

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

DIXIE SUNSHINE VILLAGE SUBDIVISION

THIS DECLARATION of covenants, conditions and re-  
strictions, hereinafter called "Declaration", is made and  
executed in St. George, Washington County, State of Utah,  
this 17 day of March 1983, by STAHOLI & HAFEN, a  
General Partnership, hereinafter called "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain proper-  
ty in the County of Washington, State of Utah, which is more  
particularly described as follows:

BEGINNING at a point N. 0°08' W. 1080.89'  
along the section line and N. 89°52' E.  
40.00' from the SW corner of Section 14,  
T42S, R16W, SLB&M, running thence N. 89°40'  
E. 123.66', thence N 0°20' W. 4.50', thence  
N. 89°40' E. 171.00', thence S. 0°20' E.  
179.00', thence S. 89°40' W. 38.00' to the  
point of a 512.16 foot radius curve to the  
left; thence southwesterly 67.23' along the  
arc of said curve, thence S. 7°51'16" E.  
50.00' on a bearing to the radius point,  
said point being on a 462.16 foot radius  
curve to the left, thence southwesterly  
47.34' along the arc of said curve to the  
point of a 504.92 foot radius reverse curve  
to the right, thence southwesterly 119.76'  
along the arc of said curve to a point of  
tangency, thence S. 89°57' W. 11.815' to  
the point of a 20.00 foot radius curve to  
the left, thence southwesterly 31.42' along  
the arc of said curve, thence N. 0°08' W.  
270.68' to the point of beginning. Con-  
taining 1.512 acres.

RECORDED DIXIE TITLE CO.

BOOK 324 PAGE 709-741  
365

1983 MAR 16 10:14:12

247250

RECORDED & INDEXED  
WASHINGTON COUNTY CLERK

BY \_\_\_\_\_

WHEREAS, Declarant is the owner of certain Townhomes and other improvements heretofore constructed or hereafter to be constructed upon the property and it is the desire and intention of the Declarant to subdivide the property into lots and to sell and convey the same to various purchasers, and

WHEREAS, Declarant will convey the said property subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the said property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of said property and which shall be construed as covenants of equitable servitude, which shall run with the real property and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

247250

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to DIXIE SUNSHINE VILLAGE ASSOCIATION, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) now owned by the Association or hereafter acquired for the common use and enjoyment of the members and not dedicated for use by the general public, specifically exempting therefrom all lots as hereafter defined which shall be deeded to grantees of Declarant. The Declarant may increase the amount of the Common Area by filing additional subdivision plats in the Washington County Recorder's office and stating thereon that said land is subject to this Declaration and by deeding additional property to the Association. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

247250

BEGINNING at a point N.  $0^{\circ}08'$  W. 1080.89'  
along the section line and N.  $89^{\circ}52'$  E.  
40.00' from the SW corner of Section 14,  
T42S, R16W, SLB&M, running thence N.  $89^{\circ}40'$   
E. 123.66', thence N  $0^{\circ}20'$  W. 4.50', thence  
N.  $89^{\circ}40'$  E. 171.00', thence S.  $0^{\circ}20'$  E.

179.00', thence S.  $89^{\circ}40'$  W. 38.00' to the point of a 512.16 foot radius curve to the left; thence southwesterly 67.23' along the arc of said curve, thence S.  $7^{\circ}51'16''$  E. 50.00' on a bearing to the radius point, said point being on a 462.16 foot radius curve to the left, thence southwesterly 47.34' along the arc of said curve to the point of a 504.92 foot radius reverse curve to the right, thence southwesterly 119.76' along the arc of said curve to a point of tangency, thence S.  $89^{\circ}57'$  W. 11.815' to the point of a 20.00 foot radius curve to the left, thence southwesterly 31.42' along the arc of said curve, thence N.  $0^{\circ}08'$  W. 270.68' to the point of beginning. Containing 1.512 acres.

LESS AND EXCEPTING Lots 1 through 12, and 1100 North Street as more particularly described on Dixie Sunshine Village Plat A, as filed in the Washington County Recorder's office, Washington County, Utah.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

247250

Section 7. "Declarant" shall mean and refer to STAHELI & HAFEN, a General Partnership, its successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Conveyance" shall mean and refer to actual conveyance of fee title to any Lot to any owner by a

warranty deed or other document of title and shall not mean the mere execution of an installment sales contract.

