

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF  
FOX BOROUGH

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RUSSELL SHIRTS \* WASHINGTON CO RECORDER  
2001 MAY 11 13:48 PM FEE \$44.00 BY TC  
FOR: SOUTHERN UTAH TITLE CO

THIS AMENDED AND RESTATED DECLARATION of Covenants Conditions and Restrictions of Fox Borough Subdivision is made by Ence Bros. Construction, Inc., a Utah corporation, (hereafter "Declarant") pursuant to Article 12, Section 12.1, and executed this 1st day of May, 2001, AND AMENDS AND RESTATES IN ITS ENTIRETY THE DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF FOX BOROUGH, recorded June 12, 2000, as Entry No. 688077, in Book 1371, at Pages 1347-1362, records of Washington County, Utah, which affects the following described property located in St. George, Washington County, Utah, (the "Properties").

All of Fox Borough, Phase I, according to the official plat thereof on file in the Office of the Washington County Recorder.

DECLARATION

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

ARTICLE 1 -- DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Association means Fox Borough Townhomes Association, its successors and assigns.

Section 1.2. Declarant means Ence Bros. Construction, Inc., and the Declarant's heirs, successors and assigns.

Section 1.3. Declaration means this instrument, and any amendments.

Section 1.4. Common Area shall mean all real property (including the Separation Walls and other improvements thereto) owned or hereafter acquired by the Association for the common use and enjoyment of the Members and includes that portion of Property owned by the Association, shown on the plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Trustees. Specifically exempted from Common Area are Lots and dedicated public streets that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

Section 1.5. Entire Membership means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and

Class B members.

Section 1.6. Limited Common Area means that portion of Property owned by the Association, shown on the Plat as Limited Common Area. The Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant has the use and enjoyment of that Limited Common Area to the exclusion of other Owners. Limited Common Area is subject to rights of the Association set forth in this Declaration. Limited Common Area also means that portion of the Common Area as shown on the Plat, that has been enclosed with walls.

Section 1.7. Lot means a separately numbered and individually described plot of land shown on the plat designated as a Lot for private ownership, but specifically excludes the Common and Limited Common Areas.

Section 1.8. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.9. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.10. Owner means 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, the group of those parties shall be treated as one "Owner."

Section 1.11. Plat or Map means the subdivision plat recorded herewith entitled "Fox Borough – Phase I," consisting of one sheet, prepared and certified by Lloyd Ried Pope, a Utah Registered Land Surveyor, or any replacements thereof, or additions thereto.

Section 1.12. Property or Properties means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

Section 1.13. Separation Walls means: (1) block landscaping walls which border the Property and separate same from other developments, public rights-of-way, and adjacent Lots; (2) the walls serving as rear-lot walls and side-lot walls of any given Lot in the Property; and (3) other yard/privacy walls and fences constructed by Declarant as part of the individual Townhome construction.

Section 1.14. Townhome means a single family dwelling, with or without walls or roofs in common with other single family dwelling Lots. When the term "Townhome" is used it includes fee title to the real Property lying directly beneath the single family dwelling, within Lot boundary lines. (In some instances there may be Lot boundary outside the Townhome walls.)

Section 1.15. Trustees or Board means the governing body of the Association.

## ARTICLE 2 -- PROPERTY RIGHTS

Section 2.1. Title to the Common Area The Declarant will convey fee simple title to the Common Area (and including the Limited Common Area as defined above) to the Association, free and clear of all encumbrances and liens, prior to the expiration of Declarant's Class B membership status, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards.

