

**SECOND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RIVERWOOD IV TOWNHOMES A PLANNED DEVELOPMENT**

THIS SECOND DECLARATION of Covenants, Conditions and Restrictions (hereinafter "Second Declaration") is made on the date hereinafter set forth to establish a separate planned unit development known as Riverwood IV Townhomes A Planned Development.

RECITALS

WHEREAS, Declarant is the owner of certain real property in the City of St. George, County of Washington, State of Utah, which is more particularly described below, and

WHEREAS, the Declarant has caused said land to be subdivided into lots, common and limited common areas, including private roads, to be known as Riverwood IV Townhomes A Planned Development, and has dedicated said land to the common use of the property owners, but not to the use of the general public, all common and limited common areas, including private roads, in accordance with the terms and conditions of dedication of said common and limited common areas, as more fully provided in the Plat for Riverwood IV Townhomes A Planned Development, and

WHEREAS, a certain "Declaration of Covenants, Conditions and Restrictions" applicable to the Riverwood II Townhomes A Planned Development, dated June 29, 1992 was recorded as Instrument No. 00409938, in Book 00667, Pages 0497 through 528, in the office of the County Recorder of Washington County, Utah (hereinafter referred to as the "First Declaration"), concurrently with the plat of Riverwood II Townhomes A Planned Development, and

WHEREAS, Riverwood IV Townhomes A Planned Development is also subject to the terms and conditions of the aforesaid First Declaration, pursuant to a Declaration of Annexation being filed concurrently herewith, and

WHEREAS, the purchasers of lots in Riverwood IV Townhomes are obligated to comply with the terms and conditions of the aforesaid First Declaration as well as comply with the additional Covenants, Conditions and Restrictions hereinafter set forth in this Second Declaration, and

WHEREAS, it is the desire and intention of Declarant to construct detached single family dwellings on the properties and sell and convey the same to various purchasers, and

WHEREAS, the City of St. George required certain Plat Notes to be placed on the - Riverwood IV Townhomes Plat Map as conditions for the recording of said plat, and

WHEREAS, said notes and conditions state that the following are binding upon the purchasers of lots in Riverwood IV Townhomes A Planned Development, and their successors and assigns:

- The lots and common areas in this development are subject to the risk of flooding. The Developers and sellers of this property do not make any representation or warranty to purchasers that it will never be damaged by such acts of God. Purchasers assume the risk of damage to lots, common areas, and personal property, as well as the risk of personal injury or fatality, resulting from such occurrences and release the Developer, and its officers and agents, and release, indemnify and hold harmless the City of St George, and its officers and agents, from all claims of whatever nature arising out of such occurrences in connection with the lot or lots owned by purchaser.
- Buildable areas in the development are elevated above the 100 year flood plain as established by FEMA. However, portions of the development are within this flood plain.
- Because of the proximity of the lots to the river, any home or other structure must have the lowest finished floor elevation at or above that shown in the elevation table. This floor elevation must be verified by a licensed surveyor prior to construction, and a "Elevation Certificate" completed and submitted to the City before the structure is occupied. No encroachment, clearing, removal of vegetation, or other activity or work of any kind is allowed within the flood plain without necessary permits and approvals from appropriate city, state and federal agencies. Purchasers should consider purchasing federal flood insurance on lots.
- The purchasers of lots within Phase IV of the Riverwood Development (or the Riverwood II Townhome Homeowners' Association, Inc, if the Association is responsible) shall be responsible to complete and pay for periodic inspections of the river floodplain area within and adjacent to this development by a registered professional engineer to examine the condition of the stream channel and overbanks and determine if any potential erosion problems exist which may require correction or maintenance. Such inspections shall be conducted at least quarterly and following each major storm event. The access to the river floodplain area shall be kept open and available for heavy equipment access for maintenance and corrective action. The cost of providing such flood or erosion protection improvements recommended by the aforesaid engineer and completed at the direction of the homeowners or the Homeowners' Association shall be the homeowners' responsibility unless the same is the responsibility of the Homeowners' Association. Any damage to the development in connection with or arising out of or failure to obtain or follow the engineering recommendations shall be the sole responsibility of the homeowners or

the Homeowners' Association, The City of St. George, and its officers and agents, and the Developer, and its officers and agents, shall not be liable for and are hereby released from any such damages and from all claims related to or arising out of any of the aforesaid engineering recommendations.

DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that all of the properties described below and located in Washington County, Utah, shall be held, sold and conveyed, and occupied subject to the following additional covenants, conditions, restrictions, easements, assessments, charges and liens. Said property is further described and outlined on that certain plat map entitled "Riverwood IV a Planned Development," consisting of one sheet, prepared and certified by Barry Andreason, a Utah Registered Land Surveyor, which was duly recorded in the office of the Washington County Recorder in Washington County, Utah, on the _____ day of May, 1995, as Instrument No _____, in Book No _____, Page No _____.

The following covenants, conditions and restrictions, easements, assessments, charges and liens are all for the purpose of protecting the value and desirability of the subject property and shall be construed as covenants of equitable servitude and shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof and their heirs, successors and assigns.

The subject real property is situated in Washington County, State of Utah described as follows.

Beginning at the Southwest corner of Lot 5, of the Southwood Meadows Subdivision, said Southwest corner is S 1°01'00" E. 1530.96 ft along the section line and West 1860.56 ft from the Northeast corner of Section 35, T 42 S, R 16 W, S L B & M, thence along the boundary of said subdivision as follows: N 37°30'00" E. 165.70 ft; N 63°30'00" W. 36.00 ft; N 33°33'15" W. 151.37 ft, N. 29°00'00" W. 252.11 ft to the Southwest corner of Lot 9 of said subdivision, thence N 21°40'00" W 153.08 ft, thence S 31°19'00" W 429.10 ft; thence West 10.00 ft, thence S 6°00'00" E. 502.91 ft, thence S 43°00'00" E. 239.08 ft to the boundary line of Riverwood III Townhomes Planned Development, thence N 26°30'00" E. 444.27 ft along the boundary line of said Planned Development, thence N. 63°28'17" E. 15.46 ft along the boundary line of said Planned Development to the point of beginning containing 6.658 acres.

ARTICLE I -- DEFINITIONS

Section 1. Second Declaration shall mean and refer to this instrument, and any amendments. First Declaration shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions dated June 29, 1992 and recorded as Instrument No 00409938, in Book 00667, Pages 497 through 528, in the office of the County Recorder of Washington County, Utah.]

Section 2. Plat or Map shall mean and refer to the subdivision plat recorded herewith captioned "Riverwood II," or any replacements thereof, or additions thereto.

Section 3. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Second Declaration

Section 4. Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant, subject to rights of the association, as herein set forth

Section 6. Lot shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership and shall exclude the common and limited common areas

Section 7. Townhome shall mean and refer to a single family dwelling, with or without walls or roofs in common with other single family dwelling lots, and shall include fee title to the real property lying directly beneath said single family dwelling

Section 8. Owner shall mean and refer to the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, those parties shall be treated, as a group, as one "owner"

Section 9. Association shall mean and refer to Riverwood IV Townhome Homeowner's Association, Inc., its successors and assigns

Section 10. Member shall mean and refer to every person or entity who holds membership in the Association.

Section 11. Trustees shall mean and refer to the governing body of the Association.

Section 12. Declarant shall mean and refer to Kent E. Prestwich and Pauline L. Prestwich and their heirs, successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary"

ARTICLE II – MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers, but shall

not include persons or entities who hold an interest merely as a security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or other proceedings in lieu of foreclosure. Membership shall be appurtenant to, and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity without additional documentation beyond that necessary to transfer title.

Section 2. Voting Rights The Association shall have two classes of voting membership:

CLASS A Class A members shall be all members with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be and constitute jointly, one member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the lot concerned, unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-owner of the same lot. In the event objection is made, the vote involved shall not be counted for any person except to determine whether a quorum exists.