Section 9. "Townhome" shall mean and refer to a single family dwelling unit constructed by Declarant on a Lot.

Section 10. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the Recorder of Washington County, Utah.

Section 11. "Development" shall mean and refer to that certain real property, and any additions thereto, together with all buildings and improvements thereon, described in the Declaration.

Section 12. "Limited Common Area" shall mean and refer to those Common Areas designated on the subdivision plat or in the Declaration as reserved for the use of a certain lot owner or owners to the exclusion of the other lot owners.

247250

## ARTICLE II

### PROPERTY RIGHTS

#### Section 1. Owners' Easements of Enjoyment.

Every lot owner shall have a right and easement of use and enjoyment in and to the Common Area which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Area, provided that such fees charged by the Association shall in no way affect its status as a non-profit corporation.
- (b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage said property; the rights of such mortgage in said property to be subordinate to the rights of the Owners hereunder;
- (c) The right of the Association to suspend the voting rights of a member and to deny said member use of any recreational facility for any period during which any assessment 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) With the approval of all the holders of first mortgage liens on lots, and two-thirds of the owners, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority,

247250

or utility for such purposes and subject to such conditions as may be agreed to by the members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Area by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

- 247250
- (e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.
  - (f) The right of the Declarant and of the Association to grant and reserve easements and right-of-ways through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for public or private utilities and the construction of additional Townhomes.
  - (g) The right of individual owners to the exclusive use of parking spaces as provided in this article.

Section 2. Delegation of Use. Any member may designate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign two (2) vehicle parking spaces for each Lot.

247250

Section 4. Title to the Common Area. The Declarant covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except, (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, (iii) easements and rights-of-way of record, and (iv) a covenant to maintain the Common Area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.



ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have two classes of membership:

(a) Class A. Class A member(s) shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

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

1. When the total votes outstanding in the Class A membership equal the total votes

247250

outstanding in the Class B membership, or,

2. On January 1, 1992.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

##### Section 1. Creation of the Lien and Personal

Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each owner of any Lot 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, (b) special assessments, and (c) capital assessments, such assessments to be levied, fixed, established and collected from time to time as hereinbelow provided. The assessments, together with interest, costs and reasonable attorney's fees, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

247250

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively

for the purpose of promoting the recreation, health, safety and welfare of the members and in particular for the improvement, repair and maintenance of the Common Area, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of Townhomes situated upon the Properties. They shall include, but are not limited to, funds for the actual cost to the Association of all taxes, utilities, insurance and shall include a reserve for repairs, replacement and maintenance of those elements of the Common Area and for the maintenance of the exteriors of the Townhomes that must be replaced on a periodic basis, caring for the grounds, landscaping, garbage pickup, snow removal and other services furnished to owners by the Association, and other charges required by this Declaration or that the Board of Directors shall determine to be necessary to meet the primary purposes of the Association. Special and capital improvement assessments shall be used exclusively for the purposes for which such assessments were levied as provided for in this declaration.

247259

Section 3. Basis and Maximum of Annual Assessments. Until January 1st of the year immediately following the conveyance of the first Lot to any owner, the maximum annual assessment shall be TWO HUNDRED FORTY AND NO/100 DOLLARS (\$240.00) per Lot.

- (a) From and after January 1st of the year immediately following the conveyance of the

first Lot to an owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Lot to an owner, the maximum annual assessment may be increased more than five percent (5%) only by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

247250

Section 4. Capital Improvement Assessments. In addition to annual assessments, with the approval of two-thirds (2/3) of each class of members, the Association may levy, for any assessment period, capital improvement assess-

ments; applicable to the assessment period only; for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement, upon the Common Area, including fixtures and personal property related thereto, and for the repair of the exteriors of the Townhomes, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

247250

Section 6. Notice and Quorum for any Action Authorized Under Sections 3, 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under sections 3, 4 or 5 shall be sent to all members not less than 30 days, nor more than 60 days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present,

another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Rate of Assessment. Annual, special and capital assessments shall be fixed at uniform rates for all lots and may be collected on a monthly basis.

Section 8. Date of Commencement of Regular Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Directors.

247250 The Association shall, upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot

owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, or such other rate as the Board of Directors may establish from time to time. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs of suit, and reasonable attorney's fees incurred shall be added to the amount of such assessment.

