

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

VISTA RIDGE ESTATES

A PLANNED UNIT DEVELOPMENT

(AMENDS AND REPLACES SUMMER HILL ESTATES  
AND SUMMER HILL ESTATES AMENDED)

THIS DECLARATION of covenants, conditions and restrictions,  
hereinafter called "Declaration," is made and executed in St.  
George, Washington County, State of Utah, This 11<sup>th</sup> day of  
Dec., 1989, by Orvin P. Nielsen, 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:

The North  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$   
of Section 15, Township 42 South, Range 16 West,  
Salt Lake Base and Meridian and being further  
described as follows:

Beginning at the East  $\frac{1}{4}$  corner of Section 15,  
Township 42 South, Range 16 West, Salt Lake Base  
and Meridian; thence South 89°28'20" West,  
1,342.35 feet; thence South 0°17'16" East,  
668.15 feet; thence North 89°24'37" East,  
1,342.18 feet; thence North 0°16'21" West,  
666.70 feet to the point of beginning.  
Containing 20.57 acres more or less.

0357786 Bk 0543 Pg 0514

RUSSELL SHIRTS & WASHINGTON CO RECORDER  
1989 DEC 11 11:04 AM FEE \$30.00 BY KJR  
REQUEST: NIELSEN ORVIN P

WHEREAS, the property herein described has heretofore been platted and developed under the name of Summerhill Estates Phase I and Summerhill Estates Phase I Amended, Vista Ridge Estates Phase I amended, and Vista Ridge Estates Phase II, said official plats having been recorded in the office of the Washington County Recorder, respectively at Book 408, page 937; Book 413, page 712; Book 511, page 377; and Book 543, page 318.

WHEREAS, it is the desire and the intent of the Declarant, to amend, substitute and replace the Declaration of Covenants, Conditions and Restrictions which was previously recorded in the office of the Washington County Recorder on the 2nd day of May, 1986, As Entry No. 293501, Book 411, pages 105-129 and as amended thereafter; and

WHEREAS, said Declaration heretofore filed is hereby amended, modified and it is intended that the Vista Ridge Declaration of Covenants, Conditions & Restrictions wholly replace and supersede the prior Declaration with the execution and recording of same; and

WHEREAS, Declarant and members are now the owner of certain town-homes and other improvements heretofore constructed or hereafter to be constructed upon the property; and

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

NOW, THEREFORE, Declarant and members 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. "Homeowners association" shall mean and refer to VISTA RIDGE HOMEOWNERS ASSOCIATION, its successors and assigns, a Utah nonprofit corporation.

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 Homeowners Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) now owned by the Homeowners Association and currently platted 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 or heretofore have been 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 by deeding additional property to the Homeowners Association.

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 Homeowners Association.

Section 7. "Declarant" shall mean and refer to ORVIN P. NIELSEN, his 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 this Declaration of Covenants, Conditions, and Restrictions applicable to the Properties recorded in the office of the Recorder of Washington County, Utah.

Section 11. "Board of Trustees" shall mean and refer to the governing board of the Homeowners Association defined above.

ARTICLE II  
PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every Townhome 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 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 the 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, 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 shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of members and has been recorded.
- (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 rights-of-way 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.

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. All such use by family members, tenants, contract purchasers or guests shall be subject to this Declaration, the Bylaws and the Rules and Regulations promulgated by the Board of Trustees.

Section 3. Title to the Common Area. Title to the Common Area in Phase I has been deeded to Homeowners Association. Additional Common Area in Phase II will be deeded to Homeowners Association when determined by declarant as necessary, that it will convey fee simple title to the Common Area to the Homeowners Association, free and clear of all encumbrances and liens. 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.

Section 4. Limitation of Homeowners Association. The Association shall not be entitled to take any of the following actions unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each mortgage owned) or two-thirds (2/3) of the owners (other than the Declarant) shall have first given their prior written approval:

(a) To act, or by omitting to act, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the lots. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this clause.

(b) To act, or by omitting to act, to change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of lots or living units, the exterior maintenance of the lots or living units, the maintenance of the Common Areas, or the upkeep of the Common Areas.