**Section 2.2. Owners' Easements of Enjoyment** Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area, except as provided in 2.3 or otherwise. This easement is appurtenant to and passes with the title to every Lot, subject to:

- (a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service of the Association or provided upon the Common Area, or parking facility situated upon the Common Area. No fees shall be charged for parking specifically designated on the plat as appurtenant to a Lot.
- (b) The right of the Association to limit the number of guests of Members using the Common Area.
- (c) Provisions for Limited Common Area as provided in this Declaration or as adopted by Rules by the Trustees.
- (d) The right of the Association to suspend the voting rights and/or common utility service of a Member for any period during which any assessment or portion thereof against the Member's Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (e) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration.
- (f) The right of the Association, if there is no Class B membership, with the approval of sixty-seven percent (67%) of the Entire Membership, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility.
- (g) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.
- (h) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
- (i) The terms and conditions of this Declaration.
- (j) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the Common Area.
- (k) The right of the Declarant to take such actions as it may deem necessary so long as the expansion of the Property shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

**Section 2.3. Limited Common Area and Designated Parking** A Lot Owner is entitled to use of the Limited Common Area (shown as Common Area on the Plat that has been converted to Limited Common Area by reason of enclosing the same with Separation Walls) that is adjacent and appurtenant to the Lot, if any, including the area within the Separation Walls as constructed as part of the initial development of a Lot, and to use of the parking area, if any, designated with the Owner's Lot number on the Plat, all to the exclusion of other Owners. The Association, through its Trustees, may adopt rules and regulations concerning use of the Limited Common Area. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

**Section 2.4. Delegation of Use** An Owner or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Area and facilities to family members, tenants, or contract purchasers who reside on the Lot. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of such damage to the Common Area and facilities shall be an assessment charged to the Lot Owner.

**Section 2.5. Rules** The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and shall be made available by the Trustees for inspection and copying.

**Section 2.6. Lot** Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but outside the Townhome walls even though part of the Lot and owned in fee simple by the Owner shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a Lot larger than the Townhome is to allow flexibility in the original Townhome construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to all other provisions of this Declaration, including, but not limited to specific approval by the Architectural Control Committee.

**Section 2.7. Combination of Lots** In the event two or more adjacent Lots are held in identical ownership, the Lots may be combined for use and construction purposes. The Common or Limited Common Areas which are between the private ownership areas in each of the adjacent Lots may be occupied for construction of a single townhome, the Owner having an easement for this purpose under, across and over such Common and Limited Common Areas. For example, if Lots 50 and 51 of the original Plat were owned by the same Owner, and the Owner desired to construct a single Townhome, the Townhome could occupy the area between Lots 50 and 51 which is designated on the Plat as Common Area. The Owner would be required to respect the Common and Limited Common Areas in the other, non-adjacent boundaries of the Lots.

In the event of such Townhome construction across Common or Limited Common Areas between adjacent Lots, all easements and rights of the Association, its Members and third-parties, such as utilities, in such area which had been exercised prior to construction of the Townhome would remain in place, in perpetuity. However, all easements and other rights that had not been used prior to construction of the Townhome could not thereafter be exercised.

In the event of such a combination of Lots, each Lot shall continue to be assessed individually with respect to the assessments provided for in Article 4 of this Declaration, with the exception that any fee for cable TV shall be assessed only on one of the two combined Lots.

### ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

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

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

**CLASS A.** Class A Members are all Members with the exception of the Declarant, as defined in the Declaration. Class A Members are 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 a 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, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

**CLASS B.** The Class B member is the Declarant. The Class B member is entitled to five (5) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

- (a) upon conveyance of 100% of the Lots subject to this Declaration to a purchaser; or
  - (b) the expiration of seven (7) years from the first lot conveyance to a purchaser; or
  - (c) the surrender of Class B membership status by the express written action of the Declarant
- In the case of expansion (as provided under the Declaration), the Declarant's memberships

appurtenant to the Lots in the expansion area shall be Class B memberships.

If Declarant shall exercise its option to add additional Lots by platting additional phases as provided in Article 10 herein, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, so that Declarant regains Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

#### ARTICLE 4 -- FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments Excepting Declarant, each subsequent Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) Additional Assessments; (4) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration; and (5) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. Successors-in-title shall not be personally liable for delinquent assessments at the time they take title unless that obligation is expressly assumed by them.

