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**AMENDED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS**

**OF**

**WEST SPRINGS TOWNHOMES**

**225 NORTH VALLEY VIEW DRIVE  
ST. GEORGE, UTAH**

Date Recorded with the Washington County, Utah, Recorder's Office \_\_\_\_\_

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## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF WEST SPRINGS TOWNHOMES ASSOCIATION

This is a Declaration of Covenants, Conditions, and Restrictions (CC&Rs) which establishes a planned unit development known as West Springs Townhomes Association (WSTA). This Declaration was originally made and executed on the 20<sup>th</sup> day of April 1992 by Jay Ence, Declarant.

This Amended and Restated Declaration of Covenants, Conditions, and Restrictions of West Springs Townhomes Association (hereafter "Amended Declaration") replaces and supersedes the original Declaration in its entirety, including all phases and any amendments thereto, originally recorded as "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF WEST SPRINGS TOWNHOMES" made and executed on the 20<sup>th</sup> day of April 1992 by Jay Ence, Declarant.

This Amended Declaration and plat maps 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.

The properties are located at 225 N. Valley View Drive in St. George, Washington County, Utah, and are described pursuant to the official plats therefore as:

- West Springs Townhomes Phase 1
- West Springs Townhomes Phase 2
- West Springs Townhomes Phase 3
- West Springs Townhomes Phase 4
- West Springs Townhomes Phase 5
- West Springs Townhomes Phase 6

which plats are available for inspection at the Washington County Recorder's Office, together with all improvements and appurtenances thereunto belonging.

### ARTICLE 1 – DEFINITIONS

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

Section 1.1. Association means West Springs Townhomes Association, its successors and assigns.

Section 1.2. Amended Declaration means this instrument and any amendments.

Section 1.3. Plat or Map means the recorded subdivision plat entitled "West Springs Townhomes, Phases 1-6." These plats may be viewed at the Washington County Recorder's office or through an Internet connection to their office.

Section 1.4. Property or Properties means that certain real property hereinbefore described and such additions thereto as may hereafter be subjected to this Amended Declaration.

Section 1.5. Common Area means that portion of property owned by the Association, shown on the plats as dedicated to the common use and enjoyment of the owners.

Section 1.6. Limited Common Area means that portion of property owned by the Association (this includes walkways and driveways) dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited common area is subject to rights of the Association set forth in this Amended Declaration.

Section 1.7. Lot means a separately numbered and individually described plot of land shown on the plats designated as a lot for private ownership, but specifically excludes the common and limited common areas. Each lot is owned in fee simple by the owner.

Section 1.8. Townhome (or unit) means a single family dwelling. "Townhome" includes fee simple title to the real property lying directly beneath the single family dwelling within lot boundary lines and any concrete patio slab affixed thereto.

Section 1.9. 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 1.10. Member means every person or entity who holds membership in the Association. Every member is an owner, and every owner is a member.

Section 1.11. Trustees means the governing body of the Association.

Section 1.12. Governing Documents means this Amended Declaration of Covenants, Conditions, and Restrictions, the Bylaws, the Articles of Incorporation, and the Rules and Regulations of West Springs Townhomes, and any amendments thereto.

Section 1.13. Fines means a punitive monetary amount levied against an owner and lot for violations of this Amended and Restated Declaration, the Bylaws, the Rules and Regulations of the Association, and applicable Architectural Guidelines. Said fines shall be collectable as assessments pursuant to Article 4 herein.

Section 1.14. Community Standard shall mean and refer to the plan, scheme, appearance, standard of conduct, maintenance, or other activity generally prevailing in the West Springs Townhomes Association. This community standard may be more specifically defined by the Trustees from time to time and shall serve as a standard against which behavioral, architectural, and landscaping restrictions and infractions are determined.

## ARTICLE 2 – PROPERTY RIGHTS

Section 2.1. Title to the Common Area. The Declarant has conveyed fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot but subject to this Amended Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Amended Declaration and to maintain the common area in good repair and condition at all times and 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. 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 or recreational 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. 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 his lot remains unpaid and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- d. The right of the Association with the approval of sixty percent (60%) of the owners 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.
- e. 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.
- f. The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

- g. The terms and conditions of this Amended Declaration.
- h. The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

Section 2.3. Limited Common Area. A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area designated with his lot number on the plat. Limited common area is subject to rights of the Association set forth in these CC&Rs. The Association, through its Trustees, may adopt rules and regulations concerning use of the limited common area.

Section 2.4. Delegation of Use. An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family or his lessees who reside on the property. No one who is a nonresident shall have any such delegable right of enjoyment.

### ARTICLE 3 – MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every owner is a member of the Association. The term "owner" 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 one class of voting membership. All members (owners) 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 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 the call for votes or deadline for return of ballot, or verbal objection is made at the meeting, if one is held, 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.

### ARTICLE 4 – FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. Each 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 (a) annual assessments or charges; (b) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (c) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this

Amended Declaration, and (d) interest, costs of collection, and a reasonable attorney's fee, as hereinafter provided whether or not a lawsuit for collections is initiated. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took 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 (except the deductible amount expressly stated to be the responsibility of the owner); the establishment of a reserve account for repair, maintenance, and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Amended Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The Trustees shall conduct a Reserve Fund Analysis as required by Utah State Code, entitled Community Association Act, 57-8a-7.5, as may be amended from time to time.

The Trustees annually, at the annual meeting of the members or at a special meeting of the members, present the reserve study and provide an opportunity for lot owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount. The Trustees shall ensure minutes are kept of each such meeting and indicating in the minutes any decision relating to funding a reserve fund.

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 and, at the option of the Association, other charges that may occur from time to time.

Section 4.3. Maximum Annual Assessment.

a. The maximum annual assessment may be increased each year up to five percent (5%) 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 for any annual period provided that any such change shall have the assent

of sixty percent (60%) of the votes of the members present in person or by proxy at a meeting duly called for such purpose.

c. The maximum annual assessment need not increase annually. Any year in which the maximum annual assessment increase (5%) was not applied may not be revisited in order to provide an increase to the current or future years' assessments. The Board shall set the maximum annual assessment on an annual basis. Notice shall be given to each owner as provided in Section 4.7.

**Section 4.4. Special Assessments.** In addition to the annual assessments, the Association may levy in any assessment year a single special assessment, applicable to that year only. The Board shall have the authority to assess up to five thousand dollars (\$5,000) without a vote of the membership. 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. Assessments exceeding the \$5,000 limit must have the assent of sixty percent (60%) of the votes of the members present in person or by proxy at a meeting duly called for such purpose. This special assessment (up to \$5,000), if levied, would be the amount to be equally shared by all homeowners in any year and not construed as an amount that could be levied on any individual lot or against any individual owner.