CLASS B The Class B member shall be the Declarant (as defined in the Second Declaration), and shall be entitled to five (5) votes for each lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first

- (a) the expiration of four (4) months after conveyance of eighty five percent (85%) of lots to purchasers,
- or
- (b) the expiration of five (5) years from the first lot conveyance to a purchaser

ARTICLE III – FINANCES AND OPERATIONS

Section 1 Creation of the Lien and Personal Obligation of Assessments Anything contained herein to the contrary notwithstanding, the Declarant and its successors and assigns, shall not be obligated to pay any assessments or special assessments for any lot owned by the Declarant within the Riverwood IV Townhomes A Planned Development. Each purchaser of any lot and said purchasers successors and assigns, by the acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges, and, (2) special assessments for capital improvements. Such assessments, are to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with interest, costs of collection and a reasonable attorney's fee, as hereinafter provided, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each

such assessment, together with interest, costs of collection and a reasonable attorney's fee, as herein provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors-in-title unless expressly assumed by them, but such delinquent assessments shall continue as a lien upon such land.

Section 2. Purpose of Assessments. The assessments levied by the Association under these additional covenants, conditions and restrictions for Riverwood IV Townhomes shall be used exclusively for the purpose of: (i) Providing for the inspection, maintenance, repair and improvements of the river floodplain area within and adjacent to the Riverwood IV Townhomes Development under direction of a registered professional engineer to determine the condition of the stream channel and overbanks and to determine if any potential erosion problems exist which may require correction or maintenance and to cover the cost of flood erosion protection, repair or improvements recommended by the engineers retained by the Homeowners' Association and completed at the direction of the Homeowners' Association in accordance with this Second Declaration; (ii) to improve, maintain and repair any of the common areas and limited common areas which may have been damaged by any flooding or natural disasters, including the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas as a result of flood damage to said common areas; (iii) the payment of flood insurance premiums covering the common areas; and (iv) the payment of administrative expenses of the Association. The expenses incurred for capital improvements shall have the approval of the majority of the combined votes of the Class A and Class B members authorized to vote, by person or by proxy, at a meeting duly called for this purpose.

Section 3. Basis and Maximum Annual Assessments. Until January 1 following recording of this Second Declaration, the maximum annual assessment allowable shall be \$1200.00 per lot. This amount shall also be the basis of calculation for future maximum annual assessments.

(a) From and after the above-referenced date the maximum annual assessments (excluding special assessments) may only be increased above the Annual Cost of Living percentage increase by the majority of the combined vote of the Class A and Class B members authorized to vote, by person or by proxy, at a meeting duly called for this purpose.

(b) The maximum annual assessment may be increased automatically without vote, by an amount equal to actual increases in the amounts payable for taxes, special assessments and other governmental assessments or charges by the Trustee.

(c) The Trustees may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not to exceed the maximum described hereinabove.

Section 4. Special Assessments for Capital Improvements In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of all of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5 Change in Basis and Maximum of Annual Assessments The Association may change the basis and maximum of the assessments fixed by Section 3 hereof prospectively for any annual period provided that any such change shall have the assent of a majority of the combined votes of the Class A and Class B members authorized to vote, by person or by proxy, at a meeting duly called for this purpose.

Section 6 Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 7 Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members by mailing such notice, or personally serving such notice, at least ten (10) days in advance of said meeting, and no more than 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 each class of membership shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8 Uniform Rate of Assessment - Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 9 Date of Commencement of Annual Assessments - Duties of Trustees, Due Dates - Adjustment of Assessments in Certain Cases The annual assessment provided for herein shall commence to accrue on the date fixed by the Trustees of the Association to the actual date of commencement.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year, and may commence immediately upon determination by the Trustees. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The due dates shall be established by the Trustees, upon which dates the assessments for any year shall become due and payable, provided, that the Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The due date of any special assessments authorized herein shall be fixed by the Trustees, subject to the same notice and payment requirements pertaining to annual assessments.

The Trustees shall prepare a roster of the properties, and the assessments applicable thereto at the same time that the Trustees fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, said Trustees shall record payments of assessments, and shall allow inspection of the roster by any member at all reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot 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.

A first mortgagee who has made a written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on, is entitled to a written certificate from the Association advising of any default in the performance by an owner of any obligation due under the Second Declaration which is not cured within sixty (60) days, provided however that said mortgagee shall be responsible for the actual cost of providing such certificate.