Section 4.2. Purpose of Assessments The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and (b) for the improvement and maintenance of Properties, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association Property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common and Limited Common Areas; the payment of administrative expenses of the Association; insurance deductible amounts; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. In addition, the assessments may be used to establish of a reserve account for repair, maintenance and replacement of those Common and Limited Common Areas which must be replaced on a periodic basis. The assessments may provide, at the discretion of the Trustees, for the payment of other charges including (without limitation) maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 4.3. Maximum Annual Assessment Until January 1 following recording of this Declaration, the maximum annual assessment shall be Nine Hundred Dollars (\$900.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after January 1, 2001, the maximum annual assessment may be increased by the Board of Trustees each year by ten percent (10%) above the maximum assessment for the previous year, without a vote of the membership.

(b) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that such change may be made solely by the Board if there is Class B membership, and if there is no Class B membership, any such change shall have the assent of sixty-seven percent (67%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose.

The actual annual assessment need not increase annually. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each owner as provided in Section 4.9. The Board must set the actual annual assessment to be an amount at or less than the Maximum Annual Assessment.

**Section 4.4. Special Assessments for Capital Improvements** In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures and personal property related thereto. If there is no Class B membership, Special assessments must have the assent of sixty-seven percent (67%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

**Section 4.5. Additional Assessments** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional 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 St. George City (the "City") or other utility provider in maintaining, repairing or replacing the utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City or other utility provider up to and including the meters for individual units, and that they are installed and shall be maintained to City or utility provider specifications.

**Section 4.6. Notice and Quorum for Any Action Authorized Under Sections 4.3 and 4.4** Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of the votes of the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 4.7. Emergency Assessments** Notwithstanding anything contained in this Article 4, the Board, without membership approval, may increase Annual Assessments or levy Special Assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one in which the Board finds one of the following:

1. an expense required by an order of a court.
2. an expense necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; or
3. an expense necessary to repair, maintain or cover actual Association expenses for the Properties or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, (for example: increases in utility rates; landscape or maintenance contract services; etc), provided, however, that prior to the imposition or collection of such Assessment, the Board shall pass a resolution containing the written findings as to the necessity of such expense involved and why the expense was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the Assessment. If such expense was created by an unbudgeted utility, maintenance, etc., increase, the Assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or the next succeeding annual budget incorporates said increase into the annual assessment.

**Section 4.8. Uniform Rate of Assessment; Periodic Assessment** Both annual and special assessments must be fixed at a uniform rate for all Lots, provided, however, that no assessments shall accrue against the Declarant so long as the Declarant has Class B membership, on the condition that Declarant shall fund any fiscal deficiency in the operations of the Association until the termination of Declarant's Class B membership.

Annual, special and additional assessments may be collected on a monthly or quarterly basis,



as the Trustees determine.

**Section 4.9. Date of Commencement of Annual Assessments; Due Dates** The annual assessment provided for herein shall commence to accrue on the date of issuance of a certificate of occupancy for a Townhome on a Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

In the absence of a determination by the Trustees as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above.

The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

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

The Association shall, upon demand, and for a reasonable charge, 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.

**Section 4.10. Effect of Non-Payment of Assessment - Remedies of the Association** Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment that shall not exceed twenty-five percent (25%) of the installment.

The Trustees may, in the name of the Association, undertake one or more of the following:

- (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment;
- (b) may foreclose the lien against the Lot 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; and/or
- (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association that it may exercise. Under the power of sale 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 beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

**Section 4.11. Non-Use and Abandonment** No Owner may waive or otherwise escape liability for any of the assessments provided for herein by non-use of the Common Area or by abandonment of the Lot.

**Section 4.12. Exempt Property** The following property subject to this Declaration is exempt from the assessments created herein:

1. All property dedicated to and accepted by any local public authority.
2. All Common and Limited Common Area.
3. All Lots owned by Declarant.