**Section 4.5. Additional Assessments.** In addition to the annual assessments and special assessments 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 the City of St. George in maintaining, repairing, or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City up to and including the meters for individual units, if any, and that they are installed and shall be maintained to City specifications.

**Section 4.6. Notice of Reinvestment Fee Covenant.** Be it known to all sellers, buyers, and title companies either owning, purchasing, or assisting with the closing of a property conveyance within West Springs Townhomes Association that this Amended Declaration establishes certain obligations that all sellers and buyers should be aware of pursuant to Utah Code Ann. 57-1-46. This Notice requires the payment of a \$250 Reinvestment Fee Covenant as permitted by Utah law according to the following terms:

a. Homeowners Association. The property being sold and purchased is within a planned unit development association which is operated and managed by a Board of Trustees and/or a Property Management Company. (West Springs Townhomes Association has presently delegated its daily operations to Monarch Property Management, located at 1240 East 100 South, Suite 10, St. George UT 84790, phone #435.628.3950. PLEASE NOTE, HOWEVER, THAT PROPERTY MANAGEMENT COMPANIES MAY CHANGE FROM TIME TO TIME. ) The planned unit development association is subject

to Covenants, Conditions, and Restrictions affecting the property, including regular and special assessments and a Reinvestment Fee Covenant for the administration and operation of the properties within the Association. If and when the contact information in this paragraph becomes outdated, contact with the Association may be made through its primary contact as designated in the Utah Homeowner Associations Registry maintained by the Utah Department of Commerce.

b. Reinvestment Fee. A Reinvestment Fee Covenant is hereby formally imposed at settlement (or upon any conveyance of any unit/lot unless exempt by law) for each unit/lot sold or conveyed, in the amount of \$250 as determined by the Board of Trustees for that type of unit/lot. This one-time fee shall be paid by each prospective member of the Association for the purpose of covering administrative and other costs associated to the management and care of the property. This imposition of this Reinvestment Fee Covenant precludes the imposition of additional reinvestment fee covenants on the properties burdened by this fee requirement and is required by the Association to be paid to benefit the burdened properties within the Association for the purposes stated above. The name and address of the beneficiary under this Reinvestment Fee Covenant is West Springs Townhomes Association, care of Monarch Property Management, as identified above. As of the date of this Amended Declaration, Monarch Property Management is to be contacted in all regards with respect to this fee or any other questions related thereto.

c. The obligation of the above referenced Reinvestment Fee Covenant is intended to run with the land and to bind the successors in interest and assigns of each and every lot, and lot owner, within the Association in perpetuity.

d. However, the Association's members, by and through a vote of its members as provided for in the amendment provisions of this Amended Declaration, may amend and/or terminate this Reinvestment Fee Covenant by a duly voted upon, approved, and recorded instrument directing the amendment or termination of this Reinvestment Fee Covenant.

Section 4.7. Notice and Quorum for Any Action Authorized Under Sections 4.3, 4.4, and 4.5. Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 4.3, 4.4, or 4.5 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 the owners, or of proxies, entitled to cast fifty percent (50%) of all the votes of the owners shall constitute a quorum. If the quorum requirement is not met at such a meeting, the meeting may be adjourned and reconvened 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 4.8. Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots. Annual, special, and

additional assessments may be collected on a monthly, quarterly, or annual basis, as the Trustees determine.

**Section 4.9. Date of Commencement of Annual Assessments: Due Dates.**

- a. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the lot to a new owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.
- b. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a prerequisite to the validity of the assessment.
- c. 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.
- d. 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 and for proper purpose.
- e. The Association shall, upon written demand by the lot owner, and for a reasonable charge not to exceed \$25.00 (see Utah Code 57-8a-311), 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 Nonpayment of Assessment - Remedies of the Association.**

- a. Any assessment or installment thereof not paid within ten (10) days after the due date shall be delinquent and assessed a minimum late fee of ten dollars (\$10) per month for each delinquent installment.
- b. In addition, any assessment or installment thereof not paid within thirty (30) days after the due date shall be delinquent and shall bear interest from the date of delinquency at two (2) points over the Wall Street Journal Prime Rate as reported on bankrate.com (or such rate as the Trustees shall determine appropriate) until paid.

c. The Trustees, in the name of the Association (1) may bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, (2) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (3) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

d. 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 lease 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 lease income or the reasonable lease without regard to the value of the other security. Utah Code 57-8a-310, as may be amended from time to time, is hereby incorporated into this Amended Declaration by reference in order to facilitate the collections of assessments.

e. The Board may terminate a delinquent owner's right to receive a utility service for which the lot owner pays as a common expense or access to and use of recreational facilities. Before terminating a utility service or right of access to and use of recreational facilities, the Property Manager or Board shall give the delinquent lot owner notice in a manner provided in this Declaration, Bylaws, or Association rules. Utah Code 57-8a-309, as may be amended from time to time, is hereby incorporated into this Amended Declaration by reference in order to facilitate the collections of assessments.

f. A power of sale is hereby conferred upon the Association which 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.

g. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the common area or by abandonment of his lot.

Section 4.11. 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 or insured by the Federal Housing Administration or the Department of Veterans Affairs 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 he takes title or from the lien of such later assessments.

Section 4.12. Books, Records, and Audits. The Association shall maintain current copies of the Amended Declaration, Articles, Bylaws, Rules and Regulations, 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 grantor 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. These documents shall be maintained and stored as required by law and/or is common practice for documents of these types.

#### ARTICLE 5 - INSURANCE

The following governing provisions apply and control with respect to the Association and individual owners' insurance requirements. However, to the extent these provisions are in conflict with Utah Code Ann., 57-8a-401 et. seq., as may be amended from time to time, the Statute shall control.

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 (100%) 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 insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

Section 5.2. Casualty and Property Insurance on Townhomes. 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, improvement, or betterment installed by a lot owner to a dwelling or to a limited common area appurtenant to a dwelling on a lot, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a dwelling or to a limited common area.

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 therefore shall be payable to, the Association as trustee for the owners.

**Section 5.3. Replacement or Repair of Property.** If a portion of the covered property for which insurance is required by this Article is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless repair or replacement would be illegal under a state statute or local ordinance governing health or safety. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. 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.