247250 Each such owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns, or agents the right and power to bring all actions against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed or trust lien on real property, and such owner hereby expressly

grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other lot owners. The Association, acting on behalf of the lot owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 10. Nonuse and Abandonment. No owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by nonuse of any Common Area or abandonment of his Lot.

247250

Section 11. Subordination of the Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such



holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all lots including the mortgaged Lot. No such sale or transfer shall relieve such Lot from liability for any assessments which thereafter became due or from the lien thereof.

Section 12. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Area;

247250

Section 13. Management Agreements. The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days' written notice thereof. Any such contract, and any other contract (except prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration where the policy permits ~~short term~~ cancellation by the insured) with a third person wherein the third person is to furnish goods or services for any Common Area or the Association, shall be limited to a duration of one (1) year; provided, however, that such

contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of each class of members of the Association.

Section 14. Insurance. The Board or its duly authorized agent, shall have the authority to and shall obtain fire and extended coverage insurance on all improvements upon the Common Area on a current replacement basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost), and shall also obtain a broad form public liability policy covering all the Common Area and all damage or injury caused by the negligence of the Association or any of its employees or agents. Said insurance may include coverage against vandalism. The Board may also obtain directors and officers insurance.

247250 Unless at least two-thirds (2/3) of the members of each class give their prior written approval the requirements for insurance as specified in the preceding paragraph may not be amended by the Association.

## ARTICLE V

### ARCHITECTURAL CONTROL

No fence, wall, building, sign or other structure (including basketball standards), or exterior addition to, or change or alteration thereof, including painting, or

landscaping, shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on the project or any portion thereof, until plans and specifications shall have been submitted to and approved in writing by the Board of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. Said plans and specifications shall be prepared by a duly licensed architect or other person approved by the Board and shall include, where appropriate, the following:

- (a) Plot plans, showing the location of all structures and showing grade elevations and drainage;
- (b) Building plans, including floor, foundation and roof plans, with all materials therefor;
- (c) Exterior elevations, surfaces, sections, structural design and salient exterior details;
- (d) General exterior color scheme; and
- (e) Landscaping plans, showing type, location and elevation of trees, bushes, shrubs, plants, hedges and fences.

All such plans and specifications shall be submitted in writing over the signature of the owner of the property or such owner's authorized agent.

247250

Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and material; conformity and harmony of external design with neighboring structures; effective location and use of improvements in landscaping on neighboring property, improvements, landscaping, operations and uses; relation of topography; grade and finished ground elevation of property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of view and aesthetic beauty with respect to fences, walls and landscaping; assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers hereunder; conformity with such rules and regulations as may be adopted by the Board in accordance with this Article; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration. The Declarant shall not be required to comply with any of the provisions of this Article.

247250

In the event the Board fails to either approve or disapprove such plans and specifications within thirty (30) days after the same have been submitted to it, it shall conclusively be presumed that the board has approved such plans and specifications. All improvement work approved by the Board shall be diligently completed and constructed in accordance with approved plans and specifications.

Unless at least two-thirds (2/3) of the votes of each class of members have given their prior written approval, the Association shall not be entitled by act or omission to charge, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of Townhomes, the exterior maintenance of Townhomes, the maintenance of the Common Area, or the upkeep of lawns and plantings on the Common Area.

#### ARTICLE VI

##### EXTERIOR MAINTENANCE

In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment, including but not limited to, paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or heating and cooling units or equipment located upon any Lot or upon the roof of any Townhome.

247250

In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his family, or guests or invitees of the owners of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VII

EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common Area shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the City of St. George, Jones Cable Television, and Mountain States Telephone and Telegraph Company, their successors and assigns, a blanket easement upon, across, over and under all of the said Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said utilities deem appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Area.

247250

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common Area in the

performance of their duties. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially planned and approved by the Declarant or thereafter approved by the Board of Directors. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 3. Easements for Ingress and Egress. An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the duties of maintenance and repair of the Townhome or Common Area provided for herein. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Area by the streets and roads established or hereafter established on said property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has created additional planned unit development Lots and/or Townhomes.