**Section 4.13. Working Capital Fund** Upon acquisition of record title to a Lot by the first Owner thereof, other than Declarant or a builder, a contribution shall be made at closing by or on behalf of the Lot purchaser to the working capital of the Association in an amount equal to three months installments of the annual assessment at the rate in effect at the time of the purchase. Payment of this amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of any assessment. The Association shall maintain the working capital funds in segregated accounts for repair, maintenance and replacement of those Common and Limited Common Areas which must be replaced on a periodic basis, to meet unforeseen expenditures, unbudgeted maintenance or repairs or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund shall not be refundable. Declarant may not use any working capital funds to defray any of its expenses, or to make up any budget deficits.

**Section 4.14. Subordination of the Lien to Mortgages** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Lot 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 assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

**Section 4.15. Books, Records and Audit** The Association shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Lot Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A Lot Owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

## ARTICLE 5 -- INSURANCE

**Section 5.1. Casualty Insurance on Insurable Common Area** The Trustees shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Townhomes including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the



regular annual assessments as levied by the Association. The insurance coverage with respect to the Townhomes shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Owners.

The Association policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible shall be treated as a common expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner and the Owner's Lot.

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

In the event that the Association is maintaining blanket casualty and fire insurance on the Townhomes, the Association shall repair or replace the same to the extent of the insurance proceeds available.

In the event of damage or destruction by fire or other casualty to any portion of the development 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 is appointed attorney-in-fact of each Owner for this purpose.

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

**Section 5.4. Fidelity Insurance** The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Trustees shall seek a policy which shall (1) name the Association as obligee or beneficiary, plus (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

**Section 5.5. Annual Review of Policies** All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed.

## **ARTICLE 6 -- ARCHITECTURAL CONTROL COMMITTEE**

The Declarant shall not be required to comply with the provisions of this Article in the initial construction of the Properties. The Declarant shall fulfill all functions of the Architectural Control Committee under this Declaration until the Declarant expressly surrenders this right by written instrument, or until each Lot in the Properties (including all expansion area) has a home constructed

thereon.

No structure, building, fence, wall or addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or home 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 Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In seeking approval, an Owner shall submit the plans and specifications to a standing member of the Architectural Control Committee who, upon receipt thereof, shall provide the Owner with a written, dated acknowledgment of receipt. In the event said Trustees, or their designated committee 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 this Article will be deemed to have been made.

Without the prior written approval of at least sixty-seven percent (67%) of the Entire Membership, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of homes and Lots, and the maintenance of the common and Limited Common Areas, including walls, fences, driveways, lawns and plantings.

The Association grants authority to the Trustees to establish rules and regulations, at the Trustees' sole discretion, pertaining to the use of Limited Common Areas adjacent to Townhomes by Owners and to establish and appoint a committee to oversee and manage such rules and regulations. Nothing herein shall require the Trustees to establish such rules and regulations.

## ARTICLE 7 -- EXTERIOR MAINTENANCE

**Section 7.1. Exterior Maintenance by Owner** Each Owner shall be responsible for maintenance to the exterior of the Townhome. The Trustees shall, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, and after a two-thirds (2/3) vote, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Townhome and Lot, and the Limited Common Area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Lot and/or Townhome. An Owner shall be responsible for maintenance of the Limited Common Area associated with the Owner's Lot.

**Section 7.2. Exterior Maintenance by Association** The Association shall be responsible for maintenance upon the Common Area, the Limited Common Area which is not associated with any Lot, and the Separation Walls. The cost of such maintenance shall be a common expense. The Association shall be responsible for maintenance of the front yard landscaping of each Lot. A Lot Owner is responsible for providing a continuous supply of water and power to the front yard and irrigation systems for use by the Association in maintaining the front yard landscaping.

**Section 7.3. Access at Reasonable Hours** For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

**Section 7.4. Alteration of Certain Maintenance Duties by Rule** The duty of maintenance for the area of a Lot outside the walls of the Townhome, and the Limited Common Areas adjacent and appurtenant to the Townhomes, including Separation Walls, may be altered by Rule of the Association.