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 5.4. 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 one million dollars (\$1,000,000) per occurrence (or in any greater amounts as determined by the Trustees) for personal or bodily insurance 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. Each lot owner is an insured person under a liability insurance policy that the Association obtains that insures against liability arising from the lot owner's interest in the common areas or from membership in the Association.

**Section 5.5. 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 (a) name the Association as obligee or beneficiary, plus (b) be written in an amount not less than the sum of (1) three months' operating expenses and (2) the maximum reserves of the Association which may be on deposit at any time, and (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

**Section 5.6. Other Policies Obtained by the Association.** The Trustees may elect, in their sole discretion, to purchase other types of insurance not specifically described in this Article, in amounts and pursuant to terms that it deems in the best interests of the Association. Any optional insurance obtained pursuant to this section which is not expressly provided for above, shall be disclosed at each annual meeting. The Trustees shall obtain and keep current Directors and Officers Insurance providing indemnification for Trustees in the event they are sued for their actions as a Trustee. Without this protection for their volunteer service, they could incur substantial liability.

**Section 5.7. Other Policies Obtained by Owners.** Nothing herein shall prohibit an owner from purchasing and maintaining any insurance they so desire. Owners should insure their contents as the Association has no obligation to cover townhome contents or personal property therein. Owners should obtain insurance in the amount of the Association's deductible in the event that they are deemed liable for said deductible as further required below.

**Section 5.8. Association's Policies are Primary.** In the event of a covered property or casualty loss and that loss is covered by a property insurance policy in the name of the Association and another policy in the name of an owner, the Association's policy shall be primary except as provided hereafter.

**Section 5.9. Instance Where Owner's Policy is Primary.** A lot owner who owns a lot that has suffered lot damage as part of a covered loss on the Association's policy is responsible for the Association's policy deductible as calculated by applying the "lot damage percentage formula" set forth in Utah Code Ann. 57-8a-401, et seq., as may be amended from time to time. In the event that an owner is responsible for the deductible, the owner's policy shall be deemed primary. The deductible required to be paid pursuant to this section shall be collectible as a regular assessment against that owner only and is due and owing regardless of whether the owner has insurance coverage for the deductible or not.

**Section 5.10. Failure of Owner to Pay Deductible or Other Amounts Owing.** If a lot owner does not pay the deductible or other amount owing required in Section 5.9 above within thirty (30) days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the limited common area appurtenant to the lot, the Association may levy an assessment against a lot owner for that amount.

**Section 5.11. Association to Set Aside Funds.** The Association shall set aside an amount equal to the amount of the Association's property insurance deductible or \$10,000, whichever is less.

**Section 5.12. Notice to Owners.** The Association shall provide notice as authorized by this Declaration or the Bylaws to each lot owner of the lot owner's obligation stated in Section 5.9 above for the Association's policy deductible and of any change in the amount

of the deductible. If the Association fails to provide such notice, the Association is responsible for the amount of the deductible that the Association could have assessed to a lot owner pursuant to this Article and Utah law.

**Section 5.13. Notice to Board or Management Company.** Owners may provide notice to the Association Board and/or Management Company a certificate of insurance otherwise known in this document as a Certificate of Compliance prepared by their Insurance Agent showing the amount of the deductible listed under Coverage A on their HO6 policy or in the case of a leased unit a Business Owners Policy showing liability coverage for the amount of the deductible. Each lot owner may acquire Loss Assessment Endorsement on their own unit policy. Lessees may provide to the owner and the owner subsequently to the Board a certificate showing proof of liability of coverage for the unit.

**Section 5.14. Board's Exercise of Business Judgment.** If, in the exercise of the business judgment rule, the Board determines that a claim is likely not to exceed the Association property insurance policy deductible, then the lot owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible, and a lot owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible. In such cases, the Association need not tender the claim to the Association's insurer.

**Section 5.15. 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

An Architectural Control Committee (ACC) shall be appointed by the Trustees and be composed of three (3) or more representatives appointed by the Trustees for a term of twelve (12) months. This committee is an advisory committee to the Trustees. The responsibilities of this committee include recommending approval or disapproval to the Trustees of any owner requests for changes to their lot, townhome, limited common area, or common area before changing, erecting, or maintaining any of the following: structures, buildings, fences, walls, additions, extensions or expansion to or maintenance of the common and limited common areas, including walls, fences, driveways, walkways, lawns, and plantings.

Such approval shall be requested by submitting in writing to the Architectural Control Committee plans and specifications showing the nature, kind, shape, height, materials, colors, location, and time frame for completion.

The Architectural Control Committee and the Trustees shall ensure the community standards are maintained and complied with as indicated more specifically in the Bylaws

and/or Rules and Regulations of the West Springs Townhomes Association. The Trustees may adopt rules and regulations binding upon all owners to administer the terms of this Article.

Neither the Architectural Control Committee nor the Trustees shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to requests made pursuant to this Article.

#### ARTICLE 7 – EXTERIOR MAINTENANCE

Section 7.1. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the common areas as may be necessary or desirable to make them appropriately usable in conjunction with the lots and to keep them clean, functional, attractive, and generally in good condition and repair. The maintenance of the area between the platted lot boundary and the actual building envelope is the responsibility of the Association. Concrete driveways and the perimeter walkways immediately adjacent to the building envelope are classified as limited common areas, and their maintenance is also the responsibility of the Association. The maintenance of everything within the building envelope is the responsibility of the lot owner. Driveways and walkways which have been altered by an owner in size, shape, or cosmetically from their original construction condition are the responsibility of the lot owner. Further, the maintenance, repair, or replacement of concrete patio slabs is the responsibility of the lot owner.

a. The Association shall not provide for the maintenance and repair of the exterior of the townhomes, including the roofs, repainting of the townhomes including the stucco, doors, sills, rain gutters, downspouts, or glass replacement, as responsibility for such maintenance and repair of the exterior of the townhomes is expressly assigned to the respective owner thereof. The Association shall require that lot owners employ materials of the same kind and quality and colors as those which were used in the connection with original construction of the items concerned unless directed otherwise by Rule. In addition to the above maintenance items, the lot owners are also responsible for the upkeep, painting, and general maintenance of the unit's heating and air-conditioning equipment.

b. Each lot owner shall be solely responsible for maintenance of glass, doors, and screens on his lot or townhome and for any maintenance on his lot or townhome required due to willful or negligent acts. In the event an owner shall fail to perform this maintenance in a manner satisfactory to the Trustees, as determined by a two-thirds (2/3) vote, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which lot is subject. A twenty-five percent (25%) administrative fee may also be added.

c. West Springs Townhomes Association has on the property various types, sizes, materials, construction, and uses of walls. Types of wall include Party Walls, Retaining

Walls, Perimeter Walls, and Privacy Walls. The Association shall be responsible for the maintenance, repair, and/or replacement of such walls except painting which is the responsibility of the owner. Any wall, fence, gate, or other barrier or dividing type of separation between units or located on common or limited common area constructed by a lot owner shall be the owner's responsibility to provide maintenance, repair, and/or replacement as may be necessary over time. No owner shall attach, modify, or otherwise change any wall which is the responsibility of the Association without first gaining written permission from the Trustees. Any damage or modification of the Association's walls caused by owner, lessee, or guest will be the responsibility of the owner to remove, repair, or replace said damage or other similar condition at owner's expense. The exterior perimeter wall along Valley View Drive and 100 North will be the responsibility of the Association.

