kind) shall be commenced, erected, placed or altered below, on or above the Subject Parcel until an application for approval of such construction and improvements and the final plans and specifications therefore ("Final Plans") have been approved in writing by an Architectural Review Committee (the "ARC") made up of three persons appointed by the Declarant. The initial ARC shall consist of Stan Rowlan, Jay Jenks, and Chuck Malone. This Article applies to original construction and to any modifications, alterations, and remodeling. The Final Plans shall include, without limitation, complete and detailed plans, specifications and drawings as to structural design, exterior elevations, exterior materials and colors of all primary and accessory structures, signage, nature and location of landscaping materials, drainage, lighting, irrigation, parking, paving and curb cut layout and screening of outdoor equipment.

(b) The Final Plans shall be in a form and substance reasonably satisfactory to the ARC, and each Owner shall provide such additional information as the ARC may reasonably require in connection with the review of the Final Plans. In the event that the ARC fails to approve or disapprove or request additional information from the Owner within fourteen (14) days after the Final Plans are submitted to the ARC, approval of the Final Plans shall be deemed granted.

(c) In reviewing each submission, the ARC may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures. The ARC shall not require permits or other approvals by local government entities other than those issued by such entities in the usual course of business.

(d) Approval of proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval, must be in writing, and shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

(e) No material changes or deviations in or from the Final Plans, once approved, may be made without the prior written approval of the ARC. Except as otherwise provided herein, all construction on the Subject Parcel shall be at the sole expense of the Owner.

(f) All improvements to be constructed on the Subject Parcel shall be constructed in compliance with all applicable laws, statutes, ordinances, rules, regulations and standards.

(g) The Owner shall not seek to modify the zoning for the Subject Parcel or any portion thereof without Declarant's prior written consent, which consent will not be unreasonably withheld.

2.2 Specific Design Requirements. In addition to any reasonable design standards imposed by the ARC, at a minimum, each building built on any Lot shall be at least twenty-five percent (25%) masonry veneer on that portion of such building that faces any public street. Further, any fence installed on any Lot shall be composed of white vinyl non-maintenance-type fencing, all approved by the ARC prior to construction and installation.

2.3 Non-Liability of Declarant or ARC. Neither the Declarant nor the ARC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the ARC nor the Declarant, its members, managers, officers, directors, employees, agents or representatives shall be held liable for defects in any plans or specifications submitted, revised or approved hereunder, nor any structural or other defects in work done according to approved plans, nor for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to the Subject Parcel or improvements thereon. The Owner shall be obligated to defend, indemnify and hold the ARC, the Declarant, and its members, managers, officers, directors, employees, agents and representatives, free and harmless for, from and against any and all claims, damages, losses and/or liabilities in connection with any Final Plans approved by the ARC and any improvements constructed pursuant thereto, including court costs and reasonable attorneys' fees. The Owner shall be responsible for obtaining all permits, licenses and other governmental approvals required in connection with any improvements to be constructed on the Subject Parcel.

2.4 Nonconforming Work. Any construction, alteration or other work done in violation of the Restrictions shall be deemed to be nonconforming. Upon written request from Declarant, the Owner, at its own cost and expense, shall either cure such nonconformance to the satisfaction of Declarant or remove such construction, alteration or other work and restore the Subject Parcel to substantially the same condition as existed prior to the construction, alteration or other work. Should the Owner fail to cure or to remove and restore as required hereunder within thirty (30) days after receipt of Declarant's request therefore, Declarant or its designees shall, in addition to all other rights and remedies available hereunder, at law or in equity, have the right but not the obligation to enter the Subject Parcel, remove the violation and restore the Subject Parcel to substantially the same condition as existed prior to the nonconforming construction, alteration or other work and/or to erect barriers to screen any uncompleted improvements, and/or to take other actions deemed reasonably necessary by Declarant to minimize the impact of the default.

2.5 Contractors. All acts by any contractor, subcontractor, agent, tenant, licensee, employee or invitee of the Owner shall be deemed to be an act done by or on behalf of the Owner. Any contractor, subcontractor, agent, tenant, licensee, employee or other invitee of the Owner who fails to comply with the terms and provisions of this Article may be excluded from the Subject Parcel. In such event, Declarant shall not be liable to any Person for exercising the rights granted by this Section.