ARTICLE 8 -- USE RESTRICTIONS

Section 8.1. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots during the period of construction and sale of said Lots and upon such portion of the Properties as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 8.2. General Use Restrictions All of the Properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the Common Area. All buildings or structures erected in the Properties shall be of new construction and no buildings or structures shall be removed from other locations to the Properties. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

Section 8.3. Signs; Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the Properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Properties unless (1) prior approval is given in writing by the Board of Trustees for application by the Owner to the City of St. George for a license to conduct such commercial activities, and (2) the necessary approval is obtained from the City of St. George. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 8.4. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

Section 8.5. Household Pets Permitted Pets are a privilege in Fox Borough, not a right. All pets must be registered with the Association by using an approved registration form that is available from the Association. Failure to register a pet shall result in a \$250.00 fine, which shall be a lien upon the Lot that is in violation and shall be added to the annual assessment provided for in Article 4. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Area, except that dogs, cats or other household pets, as approved by the Trustees, may be kept in Townhomes, subject to the rules and regulations adopted by the Board of Trustees. All dogs or cats, while not in a Townhome shall be on a leash. Dogs and other pets may not be kept in Common or Limited Common Areas or patio areas except as provided by rules established by the Trustees from time to time. A pet owner, is solely responsible for the conduct and actions of the owner's pet and shall not allow any dog (or other pets) to disturb the peace, quiet and enjoyment of the Owners of Fox Borough. Household pets shall not be bred on the premises of any Lot as a commercial venture. No more than two approved animals/pets may be kept on the premises of any Lot at any one time, without

express written approval of the Board of Trustees or appointee. Animal owners shall not allow their pets to defecate or urinate on Common or Limited Common Areas or Lots belonging to others. Pet owners shall immediately clean up after their pets.

**Section 8.6. Use of Common Area** Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of said Common Area, other than as permitted in this Declaration or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Owners of Lots in the Properties and is necessary for the protection of the interests of all said Owners in and to the Common Area.

As part of the overall program of development of the Properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

**Section 8.7. Parking** No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 48 hours shall be subject to removal by the Association, at the owner's expense. Driveways in front of each garage shall be used for parking of motor vehicles actually used by the Owner or occupant of the Townhome or their immediate family or guests, for personal use and not for commercial use. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association, and in no case longer than 24 hours, for the purpose of cleaning, loading, unloading, etc. It is the intent of this provision for owners to park their vehicles off the street, leaving the street for guest parking, thus providing for an uncluttered, safe streetscape.

**Section 8.8. Planting and Gardening** No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any Property except such as are installed initially by Declarant in accordance with the initial construction of the buildings located thereon, or as approved by the Architectural Control Committee.

**Section 8.9. External Apparatus** No Lot Owner shall cause or permit anything (including without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Architectural Control Committee.

**Section 8.10. Exterior Television or Other Antennas** No exterior radio or other antennas, except one television/cable/satellite antenna, to the extent not prohibited by law, which shall not exceed eighteen inches (18") in diameter, per Lot, shall be placed, allowed or maintained upon any Lot or upon any structure or portion of the improvements situated and located upon the Properties without prior written approval of the Architectural Control Committee. No such antenna shall be affixed to the Townhome without the location of such first being approved by the Board of Trustees, by written policy or separate written authorization.

**Section 8.11. Garbage Removal** All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

**Section 8.12. Oil and Mining Operations** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties.

**Section 8.13. Interior Utilities** All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a

Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

**Section 8.14. Lease Occupancy or Other Temporary Occupancy** No Owner shall lease a Townhome for transient or hotel purposes. Timeshare is prohibited. No Townhome shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Townhome rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of years.

By operation of law, an Owner may rent or lease the Owner's Townhome to another individual(s). Any Owner so doing shall comply with the following provisions of this Section 8.14.

(a) Any temporary or other occupancy, other than by the titled Owner, the Owner's family, friends, and invited guests, must be for a period of at least six (6) months. No Owner may designate a tenant as family, friends or invited guests in order to avoid the intent of this Section 8.14.