Section 7.2. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agents or contractors, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

Section 7.3. 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, may be altered by Rule of the Association.

## ARTICLE 8 – USE RESTRICTIONS

Section 8.1. General Use Restrictions. All of the properties which are subject to this Amended Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property. 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 buildings or structures dissimilar to those 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.

No part of the property shall be used for any commercial, manufacturing, mercantile, storing, vending, repairing, painting, or reconstructing any vehicles, recreational or otherwise, and other such nonresidential purposes unless special exception is provided by the Trustees. Garage conversions are explicitly denied unless prior written permission from the Trustees is obtained as well as required building permits and St. George City codes are complied with.

Section 8.2. Signs; Commercial Activity. Except for one "For Rent," "For Lease," or "For Sale" sign of not more than five (5) square feet, no advertising signs, election

posters, 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 whatsoever shall be conducted in any building or on any portion of the properties. Signs other than those noted above, such as security advisory signs, may be placed on the property only as allowed by Rule.

Section 8.3. 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. Limitations on the use of facilities such as the Tennis Court, Clubhouse, Swimming Pool, or other common areas may be directed by Rule and modified from time to time.

Section 8.4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any of said lots, except that dogs, cats, or other household pets, two or less in total number, may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell, or otherwise, to lot owners. Any animal or breed which could be perceived to adversely affect the ability of WSTA to maintain and/or procure reasonable liability insurance, the homeowner shall be directed by the Board of Trustees to remove the animal from the community. All pets may be unleashed when they are in fenced limited common areas; however, they must be on a handheld leash when they are in the common areas. This section may be made more restrictive by Rule of the Association.

Section 8.5. 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 Amended 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. Exceptions to this section may be modified by Rule.

Section 8.6. Parking. No motor vehicle which is inoperable shall be allowed within the properties, and any motor vehicle which remains parked over 72 hours (3 days) shall be subject to removal by the Association. The offending vehicle will be towed and the cost assessed to the owner as any other assessment under this Amended Declaration. Parking spaces within the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use. Parking of vehicles on lot owner driveways is allowed. However, driveways may not be used as a storage area for extended or excessive amounts of time. Vehicles not actually being used or seldom used by the owner or guest will qualify as being stored and will

require removal from the Association's property. No unlicensed, improperly licensed, or uninsured vehicles are allowed on the Association's property at any time.

Recreational vehicles, including boats, travel trailers, ATVs, or similar property owned by the homeowners or guests of West Springs Townhomes Association are allowed to be parked within the properties only for a period of no more than 72 hours (3 days). The allowable parking time may be extended for unusual or special circumstance only with Board approval. Owners or guests may occupy a parked RV or trailer for no longer than the time permitted by this section. RVs and trailers are denied the use of electric generators at all times. Vendor vehicles shall be required to comply with the same parking restrictions as lot owners.

Section 8.7. 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 in accordance with the initial construction of the buildings located thereon or approved by the Trustees. However, annuals may be planted in existing flower beds and as further defined by Rule of the Association, but owners are responsible for maintenance and upkeep.

Section 8.8. External Apparatus. No lot owner shall cause or permit anything (including without limitation, awnings, canopies, exterior sunblock blinds, 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 Trustees.

Section 8.9. Exterior Television or Other Antennas. No exterior radio or other antennas 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 Trustees, except that antennas (dishes) one meter in diameter or less, and designed to receive direct broadcast satellite service or receive or transmit fixed wireless signals via satellite, may be installed, provided the FCC-regulated dish is substantially shielded from view. Location of an FCC-approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the common area or the property of another owner. An owner must submit written notification to the Association within five (5) business days before installing any antenna (dish) that is allowed pursuant to this section.

Section 8.10. 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 8.11. 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 of any lot. 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 or any lot.

Section 8.12. 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. However, the Association shall maintain, repair, or replace those lines or conduits providing water and sewer service to each unit to within twelve (12) inches of the footprint of such unit. 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.

#### ARTICLE 9 - HOUSING FOR PERSONS (55 AND OLDER)

The West Springs Townhomes Association provides housing for persons 55 years of age or older as defined by the Federal Housing for Older Persons Act (HOPA), Sec. 24 CFR 100.304. Under this Act, housing for older persons exempts the project from the prohibition against discrimination on the basis of familial status and thus permits the following restriction: **No townhome may be occupied by any person under eighteen years of age, except that such persons under eighteen may be permitted to visit for reasonable periods.** In order to assure that the project meets the age requirements for occupants set forth in the Act, the Association shall be responsible for enforcing and carrying out the terms of the Amended Declaration

Section 9.1. Advertising, Marketing, and Sales. All advertising, marketing, and sales materials or displays of any kind shall reflect that the project is intended for housing for older persons. All print ads shall contain the following language:

**"The West Springs Townhomes project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the West Springs Townhomes Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act."**

Section 9.2. Approved Occupant Status. No person shall be permitted to occupy a townhome in the project unless such person is an "Approved Occupant" in accordance with the terms and provisions hereinafter set forth. If it is determined that an occupant has not obtained "Approved Occupant" status, the Association may pursue any remedies available to them under the Amended Declaration, including imposition of fines against a violator.

Section 9.3. Visitors. Persons who are not "Approved Occupants" shall not be permitted to occupy any townhome within the project; however, visitors do not have to be

approved as occupants and shall be permitted to visit for such reasonable periods of time, and upon such reasonable conditions, as provided for from time to time by the majority of the Board of Trustees.