(c) To fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in an amount equal to at least one hundred percent (100%) of the insurable value (based on current

replacement cost).

- (d) To use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of the Common Areas.

### 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 voting 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 member shall not be subjected to any assessments until Townhome is occupied for the first time, or converted to Class A membership which shall occur when deed is issued.

(c) Changes in Voting Membership: Declarant having added additional lots in phase II hereby retains his class B Membership voting status for lots owned even though previously converted to Class A status in prior phase.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant and members for each Townhome completed and occupied for the first time, hereby covenants, and each owner of any Townhome by acceptance of a deed therefor, 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 townhome and shall be a continuing lien upon the Townhome 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 Townhome 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. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the property. The use made by the Association of funds obtained from assessments may include payment of the cost of: taxes and insurance on the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

Section 3. Basis and Maximum of Annual Assessments. Until January 1st of 1990, the maximum annual assessment shall be Four Hundred Eighty Dollars (\$480.00) per townhome.

(a) From and after January 1, 1990, 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 1, 1990, 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 Trustees 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, 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 thirty (30) days, no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty-six and two thirds percent (66-2/3%) 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 sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment. Annual, special and capital assessments shall be fixed at uniform rates for all Townhomes after 1st occupancy, and may be collected on a monthly basis.

Section 8. Regular Assessments; Due Dates. The Board of Trustees shall fix the amount of the annual assessment against each Townhome 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 Trustees.



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 Townhome 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 Townhome 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 eighteen percent (18%) per annum, or such other rate as the Board of Trustees 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. Notwithstanding any other remedy provided in the Bylaws for collection of assessments, the Association shall reserve the right to withhold and interrupt service of utilities to any such unit on which the assessment is delinquent in excess of thirty (30) days from the due date.

Each such owner, by his acceptance of a deed to a Townhome, 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 Townhome 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. Non-use and Abandonment. No owner may waive or escape personal liability for the assessments provided for herein, nor release the Townhome owned by him from the liens and charges hereof, by non-use of any Common Area or abandonment of his Lot.

Section 11. Subordination of the Lien to Mortgages. The lien created hereunder upon any Townhome 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 Townhome, 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 Townhome 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 Townhome which accrue prior to the time such holder comes into possession of the Townhome, 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 Townhome. Any first mortgagee who obtains title to a lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the Townhomes's unpaid dues or charges which have accrued before the acquisition of title to the lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Townhome from liability for any assessments which thereafter become 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.
- (c) Lots owned by Declarant; or until Townhome is built and occupied

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 Assessments.** The Board of Trustees, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all Townhomes, unless the owners thereof have supplied proof of adequate coverage to the Board of Trustees' 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 and injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. All fire and extended coverage on the improvements located on the Common Area shall include coverage to cover the replacement value of all such improvements.

Premiums for all such insurance coverage, including insurance on Townhomes obtained by the Board of Trustees, 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 Trustees 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 Townhome 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 Townhome 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 Trustees 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 Trustees. The Board of Trustees shall advertise for sealed bids with any licensed contractors, and then may negotiate with any 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 Trustees shall levy a special assessment against all owners of the damaged Townhomes in such proportions as the Board of Trustees deem fair and equitable in 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 Townhome. 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 Trustees, 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 original construction of a townhome or townhome garage upon the properties and placed between two (2) separate living units or garage units intended for use and occupancy as a residence by a single family or appurtenant garage 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 for 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 contribute to the cost of restoration thereof in equal proportions with 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 Contributions 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 Trustees of the Association shall select an arbitrator for the refusing party. The cost of arbitration shall be divided among the disputing parties.

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

Section 1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC") the function of which shall be to insure that all exteriors of living units and landscaping within the property harmonize with existing surroundings and structures. The committee need not be composed of owners. If such a committee is not appointed, the board itself shall perform the duties required of the committee.

Section 2. Submission to Committee. No living unit, accessory or addition to a living unit, landscaping, or other improvement of a lot which is visible from the Common Areas shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any living unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Architectural Control Committee.

