

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SHADOWBROOK HOMES Plat A  
A PLANNED UNIT DEVELOPMENT, ST. GEORGE, UTAH

BY \_\_\_\_\_  
DOCUMENT \_\_\_\_\_  
HERBERT S BENNETT  
WASHINGTON CITY RECORDER  
REQUESTED BY LINDA HILLE CO.  
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

SHADOWBROOK HOMES Plat A

THIS DECLARATION of covenants, conditions and restrictions, hereinafter called "Declaration", is made and executed in St. George, Washington County, State of Utah this 14 day of March, 1986, by R. E. PEAY AND D. O. DEAN CONSTRUCTION COMPANY, a partnership, hereinafter called "Declarant"

W I T N E S S E T H :

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

Commencing at a point on the South boundary of 700 South Street, said point being located North 00°08'44" East 26.91 feet and South 89°44'45" East 134.91 feet from the Southwest corner of Fractional Block 2, Plat "B", ST. GEORGE CITY SURVEY, Washington County, Utah; thence South 89°44'45" East along the South boundary of said 700 South Street 393.09 feet; thence South 00°08'44" West 16.72 feet; thence North 89°08'50" East 90.01 feet; thence North 00°08'44" East 14.98 feet; thence South 89°44'45" East 137.92 feet; thence South 00°03'35" East 316.32 feet; thence North 88°54'50" West 25.00 feet; thence South 89°56'25" West 273.00 feet; thence North 59°05'45" West 29.15 feet; thence South 89°56'25" West 124.00 feet; thence South 61°34'16" West 28.41 feet; thence South 89°56'25" West 124.00 feet; thence South 79°44'11" West 25.40 feet; thence North 00°03'35" West 322.22 feet to the point of beginning.

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;

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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.

ARTICLE I  
DEFINITIONS

Section 1. "Association" shall mean and refer to DEAN & PEAY PATIO HOMES OF ST. GEORGE, 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 Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Commencing at a point on the South boundary of 700 South Street, said point being located North 00°08'44" East 26.91 feet and South 89°44'45" East 134.91 feet from the Southwest corner of Fractional Block 2, Plat "B", ST. GEORGE CITY SURVEY, Washington County, Utah; thence South 89°44'45" East along the South boundary of said 700 South Street 393.09 feet; thence South 00°08'44" West 16.72 feet; thence North 89°08'50" East 90.01 feet; thence North 00°08'44" East 14.98 feet; thence South 89°44'45" East

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137.02 feet;	thence	South	00°03'35"	East
316.32 feet;	thence	North	88°54'50"	West
25.00 feet;	thence	South	89°56'25"	West
273.00 feet;	thence	North	59°05'45"	West
29.15 feet;	thence	South	89°56'25"	West
124.00 feet;	thence	South	61°34'16"	West
28.41 feet;	thence	South	89°56'25"	West
124.00 feet;	thence	South	79°44'11"	West
25.40 feet;	thence	North	00°03'35"	West
322.22 feet;	to the point of beginning.			

LESS AND EXCEPTING Lots 9 through 28, more particularly described on that Plat of SHADOWBROOK HOMES, 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.

Section 7. "Declarant" shall mean and refer to R. E. PEAY AND D. C. DEAN CONSTRUCTION, a 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. "Board of Directors" shall mean and refer to the governing board of the Homeowner's Association defined above.

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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. The right of the association to mortgage common area property is subject to the approval required under Article II, Sec. 1(d).
- (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, abandon, partition, subdivide, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Area to any public agency, authority, 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, with the written approval of all holders of first mortgage liens on lots.

(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.

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. 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 outstanding in the Class B membership, or,

2. On January 1, 1991.

(c) Changes in Voting Procedure. If Declarant shall exercise his option to annex additional property and include the same under this Declaration as provided herein, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, including that developer may regain his Class B voting status for all lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

#### ARTICLE 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, (2) special assessments, and (3) 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.

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.

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 Seven Hundred Eighty Dollars (\$780.00) 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 ten percent (10%) 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 ten percent (10%) 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.

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 assessments, 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.

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, except that the Board may reduce the assessment on those lots owned by the Declarant on which improvements have not yet been erected nor occupied.

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.

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.

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 of 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.

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. 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.

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 of 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 Assessments. The Board of Directors, or its duly authorized agent shall have the authority to and shall obtain insurance for all the buildings, including all townhouses, unless the owners thereof have supplied proof of adequate coverage to the Board of Directors' complete satisfaction and approval, which shall not be unreasonably withheld, against loss or damage by fire or other hazard, and shall also obtain a broad form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Said fire and extended

coverage on the insurable common property shall be in the amount of the replacement value.

Premiums for all such insurance coverage, including insurance on townhomes obtained by the Board of Directors, shall be written in the name of the Association as Trustee for each of the townhome owners in the same proportions as the square footage of each townhome bears to the total square footage of all the townhomes combined. Insurance on individual townhomes obtained by the Board of Directors on

townhomes shall not be a part of the common expense, but shall be an expense of the specific townhome or townhomes so covered and a debt owed by the owners, and shall be collectible by a lawful procedure permitted by the laws of the State of Utah.

In addition, if said debt is not paid within twenty (20) days after notice of such debt, such amount shall automatically become a lien upon such owner's lot and townhouse and shall continue to be such a lien until fully paid. This lien shall be subordinate to liens as set forth in Section 11 above and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. In addition to the aforementioned insurance required to be carried by the owners and/or the Association, any owner may, if he wishes, at his own expense, insure his own townhouse unit for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, homeowner's liability insurance, theft, and other insurance covering personal property damage and loss.