247250

ARTICLE VIII

RIGHT OF FIRST MORTGAGEES TO PAY TAXES  
OR OTHER CHARGES WHICH ARE IN DEFAULT

First mortgagees of lots within this planned unit development may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Lot or Common Area and may pay overdue premiums on hazard insurance coverage on the lapse of a policy for such Lot or Common Area and first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association.

ARTICLE IX

ANNEXATION OF ADDITIONAL PROPERTIES

Declarant reserves the right to expand DIXIE SUNSHINE VILLAGE SUBDIVISION and annex additional land as set forth herein. A part, parts or all of the following described property may be annexed to the DIXIE SUNSHINE VILLAGE PLAT A, SUBDIVISION, a planned unit development, by Declarant, without the consent of Class A members, for a period terminating January 1, 1992; provided that the Federal Housing Administration and the Veteran's Association determine that the annexation is in accord with the general plan heretofore approved by them.

247250

BEGINNING at a point on the east line of Dixie Downs Road, said point being N 00°08' W. 1240.55 feet along the Section line and N 89°52' E. 40.00 feet from the Southwest Corner of Section



14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence N 89°52' E. 633.00 feet; thence N. 00°08' W. 412.17 feet to a point on the South line of 1230 North Street; thence S 89°14' E. 126.52 feet along the South line of said Street to a point of a 20.00 foot radius curve to the right; thence Southeasterly 31.09 feet along the arc of said curve; thence N. 89°50'11" E. 25.00 feet; thence S. 00°09'49" E. 1.46 feet; thence N. 89°50'11" E. 25.00 feet to a point on a 20.00 foot radius reverse curve to the right (the radius point of which is N. 89°50'11" E. 20.00 feet); thence Northerly and Easterly 31.74 feet along the arc of said curve; thence S. 89°14' E. 153.585 feet to a point of a 20.00 foot radius curve to the right; thence Southeasterly 31.09 feet along the arc of said curve; thence N. 89°50'11" E. 25.00 feet; thence S. 00°09'49" E. 1.46 feet; thence N. 89°50'11" E. 25.00 feet to a point of a 20.00 foot radius reverse curve to the right (the radius point of which is N. 89°50'11" E. 20.00 feet); thence Northerly and Easterly 31.74 feet along the arc of said curve; thence S. 89°14' E. 76.465 feet to the Northwest Corner of Lot 33, Canyon View Estates; thence S. 00°46' W. 84.71 feet; thence N. 89°50'11" East 123.16 feet to a point on the 1/16 Section line; thence S. 00°09' 49" E. 218.29 feet along said 1/16 line to the 1/16 Corner; thence North 89°31'45" E. 866.19 feet along the 1/16 line; thence South 105.00 feet to a point in the center of a Wash; thence S. 44°00' W. 374.99 feet along said center of Wash; thence South 345.88 feet; thence S. 52°00' W. 635.85 feet; thence West 101.46 feet to a point on the 1/16 line; thence N. 00°09'49" W. 427.57 feet along the 1/16 line; thence S. 89°27' 50" W. 160.00 feet; thence S. 00°09'49" E. 120.00 feet; thence S. 89°27'50" W. 1041.93 feet; thence N. 00°08' W. 120.00 feet; thence S. 89°27'50" W. 69.50 feet to a point of a 20.64 foot radius curve to the left; thence Westerly and Southerly 32.28 feet along the arc of said curve to a point on the East line of Dixie Downs Road; thence N. 00°08' W. 606.17 feet along said East line of Road to the point of beginning. Containing 40.445 acres.

247250

In the event the Declarant, within the time period set forth in this Article, files other subdivision plat(s)

creating additional planned unit developments in the afore-described property under the name and style of DIXIE SUNSHINE VILLAGE Plat \_\_, SUBDIVISION, and states on said plat(s) the intention to have the property described on said plat subject to the terms, covenants and conditions of this Declaration, then, upon recording of said plat, the property described therein shall be subject to this Declaration. The terms, covenants and conditions contained herein run not only to, with and from the property described herein, but by this reference to said plat or plats, also to, with and from all adjoining additions thereto made pursuant to this Article.

Any additional planned unit developments annexed hereto by the Declarant shall be comprised exclusively of residential single family dwellings, architecturally compatible to the existing Townhomes; substantially similar to the Townhomes already constructed; constructed out of similar materials. The Declarant shall have the sole discretion to develop the Common Area in said addition(s) and to include any facilities or amenities thereon that Declarant deems necessary.