Section 9.4. Procedure for Approving Occupants. Persons may become "Approved Occupants" based on the following terms and conditions:

- a. A person desiring to become an "Approved Occupant" shall submit to the Board of Trustees, a written "Association Membership Application and Age Verification" form (See Exhibit A) and shall request issuance of an "Approved Occupants Identification Letter."
- b. Within fifteen (15) days of receipt of the written "Association Membership and Age Verification" form, the Board of Trustees shall determine whether such occupancy is consistent with the intent to manage the project as housing for older persons, and if such occupancy were permitted, whether the project would continue to meet the requirements of the exemption under Section 3607(b)(2)C of the Act, and regulations relating thereto. Section 24 CFR 100.304: see also Preamble, 54 Fed. Reg. at pp. 3254.56. If the Board of Trustees determines that such occupancy is consistent with the intent to manage the project as housing for older persons as set forth herein and the exemption requirements would continue to be met, the occupancy shall be approved. If not, the occupancy shall be denied.
- c. Within said fifteen (15) day period, the Board of Trustees shall issue written notification to the applicant, and to the potential seller or lessor of the townhome the applicant desires to purchase or lease, as to the outcome of the Board of Trustees' determination under paragraph b above.
- d. Within ninety (90) days of the issuance of an approval by the Board of Trustees, the Approved Applicant must request the issuance of an "Approved Occupant's Identification Letter," which request must be accompanied with written proof of said applicant's legal right to occupy the townhome, either by virtue of a recorded Deed conveying fee simple title, an executed lease, or other document indicative of said Applicants' right of occupancy, which may be due to gift, devise<sup>1</sup>, inheritance or other transfer document recognized under the laws of the State of Utah for transferring occupancy rights. Upon such timely request by the "Approved Applicant" and timely receipt of appropriate documentation, the Trustees shall issue, or cause to be issued, an "Approved Occupant's Identification Letter."
- e. If an Approved Applicant fails to timely request an Approved Occupant's Identification Letter, and timely submit appropriate documentation, then such person shall not be permitted occupancy. Said person must again apply to become an "Approved

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<sup>1</sup>The act of disposing of property, especially real property, by will.

"Occupant" in accordance with provisions as set forth in Sections 9.2 through 9.4c above. An extension of the ninety (90) day period may be granted by the Board of Trustees under such circumstances as reasonably determined by the Trustees.

f. Within fifteen (15) days after written request by an owner, mortgagee or any other person who has been approved for occupancy, the Board of Trustees shall, without charge, provide a statement that such person is listed on the Association records as an "Approved Occupant" for such lot as set forth in the Association's records.

g. The Association shall retain all documents and records relating to its consideration of an application for "Approved Occupant" status.

**Section 9.5. Resale or Lease:**

a. Obligation of Owner: Contents of Agreements. Should a current resident wish to sell or lease his lot, the same procedures described above will be followed. The prospective buyer or lessee will be required to complete a Membership Application and Age Verification form. Owners shall inform all prospective purchasers or lessees of these procedures and shall provide the Board of Trustees with the information required in Section 9.4.

Any sale or lease agreement shall be in writing and shall (1) provide that occupancy of the property shall be subject to the provisions of the Amended Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association and (2) state the following:

**"The West Springs Townhomes project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the West Springs Townhomes Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act."**

In addition, lease agreements and deeds of trust shall provide that failure by the lessee or trustor to comply with the terms of this Amended Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association shall constitute a default under the agreement. Sale and lease agreements shall be approved by the Board of Trustees as to form and content prior to execution.

b. Records. The Association shall maintain the following:

1. For all persons who execute a purchase or lease agreement with an owner, the name of each such person(s), their current address and prospective address in the WSTA project, the age of each proposed occupant of the dwelling together with a copy of the documents provided to verify their ages, and the date of the agreement.

2. A log or other record of all persons occupying a townhome. Such record shall include names, address, and ages.

3. For each subsequent transfer of a townhome, a log or other record identifying the transferor, the transferee, the address of the dwelling, the names and ages of the new occupants, the documentation provided to verify those ages, the method of transfer (sale, lease, devise, etc.), and the date the transfer was approved and by whom.

4. For the sale, lease, or other transfer of a townhome rejected by the Association, a log identifying the persons involved in the proposed transfer and their current addresses, the ages of the prospective occupants, the reasons for the rejection, and the date of the rejection.

Section 9.6. Occupancy by at Least One Person 55 Years of Age or Older per Townhome. The Board of Trustees will not approve any applicant if the granting of "Approved Occupant" status will defeat the primary purpose of the WSTA project which is to provide housing for older persons within the meaning of the Act or is done pursuant to a policy of setting aside a certain number of housing units for persons under 55 years of age. To maintain the exemption under the Act for housing of older persons, at least eighty percent (80%) of the townhomes must be occupied by at least one person 55 years of age or older. The primary purpose for permitting twenty percent (20%) of the units to be occupied by persons younger than 55 is to prevent the disruption of the lives of surviving spouses and cohabitants under age 55 when the over age 55 member of the household dies or otherwise leaves the townhome. The Department of Housing and Urban Development (HUD) has indicated in the preamble to its regulations that so long as the eighty-percent (80%) rule is not violated, occupancy of a townhome can be approved, in the following situations, where there is no occupant over age 55:

- a. The individual has relatives in the WSTA project who would benefit from their residence nearby,
- b. The individual inherited the property from a former occupant,
- c. The individual is the surviving spouse or cohabitant of a former occupant, or
- d. The individual is a nurse or other medical professional whose presence would be beneficial to a resident.

**It is expressly provided that the Association shall not set aside a certain number of townhomes for persons under 55 years of age.**

Section 9.7. Applicability. The provisions of this Article shall not apply to prohibit the occupancy of any person who occupied a townhome in the WSTA project before

March 29, 2004, or prohibit the occupancy by any child born to such occupant while that occupant is a resident of the project, so long as the eighty-percent (80%) rule is not violated. Any sale or lease of the townhome by such occupant, however, must be in accordance with the provisions of this Amended Declaration.

#### ARTICLE 10 - LEASES

Section 10.1. Leases. Any lease agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Amended Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. In the event the owner fails to remedy the default under their lease agreement, the Association is hereby appointed agent of the owner and may initiate eviction proceedings against the lessee.

Section 10.2. Number of Leased Lots. The number of leased lots in West Springs Townhomes Association shall not exceed ten percent (10%) or eleven (11) lots.

Section 10.3. Grandfathering refers only to the owners who were leasing their lots on June 27, 2011, which was the adoption date of Amendment II to the Declaration of Covenants, Conditions, and Restrictions, dated April 20, 1992.

