

PH

**DOC # 20080003078**

**Note to Recorder:**  
**Record against the real property**  
**located in Washington County,**  
**Utah described in Exhibit A.**

**Restrictive** Page 1 of 33  
Russell Shirts Washington County Recorder  
01/24/2008 10:36:25 AM Fee \$ 74.00  
By RED HAWK



Recorded at the Request of  
Color Country Community Housing, Inc.

After recording mail to:  
Jenkins Jensen & Bayles, LLP  
Attn: Bruce C. Jenkins  
1240 East 100 South, Suite 9  
St. George, UT 84790

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR**

**RED HAWK AT SPRINGDALE HOMEOWNERS ASSOCIATION  
(A Mixed Income Planned Unit Development)**

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS

FOR  
RED HAWK AT SPRINGDALE HOMEOWNERS ASSOCIATION

PREAMBLE

This Declaration of Covenants, Conditions and Restrictions and Reservations of Easements for Red Hawk Subdivision affects the following real property located in Washington County, State of Utah:

See Exhibit A attached hereto and incorporated herein.

The terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

RECITALS

A. Color Country Community Housing, Inc., a Utah corporation, as Declarant, will develop the real property described in Exhibit A as a residential planned unit development.

B. Declarant has established or will establish Red Hawk at Springdale Homeowners Association and the Association will be vested with powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Property, promulgating Rules and Regulations through its Board and Architectural Control Committee, and collecting and disbursing the assessments and charges hereinafter created.

C. The Declarant intends that the Property shall be maintained, developed and conveyed pursuant to a general plan for the Property and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth.

D. The Declarant hereby declares that all of the Property shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection,

maintenance, subdivision, improvement, and sale of the Property or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Property and shall be binding upon all persons having or acquiring any right, title, or interest in the Property, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, the Association, as hereinafter defined, each owner and their respective heirs, executors and administrators, and successors and assigns.

E. Declarant intends to develop the Property as mixed income housing pursuant to that certain Moderate Income Housing Development Agreement entered into by and between Declarant and the Town of Springdale.

F. The Property and surrounding lands may currently be, and at times in the past, been inhabited by the desert tortoise, a threatened reptile species protected under the Endangered Species Act (16 U.S.C. 1531, et. seq.). The Property has been identified as a designated "take" area under the Washington County HCP which allows for development of the Property. Nevertheless, upon completion of the development, desert tortoises may from time to time roam onto the Property and Owners must take all appropriate measures to protect the desert tortoise, whether or not such protections are set forth in this Declaration.

G. These Recitals shall be deemed covenants as well as recitals.

## ARTICLE I

### DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1 ACC. ACC shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

1.2 ACC Rules and Regulations. ACC Rules and Regulations shall mean such rules and regulations as may be adopted and promulgated by the ACC pursuant to Sections 8.1 and 8.4 hereof as such rules and regulations may be amended from time to time.

1.3 Annual Assessment. Annual Assessment shall mean the annual charge against each Owner and his Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.4        Articles. Articles shall mean the Articles of Incorporation of the Association filed in the office of the Department of Commerce of the State of Utah; as such Articles may be amended from time to time.

1.5        Association. Association shall mean RED HAWK AT SPRINGDALE HOMEOWNERS ASSOCIATION, a corporation formed under the Nonprofit Corporation Law of the State of Utah, its successors and assigns.

1.6        Beneficiary. Beneficiary shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

1.7        Board. Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.8        Budget. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

1.9        Bylaws. Bylaws shall mean the Bylaws of the Association, as adopted by the Board, as such Bylaws may be amended by the Board from time to time.

1.10        Corrective Assessments. Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association for corrective action set forth in Sections 2.8, 9.1, and 14.9, Article XI, and as otherwise provided for herein.

1.11        Common Area. Common Area means that portion of property owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the Owners and all improvements constructed thereon.

1.12        Common Expenses. Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and improvement of the Common Area; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, certain landscaping and Improvements on the Common Area, gardening, against the Property, or portions thereof; and the costs of any other items incurred by the Association for any reason whatsoever, in connection with the Property, for the benefit of all of the Owners.

1.13        Declarant. Declarant shall mean Color Country Community Housing Inc., a Utah corporation, its successors and any Person to which it shall have assigned any rights

hereunder, except that a party acquiring all or substantially all of the right, title and interest of Declarant, in the Property by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assignee under this Declaration.

1.14            Deed of Trust. Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

1.15            Development. Development shall mean REDHAWK SUBDIVISION according to the Plat.

1.16            Dwelling Unit. Dwelling Unit shall mean a single family dwelling, with or without walls or roofs in common with other single family dwelling. Dwelling Unit includes fee title to the real property lying directly beneath the single family dwelling, within Lot/Pad boundary lines.

1.17            Fiscal Year. Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.18            Improvement. Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to Dwelling Units and other buildings, walkways, sprinkler pipes, swimming pools, athletic fields or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, wind-breaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.19            Lot/Pad. Each Lot/Pad is owned in fee simple by the Owner. Lots/Pads shall be designated on the Plat.

1.20            Manager. Manager shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

1.21            Member, Membership. Member shall mean any Person holding a membership in the Association, as provided in this Declaration. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws and Rules and Regulations.