(b) Each such occupancy shall be established between the parties by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board of Trustees, or appointee, together with a signed copy of the Temporary Occupancy Notification Form (available from the Trustees). Notwithstanding anything herein, any occupancy that is for a period of longer than two (2) consecutive weeks must comply with the provisions of this Section 8.14.

(c) Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and all rules and regulations enacted by the Board of Trustees. The lease agreement must further provide that any failure by lessee/renter to comply with the terms of such documents and rules and regulations shall be a default under the lease.

(d) The Temporary Occupancy Notification Form may require the following information: (a) that the Owner has conducted credit and reference checks and concluded, thereby, that the lessee/renter will be a responsible, qualified renter; and (b) that the lessee has read this Declaration, the Association rules and regulations, and such other documents as published by the Association from time to time, and, by signature of the lessee/renter, agrees to abide by same. The Temporary Occupancy Notification Form shall also bear the signature of the Owner, indicating thereby that the Owner has performed all of the above. Failure of the Owner to provide a copy of a properly referenced lease/rental agreement and Lease Notification Form to the Association shall result in the Association imposing on the Owner a fine of two-hundred fifty dollars (\$250.00), which shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article 4, (and permits the Association to pursue any remedy of law available to it in the enforcement of this provision.) (A modified version of the Temporary Occupancy Notification Form may be used in cases of family, friends and guests occupying the Townhome for a period longer than two (2) consecutive weeks.)

Notwithstanding any other rights of enforcement under the Declaration, the Bylaws of the Association, all rules and regulations enacted by the Board of Trustees, or by applicable law, the Association may impose a fifty-dollar (\$50.00) fine on the Owner, which shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment for that Owner's Lot as provided in Article 4, for each violation by Owner's lessee/renter of the Declaration, the Bylaws of the Association or any rules or regulations enacted by the Board of Trustees. Such fine shall be imposed after a ten (10) day notice is given to the Owner of such violation, which notice shall be deemed given on the date such notice is mailed, prepaid, first class U.S. mail, to Owner's address as shown on the County Recorder's ownership records. The Association may impose an additional fifty dollar (\$50.00) fine on the Owner for each day such violation continues after the ten (10) day notice period provided herein, which additional fines shall constitute a lien upon such Owners Lot and shall be added to the annual assessment as provided in Article 4. (Notice shall also be deemed given by hand-delivery to Owner.)

**Section 8.15. Violation Constitutes a Nuisance** Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violated in whole or in part is declared to be and



shall constitute a nuisance, and may be abated by Declarant or affected property Owners and such remedy shall be deemed to be cumulative and not exclusive.

## ARTICLE 9 -- WALLS

Section 9.1. Separation Walls Declarant may construct block landscaping walls which border the Property and separate same from other developments, public rights-of-way, and adjacent Lots. Such walls shall be deemed Separation Walls. It is the intent of Declarant that Separation Walls be owned and maintained by the Association. Separation Walls shall also include other yard/privacy walls and fences construction by Declarant as part of the individual Townhome construction.

Section 9.2. General Rules of Law to Apply To the extent not inconsistent with the provisions of this Article, general rules of law regarding Separation Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 9.3. Repair and Maintenance The Association shall be responsible for the cost of reasonable repair and maintenance of all Separation Walls. The Association shall have the right to enter upon any Owner's Lot for the purpose of repairing and maintaining Separation Walls. No changes or alterations shall be made to Separation Walls by Lot Owners without prior written approval of the Architectural Control Committee. The cost of repair for damage caused to Separation Walls by the acts of Lot Owners or their guests and assigns shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article 4.

Section 9.4. Destruction by Fire or Other Casualty If a Separation Wall is destroyed or damaged by fire or other casualty, which loss or destruction is not due to the willful or negligent acts of any Owner or Owner's guests or assigns, the Association shall bear the responsibility to restore the wall. The cost of repair for damage caused to Separation Walls by the acts of Lot Owners or their guests and assigns shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article 4.