Section 3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the committee shall use its best judgement to insure that all improvements, construction, landscaping, and alterations on lots within the property conform to and harmonize with existing surroundings and structures. The Board may formulate general guidelines and procedures. The adopted guidelines and procedures shall be incorporated in the book of rules and regulations adopted by the board and the Architectural Control Committee, or the board, as the case maybe, shall act in accordance with such guidelines and procedures.

Section 4. Approval Procedure. Any plans and specifications submitted to the committee shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

Section 5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the committee shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Area in the vicinity of the activity.

Section 6. Disclaimer of Liability. Neither the Architectural Control Committee, nor any member thereof acting in good faith, shall be liable to the Association or any owner for any damage, loss, or prejudice suffered or claimed on account of:

- (a) The approval or rejection of, or the failure to approve or reject, plans, drawings or specifications;
- (b) The development or manner of development of any of the property, or
- (c) Any engineering or other defect in approved plans and specifications.

Section 7. Non-Waiver. The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications.

Section 8. Exception for Declarant. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any lot or on any part of the Common Areas. Declarant shall further have the right to designate the location and design of any common area amenities, including, but not limited to, clubhouse, pool, or other recreational amenities or green areas, provided that the Declarant shall not be required to provide any such amenities by virtue of this Section.

Section 9. Declarant's Obligation. Declarant hereby covenants in favor of each owner that all living units erected by it, or caused to be erected by it, and all improvement of the Common Areas accomplished by it shall be architecturally compatible with respect to one another.

## ARTICLE VII

### OPERATION AND MAINTENANCE

Section 1. Maintenance of Lots and Living Units. Each lot and living unit shall be maintained by the owner thereof so as not to detract from the overall appearance of the development and so as not to affect adversely the value or use of any other lot or living unit. The Association shall have no obligation regarding maintenance or care of lots or living units except as provided in Section 2 of this Article VII.

Section 2. Operation and Maintenance by Association. The Association, by its duly delegated representative, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the lots, and to keep them clean, functional, attractive and generally in good condition and repair. Notwithstanding the provisions regarding lot and living unit maintenance by owners, in the event an owner of any lot in the property shall fail to maintain his lot or living unit in a manner satisfactory to the Architectural Control Committee or the Board, after approval of a majority vote of the Board of Trustees, the Association shall have the right, through its agents, employees, or through an independent contractor, to enter upon such lot and repair, maintain, restore the portion of the lot maintainable by the owner and any other improvements erected thereon (excluding the interior of the living unit). The costs incurred



by the Association in maintaining, repairing or restoring those portions of the lot maintainable by the owner, shall then be added to and become an assessment and lien against the lot as described in Article IV, Section 1 of this Declaration.

Section 3. Utilities. The Association shall pay for the monthly cable T.V. service, water, and Insurance of Clubhouse, and utilities of clubhouse. Each lot owner shall pay for all utility services which are separately billed or metered to individual lots by the City of St. George or other party furnishing such service.

#### 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, Falcon Cable Television, Mountain Fuel Supply Company, 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 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 Trustees. 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, yard and landscape area, 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, roads, paths, walkways, 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 or may create additional planned unit development Lots or townhomes.

#### ARTICLE IX

##### 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 entire 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 Trustees. All dogs or cats in the Common Area shall be on a lease.

Section 5. Signs. No signs of any kind, including real estate and "For Sale" signs shall be displayed to the public view on or from any Lot or the Common Area except by the Declarant or his successors.

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 Trustees.

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 Trustees.

Section 10. Time Sharing Prohibited. Neither the Declarant nor the owner of any Lot shall allow or permit any form of time sharing ownership.

Section 11. 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 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 and a copy of each signed lease shall be left in the office of the Association by the Homeowner.

Section 12. Recreational Vehicles. No recreational vehicles may be parked within the Common Area or upon the Driveways of each unit for longer than a seventy-two (72) hour period. In no event shall any recreational vehicle, camper, trailer, tent trailer, or mobile home be used for camping or for overnight accommodations by the lot owner or by the lot owner's guests in and on the Common Areas of the development or on the Driveways of the townhome units, except on that property specially designated by the Board of Trustees or the Declarant for this purpose.