1.22            Mortgage, Mortgagee, Mortgagor. Mortgage shall mean any Recorded first mortgage or first deed of trust. The term "Deed of Trust" or "Trust Deed" when used herein

shall be synonymous with the term "Mortgage." The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot/Pad to another (*i.e.*, the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.23        Notice of Members Meeting. Notice of meetings of the Members required or provided for in this Declaration shall be in writing, shall satisfy the notice requirements set forth in the Bylaws, and may be delivered either personally or by first class or registered mail. Notice of Members Meetings shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

1.24        Owner. Owner shall mean the Person or Persons, including Declarant, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple interest in a Lot/Pad. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.25        Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.26        Plat. Plat shall mean the "REDHAWK AT SPRINGDALE SUBDIVISION" Plat executed and acknowledged by Declarant, prepared and certified by Northern Engineering, recorded in the records of the Washington County Recorder, and as may be amended. The Plat may show multiple family housing (apartments) but they shall not be governed or bound by this Declaration.

1.27        Property or Project. Property or Project shall mean the Redhawk Subdivision described in the Plat.

1.28        Record, Recorded, Filed or Recordation. Record, Recorded, Filed or Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Washington County, Utah.

1.29        Rules and Regulations. Rules and Regulations shall mean rules and

regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Property is maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

1.30        Recreational Vehicles. Recreational Vehicles shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, all-terrain-vehicles and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, or devices similar to any of the foregoing.

1.31        Special Assessments. Special Assessments shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI.

1.32        Streets. Streets shall mean public streets and thoroughfares on the Property.

1.33        Vehicle. Vehicle shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects -- or are designed to be transported on wheels, skids, skis or tracks-- including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, recreational vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

## ARTICLE IA

### DESCRIPTION OF PROPERTY

The real property which is associated with the Development and which has been and shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of all the property described in Exhibit A hereto; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which effect the above-described land or any portion thereof,

including without limitation, any Mortgage; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

## ARTICLE II

### OWNERS' PROPERTY RIGHTS

2.1 Common Area. The Common Area shall consist of certain landscaping as marked on the Plat.

2.2 Form For Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

All of Lot \_\_\_\_\_ of REDHAWK at Springdale SUBDIVISION, according to the official Plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions and Reservation of Easements, on file in the office of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

2.3 Transfer of Title to Common Area. Declarant represents that it will, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Area, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and close of escrow of the last Lot.

2.4 Limitations on Common Area Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency or authority for such purposes and subject to such conditions as may be

agreed to by the Association. Any such dedication or transfer must, however, upon Notice of Members Meeting be assented to by two-thirds (2/3) of the vote of the Membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. The quorum requirement for such meeting shall be as set forth in the Bylaws.

(b) The right of the Association, to be exercised by the Board, to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement;

(c) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area;

(d) The right of the Association, to be exercised by the Board, to reasonably restrict access to portions of the Common Area; and

(e) The easements reserved in Sections 2.5, 2.7, 2.9 and 2.12.

2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future owners within the Property, easements for public services of the Town of Springdale in which the Property are located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.6 Waiver. No owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot/Pad or other property owned by him from the liens and charges hereof. All owners waive any right to object to, and by accepting a deed consent Declarant amending the Plat to conform with the as built requirements of the Town of Springdale and will sign any amended plats presented by Declarant.

2.7 Easements for Water and Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Property, easements for public and private utility purposes. The Lots/Pads shall also be subject to such public utility easements as shown on the Plat and as required by the Town of Springdale.

2.8 Taxes. Each Owner shall execute such instruments and take such action

as may reasonably be specified by the Board to obtain separate real estate tax assessment of each Lot/Pad. If any taxes or assessments may, in the opinion of the Board, become a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense, and the Association may levy against the LotPad as a Corrective Assessment any amounts paid by the Association to rectify the problem.

2.9         Easement for Encroachments. If any portion of a Dwelling Unit or other Improvement constructed by Declarant, or if any portion of a Dwelling Unit or other Improvement reconstructed so as to substantially duplicate the Dwelling Unit or other Improvement originally constructed by Declarant, encroaches upon the Common Areas or other Lots/Pads, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

2.10         Landscaping of Common Area. Only plants native to the Property or surrounding area may be utilized in landscaping the Common Area and any landscaping shall be installed in such a manner not to destroy desert tortoise habitat.

2.11         Trails on the Common Area. The Association may designate a trail through the Common Area to be used for pedestrian traffic only to help minimize impact on desert tortoise habitat.

2.12         Conservation Easement over Common Area. If requested by the Town of Springdale for protection of the desert tortoise, the Association shall grant to the Town of Springdale a conservation easement over and across the Common Area.

### ARTICLE III

#### RED HAWK AT SPRINGDALE HOMEOWNERS ASSOCIATION

3.1         Organization of Association. Declarant has caused or will cause the Association to be organized and the Articles filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

3.2         Parties and Powers. The Association shall have such duties and powers as set forth in the Articles, Bylaws, and this Declaration (and such other powers and duties as properly delegated or assigned through the Rules and Regulations), as such documents are amended from time to time.

3.3        Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.

3.4        Transfer. Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

3.5        Obligation to Educate Members on Tortoise Protection. The Association shall have the obligation at each and every annual meeting of the Members to educate the Members on the needs of the desert tortoise and how to minimize adverse impacts upon the tortoise.

## ARTICLE IV

### VOTING RIGHTS

4.1        Vote Distribution. The Association shall have the following two classes of voting membership:

(a)        Class A. Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Lot/Pad which the interest required for Membership, in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot/Pad.

(b)        Class B. The Class B member is the Declarant. The Class B member is entitled to three (3) votes for each Lot/Pad owned. The Class B membership will cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i)        upon conveyance of seventy-five percent (75%) of the Lots Pads subject to this Declaration to purchasers; or
- (ii)        the expiration of seven (7) years from the first Lot/Pad conveyance to a purchaser; or
- (iii)        the voluntary surrender of Class B voting rights evidenced in writing.