ARTICLE 3
GREEN SPACE

3.1 Minimum Green Space. In order to preserve the orderly development of the Project, and to avoid the overcrowding of structures on the Subject Parcel, each Lot is hereby restricted to providing a minimum of twenty percent (20%) Green Space on each Lot. For purposes of this section, the term "Green Space" shall be defined as area upon which no structures or improvements have been placed. Specifically, the term "Green Space" shall exclude apartment building foundation areas, extensions such as porches and patios, driveways, garages, parking areas, or any other area that is covered with concrete or asphalt, except sidewalks, which shall be included in the definition of Green Space. A playground or picnic area may be deemed Green Space if it is accessible to all residents of the apartment building on the Lot. When an Owner submits Final Plans to the ARC, the Owner shall include a Lot map designating Green Space consistent with the restriction set forth above. The ARC may deny approval of any proposed structure if the construction of such structure will result in a violation of the Green Space restriction set forth herein. Any required setbacks shall be included in the definition of Green Space.

ARTICLE 4
EASEMENTS

4.1 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 private streets and parking areas on the Subject Parcel in the performance of their duties.

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

ARTICLE 5
USE RESTRICTIONS

5.1 Permitted Uses Generally. No part of the Subject Parcel shall be used for any purpose other than as zoned by the City of Rexburg.

5.2 Prohibited Uses. The following activities and uses are prohibited within the Subject Parcel unless expressly authorized in writing by, and then subject to such conditions as may be imposed by Declarant:

(a) Escort bureaus, adult entertainment establishments (including, without limitation, massage parlors, turkish baths, any book, video, or similar store which offers for sale or rent pornographic material or other material which may not be lawfully sold to persons under 18), night clubs, bars, taverns, equipment rental services, mortuary, cemetery, crematorium, pawn shops, paraphernalia shops, carnivals, or fairs.

(b) Use of the Subject Parcel in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances of any kind.

(c) Any use in violation of any applicable legal requirement, including without limitation, zoning ordinances, building codes, and fire codes.

(d) Any production, manufacturing, industrial, or storage use of any kind or nature.

(e) Discharge of firearms, fireworks or explosives within the Subject Parcel. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

(f) Parking any vehicle (including, but not limited to, any car, truck, motorcycle, boat or trailer) containing or displaying a "for sale" sign or other indication of being "for sale", where said vehicle is parked in an area between any public street and any building or structure on the subject parcel for the purpose of using such vehicle as an advertising device.

(g) Raising, breeding or keeping of animals or poultry of any kind. Except those normally regarded as indoor house pets.

(h) Any nuisance so as to be offensive or detrimental to any other portion of the Subject Parcel. Without limiting the generality of any of the foregoing provisions, no open fires shall be lighted or permitted on the Subject Parcel, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace. No exterior loud speakers, horns, whistles, firecrackers, bells or other sound devices shall be located, used or placed on the Subject Parcel, except security

devices used exclusively for security purposes. Normal construction activities and parking in connection with the building of improvements on the Subject Parcel (which improvements have been approved in accordance with Article II) shall not be considered a nuisance or otherwise prohibited by this Declaration. During construction periods, trash and debris shall not be permitted to accumulate. The Declarant, in its sole discretion, shall have the right to determine the existence of any nuisance, which will not be unreasonably imposed.

(i) Any use involving Hazardous Materials, except in compliance with all Environmental Laws.

ARTICLE 6
INDEMNIFICATION

6.1 Owner's Indemnification. The Owner covenants and agrees to indemnify and save Declarant, its members, managers, officers, directors, employees, agents and representatives, entirely harmless for, from and against each and every claim, demand liability, loss, cost, damage and expense including, without limitation, reasonable attorneys' fees and court costs, arising out of any accident or other occurrence causing injury to or death of persons or damage to property by reason of the Owner's construction, development, repair, alteration, renovation or maintenance of any improvements on the Subject Parcel, or adjacent areas; or due to the condition of the Subject Parcel, or the use or neglect thereof by such Owner or any other person, unless caused by the gross negligence or willful misconduct of Declarant. The Owner further agrees to indemnify and save Declarant, its members, managers, officers, directors, employees, agents and representatives, entirely harmless for, from and against all claims, demands, liabilities, and damages arising out of any failure of the Owner to comply with any of its obligations under this Declaration, including without limitation reasonable attorneys' fees and court costs.

ARTICLE 7
GENERAL PROVISIONS

7.1 Covenants Run With the Land. Each Restriction on the Subject Parcel shall be a burden on the Subject Parcel, shall be appurtenant to and for the benefit of the Declarant's Parcel and each part thereof and shall run with the land.

7.2 Persons Bound. This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon each Owner, and their respective heirs, successors, assigns and personal representatives; all occupants, tenants, licensees and invitees of the Subject Parcel; and upon any Person acquiring any Lot on the Subject Parcel, or any portion thereof, or any interests therein, whether by operation of law or otherwise. Any lease or license relating to the Subject Parcel shall provide that the lessee or the licensee, as the case may be, shall be bound by the terms of this Declaration. Notwithstanding the foregoing, if the Owner sells or transfers all or any portion of its interest in a Lot on the Subject Parcel, such Owner shall, upon the sale and conveyance of title, be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and

conveyance of title. The new Owner of the Lot on the Subject Parcel or any portion thereof (including without limitation, any Owner [or Lienholder] who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to the Subject Parcel or portion thereof after the date of sale and conveyance of title.