Section 10 Effect of Non-Payment of Assessment - Remedies of the Association
Any assessment or installment due hereunder 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 eighteen percent (18%) per annum (or such different rate as the Trustees shall determine appropriate) until paid

The Association may bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or may foreclose the lien against the property 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, or may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member, and there shall be added to the amount of such delinquent assessment the costs and expenses of said action, sale or foreclosure, and a reasonable attorney's fee, together

with an account for the reasonable rental for the lot from the time the assessment came due to the time of commencement of the foreclosure and the Association shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the other security

A power of sale is hereby conferred upon the Association which it may exercise, and under which the lot 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 the purposes of power of sale foreclosure

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 his lot

Section 11 Subordination of the Lien to Mortgagees The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien resulting from such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such a lot or owner from liability for assessments thereafter becoming due or from the lien attaching for such after occurring assessments

Section 12. Exempt Properties The following property subject to this declaration shall be exempted from the assessment, charge and lien created herein

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use,
- (b) All common and limited common area,

However, no land or improvement devoted to dwelling use shall be exempt from said assessment, charge and lien

Section 13 Insurance The Trustees of the Association, or their duly authorized agents, may obtain and continue in effect flood insurance for all of the lots and common areas within or adjacent to the Riverwood IV Townhomes A Planned Development in an amount and on such terms as the Trustees in their sole discretion may determine, taking into consideration any flood insurance which may have been obtained by the Riverwood Townhomes Association which provides for the maintenance and protection of all common areas of Riverwood II, III and IV Townhomes and the availability and cost of such insurance. Premiums for insurance obtained by the Trustees pursuant to these sections shall be a common expense of the Association and shall be collectable from members of the Association as part of the annual assessments unless such requirement is waived by the Trustees

(a) Damage or Destruction In the event of damage or destruction to any of the common areas or limited common areas in this development by flooding covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements, the Association being appointed attorney-in-fact of each owner for this purpose. The Trustees may utilize the proceeds from any such insurance to pay the cost of repairing, restoring or rebuilding the common areas or limited common areas damaged by flooding or erosion. If the proceeds are insufficient to pay such cost, the Trustees are empowered to levy a special assessment against all owners within the Riverwood IV Townhomes development to complete the repair of the damaged common or limited common areas.

ARTICLE IV -- GENERAL PROVISIONS

Section 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 Second Declaration, 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 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, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee upon successful enforcement against said party.

Section 2 Severability All of said conditions, covenants and reservations contained in this Second Declaration shall be construed together, but if any one of said conditions, covenants or reservations, or any part thereof shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, 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 Second Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3 Duration The covenants and restrictions of this Second Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Second Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Second Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each.

Section 4. Amendment The covenants, conditions and restrictions of this Second Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the combined votes of the Class A and Class B members authorized to vote, by person or by proxy, at a meeting duly called for this purpose.

Section 5. Notices Any notice required to be sent under the provisions of this Second Declaration shall be deemed to have been properly sent and to be effective upon the dates deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. 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.

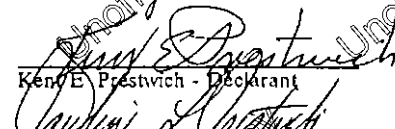
Section 7. Waivers No provision contained in the Second Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

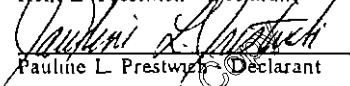
Section 8. Topical Headings The topical headings contained in this Second Declaration are for convenience only and do not define, limit, or construe the contents of the Second Declaration.

ARTICLE V -- ASSIGNMENT OF POWERS

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 10th day of May, 1995


Ken E. Prestwich - Declarant


Pauline L. Prestwich - Declarant

STATE OF UTAH

County of Washington

On the 10th day of May, 1995, personally appeared before me KENI E PRESTWICH and PAULINE L. PRESTWICH, the signers of the above instrument, who

duly acknowledged to me that they executed the same.

Melody D. Kesler
Notary Public

My commission expires 7-14-2027

Residing at: Santa Clara, Utah