4.2        Multiple Ownership. In the event there is more than one Owner of a particular Lot/Pad, the vote relating to such Lot/Pad shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any-of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the

Lot/Pad concerned, unless an objection is immediately made by another Owner of the same Lot/Pad. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

## ARTICLE V

### JURISDICTION OF ASSOCIATION

The Association has been organized to provide for the operation, maintenance, preservation and architectural control of the Property and Improvements, to administer the Common Areas of the Association, and to reasonably regulate the Members of the Association. The Association shall have jurisdiction and authority over the Property and the Members of the Association to the full extent allowed by law and also as provided for in this Declaration and in the Articles, Bylaws, and Rules and Regulations, as such documents may be modified from time to time.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

6.1 Creation of Assessment Obligation. Each Owner of any Lot/Pad by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Corrective Assessments, and (4) any other amount or assessment levied by the Board pursuant to this Declaration; all such assessments to be established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Special Assessment or Corrective Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be charge on the Lot/Pad and shall be a continuing lien upon the Lot/Pad against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot/Pad or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments liability shall not pass to any new Owner ("Purchaser") successors in title unless expressly assumed by such Purchaser. For the purpose of assessment, the term "Owner" shall exclude the Declarant, builder, contractor, investor, or other person or entity who purchases a Lot/Pad for the purpose of constructing improvements thereon for resale to an Owner, who shall pay no assessment unless a unit constructed on a Lot/Pad is occupied for a permanent residence, provided that the Declarant or its assigns shall have the obligation to subsidize the Association

until control of the Association passes to the Owners. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses (not including reserves or capital replacement). The determination of the reasonable cash needs for ordinary and necessary maintenance expenses shall be within the sole discretion of the Board and Declarant shall have no liability to the Association if subsequent Boards shall disagree with the determination of the Board which made such determination. In no event, however, shall the subsidy exceed the monthly assessments.

6.2 Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles.

6.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The initial Annual Assessment shall be Four Hundred and Twenty Dollars (\$420.00), payable in such installment payments as determined by the Board. The Annual Assessment shall be based upon the Budget prepared by the Board. The Common Expenses of the Association, and therefore the Annual Assessment, may increase because of, among other reasons, Common Facilities constructed in the sole discretion of Declarant. Nothing herein shall obligate Declarant to construct any Common Facilities.

6.4 Special Assessments. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of repair, replacement and maintenance of the Common Area.

6.5 Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to subsections 6.2, 6.3, and 6.4(a) and (b) of this Declaration shall be assessed equally and uniformly against all Owners and their Lots/Pads.

6.6 Date of Commencement of Annual Assessments. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot/Pad, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Lots/Pads on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot/Pad in the Property. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. The Board shall fix the amount of the Annual Assessment against each Lot/Pad at least thirty (30) days in advance of each

Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to every owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified LotPad have been paid. A properly executed certificate of the Association as to the status of assessments against a LotPad is binding upon the Association as of the date of its issuance.

6.7            Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Lot/Pad to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, including without limitation Sections 2.9, 9.1, 14.9, and Article XI, plus interest and other charges on such Corrective Assessments.

The Board shall deliver a Notice of Noncompliance by the Board and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Board Adjudication and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

6.8            Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

- (a)        All portions of the Property dedicated to and accepted by a local public authority; and
- (b)        The Common Area owned by the Association in fee.

6.9            Notice of Members Meetings; Quorum Requirements for Special Assessments. Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by Section 6.4 shall be as follows: at the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

6.10          Additional Assessments. In addition to the annual assessments, special

assessments, and corrective assessments, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of (i) maintaining the Common Areas if the Association fails to do so and; (ii) repairing and restoring the damage or disruption resulting to the Common Areas from the activities of the Town of Springdale in maintaining, repairing or replacing the Town's utility lines and facilities thereon.

6.11 Preparation of Budget. The Board shall prepare a Budget to be presented to the Members at the annual meetings of the Members held as provided in the Bylaws.

6.12 Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

## ARTICLE VII

### NONPAYMENT OF ASSESSMENTS; REMEDIES

7.1 Nonpayment of Assessments; Remedies. Pursuant to Utah Code Ann. §§ 57-8a-101, *et seq.* (2004), any assessment installment payment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot/Pad provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot/Pad recorded prior to the date any such installment payment on assessments become due. If any installment payment on the assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment service charge of Ten Dollars (\$10.00) if the assessment is not paid within ten (10) days of when it is due, or such larger amount as set by the Board, provided the charge does not exceed twenty-five percent (25%) of the amount of the installment payment, and the Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot/Pad. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. If a monthly installment payment is not timely made, the Board may declare the entire Annual Assessment in default and accelerate the Annual Assessment and declare the entire amount of the Annual Assessment immediately due and owing.

7.2 Washington County Tax Collection. It is recognized that under the Charter the Association will own the Common Area and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot/Pad is a Member

of the Association and as part of his assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Charter, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot/Pad. To the extent allowable, Washington County is hereby directed to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

7.3 Lien. The Board may elect to file a claim of lien against the Lot/Pad of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot/Pad against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or any other manner provided by law, including without limitation, a deed of trust as set forth in this Charter.