In the event of damage or destruction by fire or other casualty to any properties covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the properties to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution whose accounts are insured by a Federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction, or rebuilding of such destroyed building or buildings.

In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all owners of the damaged townhouses in such proportions as the Board of Directors deem fair and equitable in the light of the damage sustained by such townhomes. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests.

In the event of damage or destruction by fire or other casualty to any townhome or other property covered by insurance written in the name of an individual owner, said owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of the exterior of the townhome in good workmanlike manner in conformance with the original plans and specifications of said townhomes. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhome area within thirty (30) days, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such townhome in a good and workmanlike manner in conformance with the original plans and specifications of the townhome. The owner shall then repay the Association in the amount actually expended for such repairs, and the Association shall have a lien securing the payment of insurance premiums, and subject to foreclosures as above provided.

#### ARTICLE V PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall built as a part of the original construction of a townhome upon the properties and placed between two (2) separate living units intended for use and occupancy as a residence by a single family shall constitute a party wall and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any owner who has used the wall may restore it, and if the owners thereafter make use of the wall, they shall

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contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. The word "use" as referred to herein means ownership of a dwelling unit or other structure which incorporates such wall or any part thereof.

**Section 4. Weatherproofing.** Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs With Land.** The right of an owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

**Section 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors of the Association shall select an arbitrator for the refusing party.

**Section 7. Encroachment.** If any portion of a party wall or other part of a building or structure now or hereafter constructed upon said property encroaches upon any part of the Common Areas or upon the lot or lots used or designated for use by another lot owner, an easement for the encroachment and for the maintenance of same is granted and reserved and shall exist and be binding upon the Declarant and upon all present and future owners of any part of said property for the benefit of the present and future owners of such encroaching building or structure for the purpose of occupying and maintaining the same; in the event a structure consisting of more than one dwelling unit becomes partially or totally destroyed or in need of repair or replacement, mutual and reciprocal easements are granted and reserved upon the Common Areas and in and upon each dwelling unit and lot for the benefit of the Association and the adjacent owner or owners to the extent reasonably necessary or advisable to make repairs and replacements; and minor encroachments resulting from any such repairs and/or replacements and the maintenance thereof are hereby granted and reserved for the benefit of the present and future

owners thereof. The easements for encroachment herein granted and reserved shall run with the land.

**ARTICLE VI**  
**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.

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.

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 change, 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 VII 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.

In 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 VIII 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, Utah Power and Light, 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.

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.

**ARTICLE IX  
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 X  
ANNEXATION OF ADDITIONAL PROPERTIES**

**Section 1. Annexation by Declarant.** Declarant reserves the right and option to expand SHADOWBROOK HOMES, PHASE I and annex additional land as set forth herein. A part, parts or all of the following described property may be annexed to SHADOWBROOK HOMES, PLAT "A" a planned unit development, by Declarant, without the consent of Class A members, for a period terminating January 1, 1991. The

additional land that may be annexed by the Declarant is described as follows:

Beginning at the Southwest Corner of Fractional Block 2, Plat "B", St. George City Survey, Washington County, Utah, said point being South 89°51'01" East along the 700 South Street control line 1267.00 feet and South 00°08'44" West 86.63 feet from the city control monument at the intersection of 700 East and 700 South Street and running thence North 00°08'44" East along the East line of 900 East Street 26.916 feet; thence South 89°44'45" East along the South line of 700 South Street 905.41 feet; thence South 00°03'35" East 605.00 feet; thence North 89°44'45" West 905.41 feet; thence North 00°03'35" West 578.08 feet to the point of beginning.

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 aforescribed property under the name and style of SHADOWBROOK HOMES, PLAT "A" 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.

**ARTICLE XI  
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.

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.

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 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 By-laws 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.

Section 13. Garages. All garages constructed shall be maintained as such and shall not be converted to additional living space.

Section 14. Exterior Television or Other Antennas. No exterior radio or other antennas shall be placed, allowed or maintained upon any lot without prior written approval and the authorization of the Board of Directors.

## ARTICLE XII 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, irrespective of the fact that any article, section, subsection, 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 Grammar. 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.

**ARTICLE XIII  
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 eighty percent (80%) of the lot owners, and thereafter, by an instrument signed by not less than seventy-five percent (75%) of the lot owners, 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.

DECLARANT -

R. E. PEAY AND D. C. DEAN  
CONSTRUCTION COMPANY,  
a partnership

By: [Signature]  
ROBERT E. PEAY, Partner

By: [Signature]  
DONALD C. DEAN, Partner

STATE OF UTAH,  
County of Wasatch ss.

On the 14 day of March, 1986, before me, a Notary Public in and for the above State and County, personally appeared ROBERT E. PEAY and DONALD C. DEAN, General Partners of R. E. PEAY AND D. C. DEAN CONSTRUCTION COMPANY, a partnership, who being by me first duly sworn, declared to me that they are the persons who signed the foregoing document as Declarant and that the statements therein contained are true. In witness whereof, I have hereunto set my hand and seal, this 14 day of March, 1986.

[Signature]  
Notary Public

Residing at Santa Clara, UT

My commission expires:

May 1, 1987