Section 10.4. Continuance. An owner currently leasing his lot under Article 10, may continue to lease his lot even if the lessees change or the lot remains unoccupied for no more than one hundred twenty (120) days. Owners who fail to re-let their lots within the time set above shall lose their right to lease their lots and be subject to Section 10.5 below and the "first-come, first-served" provisions.

Section 10.5. Intent to Lease. Owners not currently leasing their lots, but desire to do so, may submit an "Intent to Lease" application (Exhibit B) to the Board of Trustees. A true and correct copy of the proposed lease agreement with the owner must be attached to the Intent to Lease application. No owner shall qualify to file said application until one (1) year or twelve (12) consecutive months after the date the deed for the owner's lot was recorded in the records of the Washington County Recorder, and a copy of said deed submitted to the Board. Further, if more Intent to Lease applications are filed with the Board than lots available to be leased, the Board shall sort the applications according to the time and date of submission to the Board on a "first-come, first-served" basis. Once permission to lease is granted by the Board, owners who fail to lease their lots within ninety (90) calendar days shall lose the right to lease their lots and be subject to the conditions of this section. The Board shall have the authority to adopt reasonable procedures and policies, not inconsistent with this Amended Declaration, for maintaining and administering the waiting list.

Section 10.6. Terms of Lease. All lease agreements must be for a period of not less than six (6) months. All renewed lease agreements must be for a period of not less than six (6) months. Each time there is a new lessee, the owner must provide a copy of the new lease to the Board via the property manager. When an existing lease is renewed, the owner must provide written notification of such lease renewal (email will suffice) to the Board via the property manager.

Section 10.7. Occupancy. All lease agreements must be submitted in writing to the Board for approval prior to occupancy.

a. Before occupancy, the lessee must be granted "Approved Occupant" status as required by Section 9.2. This process requires the lessee to complete and submit to the Board the "Membership Application and Age Verification" form (Exhibit A).

b. Approval to lease a lot shall be based on (1) the number of lots available for lease (see Article 9), (2) the payment of a Common Maintenance Security Deposit (CMSD) (See Section 10.8), (3) presentation of a City Business License, and (4) approval by the Board of the documentation required of the owner.

c. Leasing a lot for hotel, dormitory, commercial, or vacation time-share is prohibited. An owner may not sublet or allow a third party to occupy said lot. No owner shall lease less than his entire living unit. Lots may not be divided into a smaller leased space than the entire lot.

Section 10.8. CMSD, Business License, and Out-of-Washington County (Utah) Owners. Owners who were grandfathered (see Section 10.3) are exempt from paying the CMSD. All nongrandfathered owners who receive approval to lease their lots shall provide a two hundred dollar (\$200) CMSD to the Association that will be held in trust to cover emergency property costs at times when the Board is unable to reach said owners. Owners shall maintain a two hundred dollar (\$200) balance in the form of a CMSD with the Association for the tenure of their leasing activities.

a. The owners of lots being leased shall provide to the Board a copy of their St. George City Business License as required by City Code 4-7-3 before said lessee occupies the lot. When said business license has been renewed, the owner shall provide written notification (email will suffice) to the board of such renewal.

b. St. George City Code 4-7-7 requires owners who reside outside of Washington County (Utah) and lease their WSTA lots to provide a local property manager for each said lot. Owners shall provide the Board with names, addresses, and phone numbers of said managers.

c. If an owner sells or otherwise disposes of his lot, his CMSD will be refundable in whole, or in part, after deduction of any charges. Damages or charges in excess of two hundred dollars (\$200) will be subject to Board action.

**Section 10.9. Age Restriction.** Lessees shall be subject to the conditions stated in Article 9, Housing for Older Persons, which requires occupancy of a lot by at least one person fifty-five (55) years of age or older. Further, no lot may be occupied by any person under eighteen (18) years of age.

**Section 10.10. Notification of Lease.** Immediately upon entering into a lease, the owner shall furnish the Management Company and/or the Board with the following: (a) a copy of such lease, (b) the telephone number of the lessee, and (c) any change in address or telephone number of the lot owner(s). The Governing Documents (see Section 10.11) shall be binding on the lessee. Failure of the owner to provide the information required in this section shall be deemed a default by such owner.

**Section 10.11. Governing Documents.** All owners, lessees, and the lease itself shall be subject to the conditions and provisions of the Amended Declaration of Covenants, Conditions, and Restrictions, Bylaws, and Rules and Regulations of the West Springs Townhomes Association. Owners, at their own expense, shall provide a copy of the Governing Documents to their future lessees as a condition of leasing.

**Section 10.12. Compliance and Default:**

a. Any owner who leases his lot shall be responsible for assuring compliance of such owner's lessee with the Governing Documents. Failure of the owner or his lessee to comply with the Governing Documents shall be considered a default under the lease and said owner will be subject to a fine for lease violation(s) of up to five hundred dollars (\$500) per occurrence.

b. Upon receiving written notice from the Board, owners shall have fifteen (15) calendar days to cure their lessee's default of the Governing Documents. Failure of an owner to do so shall entitle the Association, through the Board, upon order of a court of competent jurisdiction, to take any and all such action, including institution of proceedings in Unlawful Detainer/Eviction, on behalf of such owner against his lessee.

c. In cases of leasing violations, the Board maintains the right to revoke any or all privileges afforded the owners and their lessees. Further, should said owners default on payments to the Association, the Board maintains the right to garnish leasing fees of said lessees as per Utah State Statutes.

**Section 10.13. Loss of the Right to Lease.** An owner, including a grandfathered owner, will lose the right to lease his lot if any of the following conditions occur. The owner:

- a. Moves back in (occupies) his lot,
- b. Sells his lot,
- c. Transfers his title to new owners of record, or
- d. Violates the provisions of the Governing Documents. The only exception being ownership changes through current family trusts or spousal inheritance.

Section 10.14. Heirs Right to Lease. A lot which is being leased at the time of the owner's death and passes to the heirs of such owner by intestacy or testamentary instrument may continue to be leased until the heirs:

- a. Sell the lot,
- b. Move into the lot, subject to the conditions in the Governing Documents, or
- c. Change title.

Section 10.15. Sale of a Leased Lot. If an owner sells his lot at a time when a lease is in effect, that lease shall continue to its termination. However, the new owner shall not have the right to lease the lot except for the remainder of the term of the lease in place at the time of sale.

Section 10.16. Power of Attorney. In the event an owner fails to enforce the terms of that owner's lease and the Governing Documents, then upon the Association sending no less than two (2) letters to the owner(s) demanding that the owner(s) take remedial action against its lessee, such owner(s) hereby appoints the Association as its limited power of attorney for the purposes of filing and prosecuting any proceeding in Unlawful Detainer/Eviction that the Association elects to commence pursuant to the terms of these Governing Documents.