7.4 Trust Deed for Assessments. By acceptance of a deed for a Lot/Pad, each Owner as Trustor conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Lot/Pad and all Improvements thereon for the purpose of securing payment of all assessments (including basis of collection) provided for in this Charter. For purposes of this Section and Utah Code Ann. §§ 57-1-19, *et seq.*, as amended from time to time. The Trustee shall mean the attorney for the Association and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the Washington County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

7.5 Perfection of Lien and Priority. Upon the recording of Notice of Lien by the Manager or Board, such lien constitutes a lien on the Lot/Pad Owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

- (a) tax and special assessment liens on the Lot/Pad in favor of any assessing lot or special improvement district; and
- (b) encumbrances on the interest of the Lot/Pad Owner;
- (c) recorded prior to the date of the recording of Notice of Lien; and
- (d) that by law would be a lien prior to subsequently recorded encumbrances.

The Manager or Board may enforce the assessment lien by sale or foreclosure of the Owner's interest. The Manager or Board may bid at a sale or foreclosure and hold, lease, mortgage, or convey the Lot/Pad that is subject to the assessment lien.

7.6 Future Lease Payments. If the Owner of a Lot/Pad who is leasing the Lot/Pad fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this Section. The notice shall: (i) provide notice to the tenant that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Charter, Bylaws, or Association Rules; (ii) state the amount of the assessment due, including any interest or late payment fee; (iii) state that any costs of collection, not to exceed One Hundred Fifty Dollars (\$150.00), and other assessments that become due may be added to the total amount due; and (iv) provide the requirements and rights described in this Section. If the Owner fails to pay the assessment due by the date specified in the notice, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to this Section. The Manager or Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due to the Association; (ii) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (iii) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement. If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be: (i) deposited in a separate account; and (ii) disbursed to the Association until the assessment due, together with any cost of administration which may not exceed Twenty-Five Dollars (\$25.00), is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association.

Within five (5) business days after payment in full of the assessment, including any interest or late payment fee, the Manager or Board shall mail a copy of such notification to the Owner.

7.7 Statement of Account. The Manager or Board shall issue a written statement indicating any unpaid assessment with respect to a Lot/Pad covered by the request, upon the written request of any Owner, and payment of a reasonable fee not to exceed Ten Dollars (\$10.00). The written statement shall be binding in favor of any person who relies in good faith on the written statement upon the (i) remaining Owners; (ii) Manager; and (iii) Board. Unless the Manager or Board complies with such request within ten (10) days, any unpaid assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.

7.8 Payment by Encumbrancer. An encumbrancer holding a lien on a Lot/Pad may pay any unpaid assessment due with respect to the Lot/Pad. Upon such payment, the encumbrancer has a lien on the Lot/Pad for the amounts paid.

7.9 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.10 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Charter, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot/Pad made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot/Pad by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot/Pad shall remain subject to the Charter and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.11 Rent After Foreclosure. In the event the Association takes title to a Dwelling Unit through foreclosure, the Board may elect to allow the occupant to remain in the Dwelling Unit and the occupant shall be required to pay a reasonable rental to the Association for the Dwelling Unit.

## ARTICLE VIII

### REVIEW AND APPROVAL PRIOR TO INITIAL CONSTRUCTION

8.1 Approval. Declarant, or its assignee as provided in the Moderate Income Housing Development Agreement with the Town of Springdale, Utah, shall construct all homes on the property. Construction plans and specifications for homes on the property are subject to

Declarant's Moderate Income Housing Development Agreement with the Town of Springdale, Utah. No construction on any Lot/Pad shall begin and no Lot/Pad shall be modified except in accordance with an approved plan and Declarant's Moderate Income Housing Development Agreement with the Town of Springdale, Utah.

8.2 Standards. Declarant, subject to its Moderate Income Housing Development Agreement with the Town of Springdale, Utah, shall set standards for all aspects of the Lot/Pad visible from the outside, including without limitation the size and shape of the building, its roof, windows, doors, porches and other components, placement on the Lot/Pad, fences, drainage, paving and landscaping and all finish materials. Review shall include materials and color selection and selection and placement of any ornamentation or functional accessories, including but not limited to the following:

- (i) materials and color selection for the main building and any outbuilding (including roof, doors, windows and trim);
- (ii) driveways, walks, patios and other ground surface materials;
- (iii) antennas, satellite dishes or receivers, solar panels or other devices which are visible from outside the Lot/Pad;
- (iv) fountains, swimming pools, whirlpools or other pools;
- (v) privacy walls or other fences and gates;
- (vi) awnings, flower boxes, shelves, statues, or other outdoor ornamentation, and window coverings visible through the window;
- (vii) construction trailers or other trailers, temporary structures, tents, shacks, and sheds;
- (viii) signage of any type; and
- (ix) permanent or semi-permanent play equipment, whether or not secured, such as tree houses, basketball hoops, skateboard ramps and swing sets.

The listing of a category does not imply that such construction is permitted.

8.3 Modifications. All dwellings constructed upon Lots/Pads within the Project shall retain their similar appearance, exterior building materials and landscaping (defined in Section 8.7 below). Accordingly, substantial modifications to a dwelling, surrounding Lot/Pad improvements or landscaping after completion of construction shall not be permitted except as stated herein. Minor modifications after completion of construction, or additions or changes to the approved plans during construction, may be permitted and must be reviewed and approved by Declarant prior to the commencement of any such work. However, review is not required to perform repairs or maintenance provided it is undertaken and completed with duplicates of the originally approved materials and colors. Significant new landscaping, grading and any removal or substantial pruning of trees or plants must be approved in advance by Declarant.