7.3 Duration. The term of this Declaration shall commence as of the date of recordation of this Declaration and shall continue in effect in perpetuity, unless the Declarant records a notice of termination of the Declaration in the office of the recorder of the county in which the Subject Parcel is located.

7.4 Injunctive Relief. In the event of any violation or threatened violation of any provisions of this Declaration, the Declarant shall have the right, in addition to any other remedies herein or by law provided, to seek to enjoin such violation or threatened violation in a court of competent jurisdiction.

7.5 Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Declarant, and then only by written instrument duly executed and acknowledged by the Declarant recorded in the office of the recorder of the county in which the Subject Parcel is located.

7.6 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Subject Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

7.7 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

7.8 Default. A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten (10) days in the event of failure to pay money) from receipt of written notice from the Declarant specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten (10) days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default. If an Owner shall be in default, the Declarant shall have the right (but not the obligation) to perform such obligations and to bill the Owner for the costs incurred by the Declarant. If the Owner does not reimburse the Declarant within ten (10) days after the presentation of a bill for the costs incurred, the Declarant shall, at its election, have a lien on the Subject Parcel to the extent of the costs incurred by the Declarant but not reimbursed by the Owner, which amount shall bear interest at the annual rate of eighteen percent (18%). Such lien

may be filed for record by the Declarant as a claim against the Owner in the form required by law in the local governmental office wherein liens are filed. The lien so claimed shall attach from the date of recordation of this Declaration in the amount claimed by Declarant, with interest at the rate set forth herein. The lien may be enforced and foreclosed in any manner allowed by law, including but not limited to, suits to foreclose a mortgage or mechanic's lien under the applicable laws of the State of Idaho. Such lien, when so filed of record against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which is acquired or attached to such real property after the time of recording this Declaration.

7.9 Notices.

(a) Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by telefacsimile, personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address or telefacsimile number set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Subject Parcel is located. All notices to Declarant shall be sent at the following address or telefacsimile number:

WESTATES HOLDINGS, LC
3800 North 60 West, Suite C
Hyde Park, Utah 84318
Attn: Jay M. Jenks
Fax No.: (435) 563-1700

The person and address to which notices are to be given may be changed at any time by Declarant upon written notice to the Owners. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) Receipt. For the purpose of this Declaration, the term "receipt' shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party or in the case of a telefacsimile, the date and time of receipt as shown on the confirmation of the telefacsimile transmission.

7.10 Waiver. The failure of a Person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other Person.

7.11 Attorney's Fees. In the event Declarant or an Owner initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its

reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

7.12 Severability. If any term or provision of this Declaration or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

7.13 Captions and Headings. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

7.14 Entire Agreement. The provisions of this Declaration shall be construed as a whole and not strictly for or against any Owner.

7.15 Construction. In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

7.16 Joint and Several Obligations. In the event an Owner is composed of more than one (1) Person, the obligations of said Persons as an Owner shall be joint and several.

7.17 Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Subject Parcel is located.

7.18 Declarant's Option to Add Portion of Declarant's Parcel. At any time and from time to time, at Declarant's option, Declarant shall have the right, without any Owner's consent, to amend this Declaration to subject all or any portion of Declarant's Parcel to the Restrictions contained herein, or to any portion of such Restrictions.

EXECUTED as of the date first set forth above.

WESTATES HOLDINGS, LC, a Utah limited liability company

By: _____
Jay M. Jenks, Manager

STATE OF Idaho)
ss.
County of Madison)

On this 6th day of May, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Jay M. Jenks, to me known to be the Manager of Westates Holdings, LC, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

LORNA - LEIGH
STATE OF IDAHO
NOTARY -- • -- PUBLIC

_____
Notary Public

Lorna - Leigh
Notary Public in and for the
State of Idaho

My commission expires:
2-16-2007

EXHIBIT A
DESCRIPTION OF SUBJECT PARCEL

Westates Subdivision No. 1, MADISON COUNTY, IDAHO, as shown on the plat recorded March 29, 2002 as Instrument No. 294912.
Block 1, Lot 2
Block 1, Lot 3

Block 2, Lot 3
Block 2, Lot 4
Block 2, Lot 5
Block 2, Lot 6

Block 3, Lot 2
Block 3, Lot 3
Block 3, Lot 4

Block 4, Lot 3
Block 4, Lot 4
Block 4, Lot 5
Block 4, Lot 6
Block 4, Lot 7