ARTICLE X

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.

Section 6. Amendment. The covenants, conditions, and restrictions of the Declaration may be amended in the following manner:

- (a) During the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot owners, and and thereafter by an instrument signed by not less than two-thirds (2/3) of the Lot owners.
- (b) So long as the Class B membership exists, and the written consent of the Declarant is given.
- (c) Declarant shall have, and it hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable; to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information of mortgage requirements, or to better insure, in light of then existing circumstances or information, workability of the Arrangement which is contemplated by this Declaration.
- (d) Any amendment must be recorded in the Office of the Recorder of Washington County, State of Utah.

Section 7. Declarant's Right to Amend Plat. Declarant shall have, and is hereby vested with, the right to unilaterally amend the plat as may be reasonably necessary or desirable:

- (a) To adjust the boundaries of the Lots, including adding or deleting common areas (by filing an appropriate amended Plat) to accommodate design changes or changes in type of units or adjustment to lot configuration.
- (b) To conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

Section 8. Annexation. Additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3) of each class of members.

Section 9. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

Section 10. Payment of Charges by First Mortgagees. First mortgagees of Lots may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Areas, and pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Areas in case of lapse of policy.

First mortgagees making such payments are due immediate reimbursement from the Association. Entitlement to reimbursement is reflected in an agreement duly executed by the Association in favor of all first mortgagees of Lots.

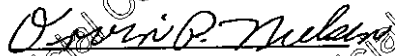
#### ARTICLE XI

##### INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The address of the initial registered office of the Association shall be 1131 Dixie Downs Rd., #15, St. George, Utah 84770. The name of the registered agent at that address is WILFORD L. GRIFFITHS.

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

Declarant



Orvin P. Nielsen

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

On the 11 day of Dec, 1989, before me, a Notary Public in and for the above State and County, personally appeared ORVIN P. NIELSEN, who being by me first duly sworn, declared to me that he is the person 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 11 Day of Dec, 1989.

My Commission Expires:  
April 21 - 1990

Blaine Anderson  
Notary Public  
Residing at: St. George, UT



DECLARATION AND CERTIFICATION TO AMEND

We the undersigned being the successors and owners and legally recorded owners of Lots #2 and Lots #34 thru 42 and Lots #54 thru 171, except Lot # 103, Which totals 129 Lots, from a total of 171, which gives Seventy-five point forty-three percent ( 75.43%) thereby giving authority to amend, substitute and replace the Declaration of Covenants, Conditions and Restrictions which was previously recorded in the office of the Washington County Recorder on the 2nd day of May, 1986, as Entry No. 293501, Book 411, pages 105-129 and as amended thereafter. Said Declaration heretofore filed is hereby amended, modified and it is intended that the Vista Ridge Declaration of Covenants, Conditions & Restrictions wholly replace and supersede the prior Declaration with the execution and recording of same. Said amendments were effective as of the date of recording as shown above.

Orvin P. Nielsen

ORVIN P. NIELSEN

Rosalie R. Nielsen

Rosalie R. Nielsen

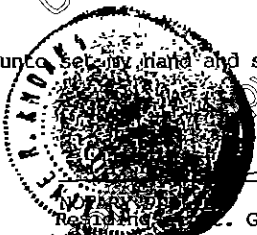
STATE OF UTAH, )  
 )  
 ) ss.  
COUNTY OF WASHINGTON )

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On the 11 day of Dec., 1989, before me, a Notary Public in and for the above State and County, personally appeared ORVIN P. NIELSEN & ROSALIE R. NIELSEN, who being by me first duly sworn, declared to me that they are duly authorized to execute said instrument.

IN WITNESS THEREOF, I have hereunto set my hand and seal this 11 day of Dec., 1989

My Commission Expires: 4-21-90



R. Andrus

Notary Public, State of Utah, George, Utah