8.4 Review Procedure. The plans to be submitted for approval shall include (i) the construction plans and specifications, including all materials and colors, (ii) elevations of

all proposed improvements (iii) proposed clearing, grading and landscaping, (iv) a foundation plan signed and stamped by an engineer licensed in the state of Utah, (v) a plat map showing the location of the proposed lot/pad, and (vi) all other items required by the Declarant and the Town of Springdale, Utah. All plans submitted for dwellings within the Project shall be substantially the same in exterior appearance and surrounding Lot/Pad improvements, except that where appropriate some dwellings may be constructed with basements. Plans must be drawn to scale. Plans and specifications for review shall be submitted in the form required by the Declarant and the Town of Springdale, Utah.

8.5 Review Fee. Each time plans are submitted, they must be accompanied by a \$50 nonrefundable review fee.

8.6 Basis For Decision. Applications shall be approved or denied based upon compliance with any specific requirements and overall design quality.

8.7. Landscaping. Declarant or its approved contractor shall complete all landscaping on each Lot/Pad and Common Area within the Project within thirty (30) days following the completion of construction of a dwelling upon said Lot/Pad. Owners may select from a pre-approved list of landscaping features, including grass, trees, shrubs, organic ground cover, walks, patios, fences, gates and other similar landscaping features.

## ARTICLE IX

### ARCHITECTURAL REVIEW AFTER INITIAL CONSTRUCTION

9.1 Members of Committee. The ACC shall consist of three (3) to five (5) members. The Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board need not be Members of the Association. If the ACC is not appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members.

9.2 ACC General Powers. The ACC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed Plans conform harmoniously to the exterior design and existing materials of the Improvements on the Property. This power shall include the power to issue ACC Rules and Regulations which, among other provisions, may set forth procedures for the submission of Plans for approval, and state additional factors which it will take into consideration in reviewing submissions.

9.3 Review of Plans and Specifications. The ACC shall consider and act upon any and all Plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the

inspection of construction in progress to assure its conformance with Plans and specifications approved by the ACC. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, or reconstruction of a Dwelling Unit or Improvement, including landscaping, in the Property shall be commenced or maintained, until the Plans and specifications therefore showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC. The ACC shall approve Plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Lots/Pads and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

9.4         Meetings of the ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC, shall be sufficient to enact resolutions or motions of the ACC. The attendance of a majority of the members at any meeting shall constitute a quorum.

9.5         No Waiver of Future Approvals. The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted for approval or consent.

9.6         Compensation of Members. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

9.7         Limitation on Liability. Neither the ACC, the Board nor Declarant, nor any member thereof, acting in good faith shall be liable to the Association or to any owner for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or rejection of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests (ii) the construction or performance of any work, whether or not pursuant to approved Plans, (iii) the development or manner of development of any of the Property, or (iv) any engineering or other defect in approved Plans, drawings and specifications.

9.8         Declarant's Rights. The Declarant shall not be required to comply with the provisions of this Article in the initial construction of the Property.

## ARTICLE X

### MAINTENANCE AND REPAIR OBLIGATIONS

10.1 Maintenance by Owner. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration requiring ACC Approval, to maintain, repair, replace and restore the Dwelling Unit, Party Wall, and Improvements located on his Lot/Pad, and to ensure that the Lot/Pad itself is maintained in a neat, sanitary and attractive condition. If any Owner shall permit any Dwelling Unit, Party Wall, or Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive or to otherwise violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, to enter upon such Owner's Lot/Pad to perform such emergency and non-emergency repairs or maintenance as the Board deems appropriate and to charge the cost thereof to the Owner. Said cost shall be a Corrective Assessment enforceable as set forth in this Declaration. For non-emergency repairs or maintenance the Owner shall be entitled to Notice of Noncompliance by the Board and Right to Hearing.

10.2 Operation and Maintenance by Association. The Association shall provide for such maintenance and repair of the Common Areas.

10.3 Mold. Whether or not you as an Owner experience mold growth depends to a great extent on how you manage and maintain your Dwelling Unit. You are hereby given notice to take all reasonable means to detect and prevent growth and infestation of mold and other similar agents. The Declarant will not be responsible for any damages, and as Owner you waive any claim to damages, caused by mold, or by some other agent, that may be associated with customary construction practices in the area, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects or losses. Any implied warranties, including but not limited to an implied warranty of workmanlike construction, an implied warranty of habitability, an implied warranty of merchantability or an implied warranty of fitness for a particular purpose, are hereby waived and disclaimed by you as the Owner.

## ARTICLE XI

### BUILDING, USE AND OCCUPANCY

All real property within the Property shall be held, used and enjoyed subject to such limitations and restrictions set forth below.

11.1 Single Family Residence. The Lots/Pads into which the Property shall be

divided shall be used only for single family residential dwellings. There shall be no multiple unit dwellings of any kind, including but not limited to basement apartments, duplexes or apartment buildings. No condominiums of any kind are allowed. No timesharing of any kind is allowed. Each dwelling shall be occupied only by a single family. No one shall be entitled to reside in a residence constructed on a Lot/Pad unless they are members of the immediate family therein residing, or are authorized foster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed, regardless of the method or structure of the occupancy arrangement.