Section 10.17. Notice. Notices required under the provisions of Article 9 shall be deemed as given four (4) days after placing the same in the US Certified Mail, postage prepaid, to the last address of the owner known to the Association. An owner shall be obligated to notify the Association in writing of the owner's correct address and any change of address.

Section 10.18. Expenses. All expenses incurred by the Association during the enforcement of the Governing Documents, including attorney fees and cost of suit, shall be repaid to the Association by such owner. Failure of such owner to make repayment within fifteen (15) calendar days after receipt of written demand shall entitle the Board to:

- a. Levy and add to the assessment against such owner all expenses incurred by the Association,
- b. Foreclose the assessment lien according to Utah State Law, and
- c. File suit to collect the amounts due and owing or both.

Section 10.19. Hardship Exemptions.

- a. Exemptions. If an owner believes that a hardship is being endured and needs to lease his lot, the owner may apply for a Hardship Exemption. The owner seeking the Hardship Exemption must submit in writing to the Board a request for such an exemption setting forth in detail the reasons why such owner should be entitled to same. Hardship is at the sole discretion of the Board. The Board, in its discretionary power, may grant, under Hardship Exemptions, leasing privileges for up to two (2) additional lots subject to Section 10.19b below. All decisions regarding Hardship Exemptions and Conditional Exemptions (Section 10.19c below) shall reside in the Board, be recorded in writing, and be subject to a majority vote of the Board members.
- b. Hardship Factors. The types of hardships the Board may consider shall include, but not be limited to, death in the family, transfer of employment, significant medical treatments for an owner's immediate family member, and religious, government, or humanitarian service. Financial hardships are excluded and will not be considered. An owner seeking an exemption must provide proof to the Board of his engagement in one or more of the above-listed activities.
- c. Conditional Exemptions. All exemptions granted by the Board are conditional. If based upon information supplied by the owner, the Board finds, in its sole discretion, that a hardship exists, the Board may grant a waiver of lease restrictions up to a maximum of one (1) year. The owner of a leased lot may request, in writing, from the Board, relief from the six (6) month lease period if unforeseen circumstances compel a good faith lessee to vacate the lot earlier than the required minimum time frame.
- d. Leasing During Exemption. Any lease entered into under an exemption shall be in writing and for a period of no less than six (6) months and no more than one (1) year. The lease will be subject to and must comply with all other requirements of the Governing Documents.
- e. Extension of Exemptions. The owner who has been granted a Hardship Exemption to lease his lot may apply within thirty (30) days of the expiration of such exemption for an extension. The Board, in its sole discretion, may decide if an extension for such Hardship Exemption shall be granted. However, in no event shall the owner's Hardship extension be extended beyond a total period of three (3) consecutive years.

## ARTICLE 11 - AUTHORITY OF TRUSTEES

Section 11.1. Resignation and Removal. Any officer or Trustee may resign at any time by delivering a written resignation to the President of the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer or Trustee may be removed by the Board of Trustees at any time for cause, and a successor may be elected at a special meeting of the Board called for such purpose.

Section 11.2. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special Board meeting.

Section 11.3. Fines. The Board shall have the right to levy fines against owners and lots for violation of the provisions of this Amended Declaration, the Bylaws, or Rules and Regulations. The amount of the fines shall be determined by the Board. Fines shall be considered an assessment against the lot and shall be collectible as an assessment pursuant to Article 4 herein. In order to provide a uniform enforcement policy, the Association hereby adopts the Utah Community Association Act's fine provisions (see Utah Code 57-8a-208), as amended from time to time. Further, if an owner is noticed properly of a particular violation and refuses corrective action within a reasonable time period, the Association, following duly given notice, has the right to correct the violation itself and charge the cost to the owner through an individual assessment.

Section 11.4. Notice and Hearing. In the event of a claimed violation of the Amended Declaration, Bylaws, or Rules and Regulations as they may be adopted by the Trustees from time to time, governing the Association, an owner or resident shall be entitled to the following:

a. Notice. Written notice specifying the nature of the alleged violation (providing any other appropriate information) and stating that the owner or resident may request a hearing at which he will have an opportunity to be heard. If a hearing is requested, notice shall be given at least ten (10) days prior to and no longer than forty-five (45) days before the date set for the hearing. The notice may be delivered personally, by mail, or by another manner authorized under the Amended Declaration, Bylaws, or Rules. If delivery is made by mail, it shall be deemed to have been given four (4) business days after it has been deposited with the US Postal Service, regular mail, postage prepaid, addressed to the owner or resident at the address given by the member to the Trustees for the purpose of service of notice, or to the address of the owner's or resident's unit if no other address has been provided. The address of an owner or resident for the purposes of notice may be changed from time to time by notice to the Trustees.

b. Costs and Assessments. If the violation, or the failure to correct or remedy a violation continues, the Board of Trustees may levy fines as indicated in Section 11.3.

c. Final Determination. If a hearing is requested, then after the hearing has taken place, the Trustees shall determine whether a violation has occurred; and if so, the Trustees may (1) levy an assessment or impose conditions which shall become effective not less than five (5) days after the date of the hearing or (2) take such other action as it may deem appropriate. The voting rights of the owner shall be suspended during any period of delinquency of assessments. The determination of the Trustees shall be final.

Section 11.5. Board Meetings and Actions. The Board of Trustees may permit any Trustee to participate in a meeting by, or conduct the meeting through, the use of any means of communication by which all Trustees participating may hear each other during the meeting. A Trustee participating by such means is considered to be present in person at the meeting. Any action required or permitted to be taken at a Board meeting may be taken without a meeting (e.g., via email correspondence) if each member of the Board in writing either (a) votes for the action, (b) votes against the action, or (c) abstains from voting and waives the right to demand that action not be taken without a meeting.

## ARTICLE 12 - EASEMENTS

Section 12.1. Encroachments. Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling, and overhangs, as designed or constructed. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 12.2. 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, the Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

**Section 12.3. 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 12.4. Maintenance by Association.** An easement is hereby granted to the Association, its officers, agents, contractors, 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.

#### **ARTICLE 13 - GENERAL PROVISIONS**

**Section 13.1. Enforcement.** The Association 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 Amended 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 and costs incurred. 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.