247250 Furthermore, if additional planned unit developments are created by the Declarant pursuant to the terms of this Article, the lot owners in said addition(s) shall be members of the Association and shall have the same rights to the use and enjoyment of the property and facilities of the Association as any other member, either an owner in DIXIE

SUNSHINE VILLAGE PLAT A, SUBDIVISION, or otherwise. The Common Area in any such additional planned unit development(s) as set forth therein shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens prior to the conveyance of the first Lot on said plat and the Association must accept the deed to said Common Area.

## ARTICLE X

### USE RESTRICTIONS

Section 1. Residential Use. No owner shall occupy or use his Townhome, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the owner and the owner's family or the owner's lessees or guests.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

247250

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said Townhomes to maintain during the period of construction and sale of said Townhomes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental

to the construction and sale of said Townhomes, including but without limitation, a business office, storage area, construction yard, signs, model Townhomes and sales office.

Section 4. Household Pets Permitted. No animals, livestock or poultry of any kind may be raised, bred or kept on any Lot or in the Common Area, except that dogs, cats or other household pets may be kept in Townhomes, or upon any Lot subject to the rules and regulations adopted by the Board of Directors.

Section 5. Signs. No signs of any kind shall be displayed to the public view on or from any Lot or the Common Area without prior consent of the Board of Directors.

Section 6. Obstruction of the Common Area. There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior consent of the Board of Directors.

Section 7. Prohibited Uses. No noxious or offensive activities shall be carried on in any Lot or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the owners.

247250 Section 8. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Area.

Section 9. Alteration of Common Area. Nothing shall be altered or constructed, or removed from the Common

Area, except with the written consent of the Board of Directors.

Section 10. Owner's Responsibility for Maintenance. All utilities, fixtures and equipment including but not limited to heating and cooling, installed within a Townhome, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls or roof of a Townhome shall be maintained and kept in repair by the owner thereof. The Owner shall also maintain, repair and replace, at his expense, any heating or cooling unit located upon the roof of his Townhome or upon his Lot. 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 Townhomes or their owners.

Section 11. Time Sharing Prohibited. Neither the Declarant nor the owner of any Lot shall allow or permit any form of time sharing ownership.

Section 12. Leases. Any lease agreement between **247250** a Townhome owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association and the Bylaws of said Association, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Furthermore, all leases shall be in writing.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or the Declarant or its successors in interest, or any owner, shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant and lot owners, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, 247250 irrespective of the fact that any article, section, sub-

section, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. Gender and Grammer. The singular wherever used in this Declaration 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 5. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

247250 Section 6. FHA/VA Approval. As long as there is Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the

Veteran's Administration: annexation of additional Properties, dedication of Common Area, and the amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE XII

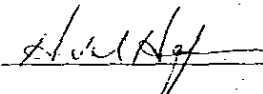
AMENDMENT

Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the lot owners, and thereafter, by an instrument signed by not less than seventy-five (75%) of the lot owners, which which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the members will vote on said amendment.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal the day and year first above written.

STAHELI & HAFEN  
a General Partnership,

Declarant

  
\_\_\_\_\_

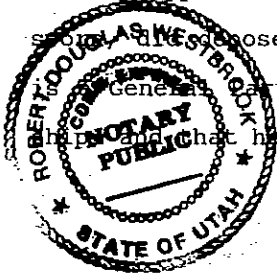
247250

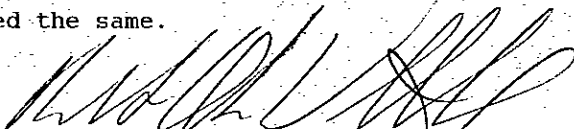
740



STATE OF UTAH )  
 : ss.  
COUNTY OF WASHINGTON)

On the 17 day of March, 1983, before me, a  
Notary Public in and for the above State and County, per-  
sonally appeared H. VAL HAFEN, who being by me first duly  
sworn, did depose and say: That he, the said H. VAL HAFEN,  
General Partner of STAHELI & HAFEN, a General Partner-  
ship, and that he duly executed the same.



  
NOTARY PUBLIC  
Residing at St. George, Utah

My Commission Expires:  
May 1, 1983

247250