Section 9.5. Decoration No Owner whose Lot includes a Separation Wall shall paint, construct addition to, color, or otherwise decorate the interior or exterior surface of a Separation Wall. Any Owner found in violation hereof shall bear the whole cost of refurbishing and restoring the affected wall to its original condition, consistent with other portions of the Separation Walls.

Section 9.6. Weatherproofing Notwithstanding any other provision of this Article, an Owner who by negligent or willful acts causes a Separation Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

Section 9.7. Arbitration In the event of any dispute arising concerning a Separation Wall, each part shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

Section 9.8. Applicability This Article shall be applicable to walls built by Declarant for the purposes stated in Section 9.1. This Article shall not apply to additional walls constructed by Owners, as approved by the Architectural Control Committee, as provided in this Declaration.

## ARTICLE 10 -- EASEMENTS

Section 10.1. Encroachments Each Lot and the property included in the Common and Limited Common Areas is subject to an easement for encroachments created by construction, settling and



overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same shall and does exist, so long as they stand.

**Section 10.2. Utilities** There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. In the initial exercise of easement rights under this section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof.

Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common and Limited Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Properties. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or owners associations the right to use Common and Limited Common Areas and common facilities, including (without limitation) recreational facilities.

**Section 10.3. Police, Fire and Ambulance Service** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Area in the performance of their duties.

**Section 10.4. Maintenance by Association** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common and Limited Common Areas and any Lot to perform the duties of maintenance and repair.

**Section 10.5. Easement for Declarant** The Declarant shall have a transferrable easement over and on the common areas and facilities and utilities for the purpose of making improvements on the Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same.

**Section 10.6. Other Easements** The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE 11 -- EXPANSION

Declarant reserves the right, at its sole election, to expand the Properties to include additional property more particularly described below by unilateral action of Declarant, without the consent of Owners, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property, all 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:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY PREVIOUSLY DESCRIBED HEREIN, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT.

Expansion shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments 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 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 single family dwellings, architecturally compatible to the existing townhomes, similar to the townhomes already constructed, constructed out of similar materials, with similar Lot size. The maximum number of Lots to be added shall be 93. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association.

The Common Area and Limited Common Area in such expansion area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to the expiration of Declarant's Class B membership, and the Association shall accept the deed. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of Association Property and facilities. Declarant's Class B membership status shall extend to all Lots in the expansion area. Otherwise, Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each Lot and Lot Owner in any expansion area shall be equal to the liability of each Lot and Lot Owner in the original Properties.

#### ARTICLE 12 -- GENERAL PROVISIONS

**Section 12.1. Enforcement** The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

**Section 12.2. Severability** All of said conditions, covenants and reservations contained in this 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 Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 12.3. Duration The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 12.4. Notices Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 12.5. 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 12.6. Waivers No provision contained in the 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 12.7. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

#### ARTICLE 13 -- AMENDMENT

Section 13.1. Declarant's Right to Amend Until all portions of "Fox Borough" are developed, or until the right to enlarge the Properties through the addition of tracts of land or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with the right to unilaterally amend this Declaration and or the Plat, or allow a lot line adjustment according to law, as may be reasonably necessary or desirable at the sole discretion of Declarant.

Section 13.2. Lot Owners Right to Amend Subject to Section 13.1, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Entire Membership, and thereafter, by an instrument signed by not less than sixty percent (60%) of the Entire Membership, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to the Declaration under this Section 13.2, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

#### ARTICLE 14 -- 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 this 10<sup>th</sup> day of May, 2001.

DECLARANT:  
ENCE BROS. CONSTRUCTION, INC.

By [Signature]  
KIM C. ENCE, President

STATE OF UTAH )  
                                  ) ss.

COUNTY OF WASHINGTON

On this 10<sup>th</sup> day of May, 2001, before me personally appeared Kim C. Ence whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the president of Ence Bros. Construction, Inc., a Utah corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or of a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.

[Signature: Craig Hopkinson]  
NOTARY PUBLIC  
Address: St. George UT  
My Commission Expires: 7-11-2001