11.2        Quiet Enjoyment. No noxious or offensive activity shall be conducted nor allowed to occur in or upon any part of the Property nor shall anything be done or placed in or upon the Property which is or may become a nuisance or may cause embarrassment, disturbance or annoyance to other Owners. No laundry may be hung outside to dry. No activity shall be conducted upon the Property, nor any improvements constructed thereon, which are or may become unsafe or hazardous to any person or property. Loud noise inconsistent with a residential environment is prohibited. It shall be forbidden for any person within the Subdivision to use or operate any radio, musical instrument, phonograph, television receiver, or other machine or device for the producing, reproducing or amplification of the human voice, or any other sound in such a manner as to (1) disturb, for that time of the day or night, the reasonable peace, quiet, and comfort of the occupants of neighboring dwellings; or (2) create any loud or raucous noise level by such use or operation which is audible to the human ear during the hours of 9:00 p.m. to 7:00 a.m. of the following day, at a distance in excess of fifty (50') feet from the property line of the noise source.

11.3        Parking. No trailers, boats or other forms of recreational vehicles may be parked, kept or stored within the Subdivision unless they are kept within the garage. No automobiles may be parked on streets within the Subdivision.

11.4        Signs. No commercial signs of any kind shall be displayed to public view on any Lot, except that each Owner may display one sign of not more than 18" by 24" advertising the property for sale. Anything contained herein notwithstanding, Declarant may, during the course of development of the Property and sale of Lots/Pads, place attractive signs in excess of the 18" by 24" restriction as necessary to advertise the Property in conformity with Springdale Code Title 10, Chapter 24, as amended.

11.5        Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on the Property, or any Lot/Pad, excepting only household pets. Dogs (no more than 60 pounds), cats and other household pets may not be kept for commercial purposes, are limited to two pets total, and are restricted to the Owner's premises or under the Owner's control by leash or otherwise.

11.6        Trash Receptacles. All such waste shall be kept at all times in appropriate

sanitary containers. The garbage containers shall at all times be stored out of prominent view. Any building materials or construction materials shall be neatly stacked and kept upon the Property and shall not remain thereon for more than the sixty (60) days following the completion or construction. All Lots/Pads shall be used and kept free from trash, rubbish, garbage or other waste, and the Property shall at all times be kept by the various Owners in an attractive manner.

11.7        Land Use/ Zoning. All land use and all buildings constructed shall fully comply with all zoning, land-use, building, and other relevant ordinances, codes, and regulations applicable to the property, which include but are not limited to the land-use, zoning, and building ordinances of the State of Utah, of Washington County, and of the Town of Springdale. All grading shall be done so as to preserve or restore the drainage of the land and so as to comply with all flood control requirements of any applicable agency. All disturbance of the natural vegetation must be restored back to a natural like kind condition.

11.8        Subdivision. No Lot/Pad within the Property shall be further subdivided. No Owner shall further partition or subdivide his Lot/Pad or the rooms in the Dwelling Unit, including without limitation any division of his Lot/Pad into time-share estates, time-share uses, or creation of additional living quarters; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Lot/Pad to a single family by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Lot/Pad is not leased for transient or hotel purposes; (2) to sell his Lot/Pad; or (3) to transfer or sell any Lot/Pad to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or some other form of joint ownership. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration and the Bylaws of the Association. Any failure by the lessee of such Lot/Pad to comply with the terms of this Declaration, the Bylaws of the Association or the Rules and Regulations shall constitute a default under the lease or rental agreement.

11.9        Drainage. Easements for installation and maintenance of utilities and drainage are reserved as shown on the recorded plat. Within these easements, no structure shall be permitted to remain which may damage or interfere with the installation and maintenance of utilities. This easement area of each Lot/Pad shall be maintained continuously by the Owner or by the Homeowner's Association if they lay within the Common Area, except for those improvements for which a public or utility company is responsible.

11.10       Landscapeing. All Owners agree that a major influence on property values is the appearance of each individual Lot/Pad within the Subdivision. All Lots/Pads shall be well maintained so as to present a quality appearance. All yard landscaping shall be completed for each Lot/Pad by Declarant within thirty (30) days after the completion and/or occupancy of any dwelling on said Lot/Pad. At a minimum, all Lots.Pads shall be suitably planted, in grass, ground cover, flower beds, or low-water landscape materials (xeriscape), said planting to be completed within thirty (30) days of the completion of any building or structure on the Lot/Pad. Lot/Pad Owners shall maintain the landscape and control the growth of weeds on the entire Lot/Pad not covered by finished structure, concrete, or asphalt.

11.11 Driveways. Driveways shall be constructed out of concrete, inlaid brick, or other hard materials approved by the Town of Springdale. Driveways consisting of cinders, sand, gravel, asphalt or dirt shall not be permitted on any Lot/Pad. Driveways shall be of a sufficient size that two (2) vehicles can park thereon side by side, and shall in all other respects conform to the Town of Springdale's requirements. Driveways shall be limited solely to providing a connection between the street and the garage area; no private lanes or streets traversing Lots/Pads shall be allowed.

11.12 Minimum Livable Area. All dwellings within the Project shall be of the same principal design, floor plan and square footage. The finished ground-level living area of all dwellings shall be not less than one thousand two hundred (1,200) square feet, excluding garages and outbuildings. Each dwelling shall also have a second story of at least three hundred seventy-five (375) square feet. In the event any dwelling within the Project is destroyed by any natural or unnatural cause, said dwelling shall be reconstructed of substantially the same materials and design so as to achieve its prior appearance and design. In order to maintain the integrity and continuity of the Project, all dwellings within the Project shall be insured against risk of a total loss and provide for exact reconstruction in the event of a total loss.