**Section 13.2. Severability.** All of said Covenants, Conditions, and Restrictions contained in this Amended Declaration shall be construed together, but if any one of said Covenants, Conditions, and Restrictions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or restriction, or any part thereof, shall be thereby affected or impaired; and the Association and owners, their successors, heirs, and assigns shall be bound by each Article, section, subsection, paragraph, sentence, clause, and phrase of this Amended Declaration, irrespective of the invalidity or unenforceability of any other Article, section, subsection, paragraph, sentence, clause, or phrase.

**Section 13.3. Duration.** The Covenants, Conditions, and Restrictions of this Amended Declaration shall run with and bond the land and shall inure to the benefit of and be enforceable by the Association or the owner of any lot subject to this Amended

Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Amended Declaration is recorded after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 13.4. Amendment. The covenants, conditions, and restrictions of this Amended Declaration may be amended by an instrument approved by not less than sixty percent (60%) of the owners. Amendments to the Amended Declaration shall be proposed by either a majority of the Trustees or by owners holding fifty percent (50%) or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action or a vote is to be taken thereon or attached to any request for approval or consent to the amendment. Any approved amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 13.5. Notices & Affairs. Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the owner if the Board does so in good faith and has no reason to believe it is not the act of the owner. A writing may be delivered in an electronic medium or by electronic transmission and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person as if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record, and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a member or by the Association.

In any circumstance where notice is required to be given to a owner, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An owner may require the Association, by written demand, to provide notice to the owner by US mail. The Board is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time. Additionally, any notice required to be sent under the provision of this Amended Declaration shall be deemed to have been properly sent when deposited in the US Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 13.6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 13.7. Waivers. No provision contained in the Amended 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 13.8. Topical Headings. The topical headings contained in this Amended Declaration are for convenience only and do not define, limit, or construe the contents of the Amended Declaration.

Date Recorded with the Washington County, Utah, Recorder's Office \_\_\_\_\_.

**ASSOCIATION MEMBERSHIP APPLICATION  
AND AGE VERIFICATION FOR  
WEST SPRINGS TOWNHOMES ASSOCIATION**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Mobile: \_\_\_\_\_

I am eighteen (18) years of age or older, and I hereby certify that at least one (1) member of my household that will be living with me in said home is fifty-five (55) years of age or older and that no person living with me in said home will be under eighteen (18) years of age.

Signed \_\_\_\_\_ Date: \_\_\_\_\_

Proof of age is indicated by my: \_\_\_\_\_ Drivers License  
\_\_\_\_\_ Birth Certificate  
\_\_\_\_\_ Passport  
\_\_\_\_\_ Immigration Card  
\_\_\_\_\_ Any state, local, national, or official  
document containing a birth date of  
comparable reliability

I request the issuance of an "Approved Occupant's Identification Letter" for Lot/Unit Number: \_\_\_\_\_ purchased on: \_\_\_\_\_ or leased on: \_\_\_\_\_ in my name.

Signed \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Approved. Occupant's Identification Letter Issue (Date): \_\_\_\_\_

\_\_\_\_\_ Denied (Reason/Date): \_\_\_\_\_

Signed (Management Company/President/Trustee): \_\_\_\_\_

Dated: \_\_\_\_\_

**NOTICE OF INTENT TO LEASE APPLICATION  
WEST SPRINGS TOWNHOMES ASSOCIATION**

**TO ALL OWNERS:**

All owners seeking to lease their lots are required to complete and submit the form below in the attached self-addressed envelope to the Association c/o Monarch Property Management, 1240 East 100 South #10, St. George UT 84770, as required by Section 10.5 of the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of West Springs Townhomes Association prior to the completion of the Approved Occupant Status and Membership Application and Age Verification requirements of all future lessees before any degree of occupancy is allowed.

**REGISTRATION INFORMATION**

1. Name(s )of Intended Lessee(s): \_\_\_\_\_

2. Telephone numbers of intended Lessee(s): \_\_\_\_\_

a. Home: \_\_\_\_\_ b. Work: \_\_\_\_\_ c. Mobile: \_\_\_\_\_

3. Name of Owner(s): \_\_\_\_\_

4. Telephone numbers of Owner(s): \_\_\_\_\_

a. Home: \_\_\_\_\_ b. Work: \_\_\_\_\_ c. Mobile: \_\_\_\_\_

5. Current address Owner(s): \_\_\_\_\_

6. Date of Owner's Deed: I/We verify that the date of our deed to Lot # \_\_\_\_\_ in West Springs Townhomes is dated as of: \_\_\_\_\_ and has been duly recorded in the records of the Washington County Recorder and that our ownership of said lot is in excess of twelve (12) consecutive months. Further, I/we hold a valid City of St. George Business License. A copy of said Business License is attached.

I/we the owners of lot(s) \_\_\_\_\_ hereby verify that the above information is true, accurate, and complete.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Signed: \_\_\_\_\_ Signed: \_\_\_\_\_

7. Date: \_\_\_\_\_ Time: \_\_\_\_\_ received by the Property Management Company and/or the Board of Trustees.

Signed: \_\_\_\_\_  
(Agent)

**Amended and Restated Declaration of Covenants,  
Conditions, and Restrictions  
For  
West Springs Townhomes Association  
Phases 1 - 6**

**Date:** March 19, 2013

Pursuant to and in accordance with the Declaration of Covenants, Conditions, and Restrictions (CC&R), Article XI, Section 4, of the West Springs Townhomes Association, Phases 1 – 6, the required sixty-seven percent (67%) of the owners have approved the Amended and Restated Declaration of Covenants, Conditions, and Restrictions. These Amended and Restated Declaration of Covenants, Conditions, and Restrictions wholly replace the former Declaration of Covenants, Conditions, and Restrictions dated 20 April 1992.

I certify that on March 19, 2013, the ballots were counted by a trustee representing the Board of Trustees and a representative from Monarch Property Management, 1240 East 100 South, Suite 10, St. George, Utah 84790. The ballots were handled in a proper manner and the vote count is accurate. The results of the vote are 83 FOR and 8 AGAINST.

The ballots shall remain in a permanent confidential at Monarch Property Management

The Amended and Restated Declaration of Covenants, Conditions, and Restrictions shall be recorded against the West Spring Townhomes Association properties Phases 1 – 6.

EXECUTED the day and year first above written.

DECLARANT:

Raymond Jakubczak  
Raymond Jakubczak, President  
West Springs Townhomes Association

State of UTAH, County of Washington:

The foregoing document was acknowledged before me, Susan E. Stucki on this  
19<sup>th</sup> day of March, 2013

NOTARY PUBLIC Susan E. Stucki

My commission expires: 3/29/15