11.13 Completion of Construction. Construction of any dwelling on a Lot/Pad in the Subdivision shall be completed within nine (9) months after the beginning of such construction, unless Declarant provides an extension for good cause shown. No dwelling constructed on any Lot/Pad in the Subdivision shall be occupied or used for residential purposes or human habitation until the Owner has received certification for occupancy by the appropriate governmental agencies.

11.14 Temporary Buildings. No temporary buildings, structures, or improvements of any kind shall ever be erected or maintained on any of the Lots/Pads within the Property. Provided, however, that in a reasonable manner during construction, a general or subcontractor shall be entitled to keep a temporary construction trailer or portable building on the Property.

11.15 Roofs. No dwelling may have a roof pitch of less than 5/12 pitch. Roofing material may be flat concrete tile, or bar tile, or of comparable or better masonry roofing material. All dwellings to be constructed or erected on any Lot/Pad shall conform with these covenants and be in harmony with external design with existing structures in the Subdivision.

11.16 Fenced Areas. The Project has been designed to retain openness between Lots/Pads. Accordingly, fences shall not be constructed around the perimeter of any Lot/Pad; however, Declarant may designate within the interior of each Lot/Pad a location appurtenant to the side or rear of the dwelling that may be enclosed with a fence. Where allowed, no fence, wall or hedge higher than six (6) feet shall be erected or maintained on any Lot/Pad. Except as modified and further restricted herein, all fences or walls shall comply with existing municipal regulations, except that fences may not be constructed of vinyl, plastic, or

chain link. All materials must be approved of by Declarant or the Architectural Control Committee.

11.17 Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property within the Redhawk at Springdale Subdivision which shall induce, breed or harbor weeds, infectious plant diseases or noxious insects.

11.18 Air-Conditioning Equipment. No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground unless screened or concealed (subject to required approvals by the Architectural Control Committee) in such manner that the screening or concealment thereof appears to be part of the integrated architectural design of the building and does not have the appearance of a separate piece of machinery fixtures or equipment.

11.19 Burning and Incinerators. No open fires or burning shall be permitted on any Lot/Pad or Common Area at any time and no incinerators or like equipment shall be placed, allowed or maintained upon any Lot/Pad or Common Area. The foregoing shall not be deemed to preclude the use, in customary fashion, of outdoor residential barbecues or grills.

11.20 FCC Policy.

(a) Types of Antennas. This Section applies only to antennas, masts and dishes (collectively antennas) listed in FCC Rules. All other antennas, except the ones requested by the FCC, are *prohibited without the approval of the ACC.*

(b) Location and Installation. If the antenna is one of the types now allowed under FCC Rules, the antenna must still comply with the following regulations:

(i) No antenna may encroach upon the Common Area or the property of another Owner.

(ii) An antenna must be placed on the backside of the roof (or in the attic) or screened in the backyard so no part of the antenna or satellite dish may be seen from the street in front of the Dwelling Unit, provided an acceptable signal quality may be received from such location.

(iii) The antenna must be shielded from view from the street and neighboring Property to the maximum extent possible as long as an acceptable signal quality may be received. If necessary to shield the antenna from view, the Association may require that the antenna be shielded by reasonably priced landscaping that complies with the Association's landscape requirements.

(iv) Antennas and any visible wiring must be painted to match the color of the structure to which they are installed, provided the painting does not interfere with acceptable quality signal and does not void the manufacturer's warranty.

(v) The antenna must comply with all applicable town, county and

state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits and local codes.

(vi) Installation must be pursuant to the manufacturer's instructions.

(vii) In order to protect against personal injury and property damage, an antenna may not be placed in a location where it may come into contact with a power line.

(viii) In order to protect against personal injury and property damage, all antennas must be properly grounded and secured.

(ix) In order to protect against personal injury, antennas may not block or obstruct any driver's view of an intersection or street.

(x) If the antenna is attached to a mast, the mast height shall be no higher than absolutely necessary to receive acceptable signal quality.

(c) Maintenance.

(i) The Owner is responsible for all costs associated with the installation and maintenance of an antenna.

(ii) The Owner is responsible for all damage caused by or connected with the antenna.

(iii) The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the antenna.

(iv) The Owner shall keep the antenna in good repair so that it does not violate any portion of this Section.

(d) FCC Notice. The FCC Rules provide that a restriction will impair installation, maintenance, or use if it:

(i) Causes unreasonable delay in installation;

(ii) Unreasonably increases the cost of the equipment or its installation, maintenance, or use; or

(iii) Precludes reception of an acceptable quality signal.

(e) Notification.

(i) An Owner must complete the notification form attached as Exhibit B and submit a copy of the completed form to the Association within five (5) business days after installing an antenna allowed pursuant to this Section.

(ii) If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna.

(f) Enforcement.

(i) In the event of a violation of this Section, the Association may

bring an action for declaratory relief with the FCC or the Fifth District Court, Washington County, after notice and an opportunity to be heard. If the FCC or Court determines that this Section is enforceable, the Owner shall pay a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time, additional fines of \$10.00 per day will be imposed for each day that the violation continues.

- (ii) If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna.
- (iii) The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section.

(g) Severability.

- (i) If any provision of this Section is ruled invalid, the remainder of this Section and the Declaration shall remain in full force and effect.
- (ii) If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein.

## ARTICLE XII

### DAMAGE AND CONDEMNATION

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member. All expenses of fixing the damage may be levied by the Association as a Corrective Assessment.

(b) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot/Pad Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefore, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

## ARTICLE XIII

### INSURANCE

13.1 Insurance. The Association may secure liability and casualty insurance for the Common Area. The Association shall secure general liability insurance covering the Common Areas for at least \$1,000,000.00 per occurrence.

13.2 Fidelity Insurance. A fidelity policy or policies to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all Mortgagees of Lots/Pads.

13.3 Lots/Pads and Dwelling Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot/Pad or Dwelling Unit on a Lot/Pad or any Improvement thereon erected by the Owner.

## ARTICLE XIV

### MORTGAGEE PROTECTION CLAUSE

Notwithstanding any other provision of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

14.1 Preservation of Regulatory Structure and Insurance. Unless the holders of seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the Lot/Pad Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design of the exterior, appearance of Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.1, or the upkeep of the Common Area;

14.2 Notice of Meetings. The Association shall give to any first Mortgagee of a Lot/Pad requesting the same, notice of all meetings of the Association, and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

14.3 Right to Examine Association Records. Any first Mortgagee shall have

the right to examine the books, records and audit financial statements of the Association.

14.4 Rights Upon Foreclosure of Mortgagee. Each holder of a first Mortgage (or Deed of Trust) on a Lot/Pad and any purchaser from it who comes into possession of the Lot/Pad by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot/Pad free of, and shall not be liable for any claims for unpaid assessments and charges against the Lot/Pad which accrue prior to the time such holder comes into possession of the Lot/Pad.

## ARTICLE XV

### GENERAL PROVISIONS

15.1 Enforcement. The restrictions set forth in this document shall operate as covenants running with the land for the benefit of the Town as set forth in Section 15.2 and any and all persons who now may own, or who may hereafter own, property in the Subdivision, and such persons are specifically given the right to enforce these restrictions through any proceeding, at law or in equity, against any person or persons violating or threatening to violate such restrictions and to recover any damages suffered by them from any violation thereof. In the event any enforcement action is necessary, the person or persons seeking enforcement shall be entitled to enjoin the violation of these covenants, and to recover any and all damages of any kind suffered by them because of the violation. In addition, the prevailing party in any action to enforce the Declaration shall be entitled to recover from the other all costs, attorney's fees and expenses incurred in the enforcement action.

15.2 Town's Rights to Enforce. Since the Subdivision and Project are part of a Workforce Housing Development in the Town and subject to a Moderate Income Housing Development Agreement between the Declarant and the Town, the Town shall have the right, in its sole discretion, to enforce these covenants, conditions and restrictions against any owner of property within the Project, including but not limited to the withholding of any permits required for development of any kind within the Project; however, the Town may not be compelled by any owner to so act, and the Town's failure to act in any specific instance shall not constitute a waiver of, nor enjoin it in the future from, its ability to enforce these covenants, conditions and restrictions.

15.3 Declarant's Right to Amend. The Declarant shall have the right to modify these Restrictive Covenants, subject to its Moderate Income Housing Development Agreement with the Town, until all Lots/Pads in the Subdivision have been sold by the Declarant.

15.4 Amendment. Once all Lots/Pads in the Subdivision have been sold by the Declarant, The Declaration will remain in force, subject to amendment by a majority vote of three-fourths of the Lot/Pad Owners and approval by the Town of Springdale, Utah, pursuant to its development agreement with Declarant. The Amendment shall not be enforceable or

effective until an instrument is recorded in the Washington County Recorder's office indicating that a vote has been duly and properly taken on the proposed amendment, that it has been approved by the requisite percentage of Owners within the Subdivision and the Town, and is signed and acknowledged by each Owner and the Town in favor of the modification.

15.5 Votes. Any vote, approval or other action specified herein to be taken by the Owners which requires a specified percentage shall be calculated on the basis of one vote for each Lot/Pad within the Subdivision.

15.6 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

15.7 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

15.8 Deed Rider Conflict. To the extent a Lot/Pad owner has executed a Promissory Note to Developer and Equity Sharing Agreement and Right of First Refusal and Restrictions on Transfer and Encumbrance with the Developer and the terms are in conflict with those outlined herein, the terms of the Deed Rider shall be superior and shall override any terms outlined herein.

15.9 Notice. Any notice, including without limitation Notice of a violation of this Declaration, the Bylaws, or any Rules and Regulations of the Association, permitted or required to be delivered as provided herein shall be fair and reasonable if given in writing and may be delivered either personally or by first class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

15.10 Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the

Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

15.11 Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

15.12 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Property are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties and fines for the infractions of any Rules and Regulations, this Declaration, or the Bylaws. Fines levied may be assessed as a Corrective Assessment against the Lot.

IN WITNESS WHEREOF, Declarant executed this Declaration on the 23 day of January, 2008.

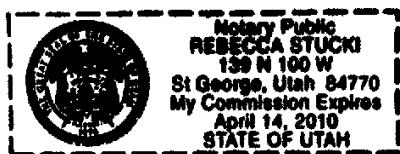
DECLARANT:

COLOR COUNTRY COMMUNITY HOUSING  
INC.

By:  
Its: Manager

STATE OF UTAH, )  
:ss.  
County of Washington. )

On this 23 day of January, 2008, personally appeared before me C.Ty Tippets, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the Manager of Red Hawk at Springdale Homeowners Association, a Utah limited liability company, and that he executed the foregoing Declaration on behalf of said limited liability company being authorized and empowered to do so by the operating agreement of said Company or resolution of its managers, and he acknowledged before me that such Company executed the same for the uses and purposes stated therein.



Notary Public

Exhibit A  
(Legal Description)

ALL of Lots/Pads 1 through 15 of the REDHAWK AT SPRINGDALE Subdivision as recorded  
with the Washington County Recorder.