

**Declaration of Covenants**

**Conditions And Restrictions of**

**Warm Springs Townhomes**

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AND RESTRICTIONS OF  
WARM SPRINGS TOWNHOMES**

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**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
OF  
WARM SPRINGS TOWNHOMES**

**THIS DECLARATION** of Covenants, Conditions and Restrictions is made on the date hereinafter set forth to establish a planned unit development known as Warm Springs Townhomes.

**RECITALS**

WHEREAS, Declarant is the owner of certain real property in the City of St. George, County of Washington, State of Utah, excepting lots 3, 4, 5, and 6 of Warm Springs Townhomes Phase I - Amended, which is more particularly described below, and;

WHEREAS, it is the desire and intention of Declarant to construct detached single family dwellings on the properties and sell and convey the same to various purchasers.

**DECLARATIONS**

NOW, THEREFORE, Declarant hereby declares that all of the properties described below and located in Washington County, Utah, shall be held, sold and conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and the map recorded herewith entitled "Warm Springs Townhomes Phase I - Amended," consisting of one sheet, prepared and certified by Dale A. Williams, a Utah Registered Land Surveyor, which are all for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each other thereof:

Real property situated in Washington County, State of Utah, described as follows:

BEGINNING AT A POINT S 0°19'19" E 4264.96 FEET ALONG THE CENTER SECTION LINE FROM THE N ¼ CORNER OF SECTION 11, T 42 S, R 15 W, SLB&M; AND RUNNING THENCE S 0°19'19" E 236.48 FEET ALONG THE CENTER SECTION LINE TO A 50.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 53.94 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE S 61°29'35" W 58.43 FEET; THENCE S 88°46'06" W 708.12 FEET TO THE EASTERLY RIGHT OF WAY OF WARM SPRINGS DRIVE, A PUBLIC STREET, SAID POINT BEING ON A 220.43 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHERLY 73.91 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE N 0°19'19" W 107.48 FEET TO A 20.00

FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 31.10 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE N 88°45'56" E 381.66 FEET; THENCE LEAVING SAID RIGHT OF WAY N 0°00' E 40.51 FEET; THENCE N 88°45'56" E 75.51 FEET TO A 25.00 FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY 38.73 FEET ALONG THE ARC OF SAID CURVE; THENCE N 90°00' E 50.00 FEET; THENCE N 0°00' E 43.10 FEET; THENCE N 88°45'56" E 246.36 FEET TO THE POINT OF BEGINNING. CONTAINING 4.39 ACRES.

**PARCEL 2**

BEGINNING AT A POINT S 0°19'19" E 4221.47 FEET ALONG THE CENTER SECTION LINE AND N 90°00' W 596.41 FEET AND S 00°00' W 48.82 FEET FROM THE N ¼ CORNER OF SECTION 11, T 42 S, R 15 W, SLB&M; AND RUNNING THENCE S 00°19'19" E 78.01 FEET TO THE NORTHERLY RIGHT OF WAY OF ARROWHEAD WAY, A PUBLIC STREET; THENCE S 88°45'56" W 181.25 FEET ALONG SAID RIGHT OF WAY TO A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY 31.73 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE N 0°19'19" W 60.90 FEET; THENCE LEAVING SAID RIGHT OF WAY N 89°40'41" E 201.54 FEET TO THE POINT OF BEGINNING. CONTAINING 0.36 ACRES.

**PARCEL 3**

BEGINNING AT A POINT S 0°19'19" E 4221.47 FEET ALONG THE CENTER SECTION LINE AND N 90°00' W 863.98 FEET AND S 00°00' E 41.16 FEET FROM THE N ¼ CORNER OF SECTION 11, T 42 S, R 15 W, SLB&M, SAID POINT BEING ON THE WESTERLY RIGHT OF WAY OF A PUBLIC STREET; THENCE ALONG SAID RIGHT OF WAY S 0°19'19" E 58.00 FEET TO A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 31.10 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE S 88°45'56" W 82.33 FEET; THENCE LEAVING SAID RIGHT OF WAY N 0°19'19" W 79.31 FEET; THENCE N 89°49'41" E 102.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.18 ACRES.

**PARCEL 4**

BEGINNING AT A POINT S 0°19'19" E 4221.47 FEET ALONG THE CENTER SECTION LINE AND N 90°00' W 966.21 FEET AND S 0°19'19" E 181.04 FEET FROM THE N ¼ CORNER OF SECTION

11, T 42 S, R 15 W, SLB&M, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY OF A PUBLIC STREET; THENCE ALONG SAID RIGHT OF WAY N 88°45'56" E 81.70 FEET TO A 20.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 31.73 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE S 0°19'19" E 96.04 FEET TO A 286.43 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY 74.46 FEET ALONG THE ARC OF SAID CURVE; THENCE LEAVING SAID RIGHT OF WAY S 88°46'06" W 111.64 FEET; THENCE N 0°19'19" W 190.13 FEET TO THE POINT OF BEGINNING. CONTAINING 0.44 ACRES.

EXCLUDING LOTS 3, 4, 5, AND 6, AS DESCRIBED AND ACCORDING TO THE MAP RECORDED AND IDENTIFIED ABOVE AS WARM SPRINGS TOWNHOMES PHASE I - AMENDED, TOGETHER WITH THE LIMITED COMMON AREAS IMMEDIATELY APPURTENANT THERETO, TOGETHER WITH THE COMMON AREAS APPURTENANT THERETO, SAID LOTS SHALL BE AND ARE HEREBY REMOVED FROM AND SHALL NOT BE SUBJECT TO THE COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS, ASSESSMENTS, CHARGES AND LIENS DESCRIBED WITHIN THIS DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS.

#### **ARTICLE I --DEFINITIONS**

Section 1. Declaration shall mean and refer to this instrument, and any amendments.

Section 2. Plat or Map shall mean and refer to the subdivision plat recorded herewith captioned "Warm Springs Townhomes Phase I - Amended," excluding lots 3, 4, 5, and 6 and the common areas and limited common areas appurtenant to said lots 3, 4, 5, and 6, or any replacements thereof, or additions thereto.

Section 3. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.

Section 4. Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant, subject to rights of the association, as herein set forth.

Section 6. Lot shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership and shall exclude the common and limited common areas.

Section 7. Townhome shall mean and refer to a single family dwelling, with or without walls or roofs in common with other single family dwelling lots, and shall include fee title to the real property lying directly beneath said single family dwelling.

Section 8. Owner shall mean and refer to the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, those parties shall be treated, as a group, as one "owner."

Section 9. Association shall mean and refer to Warm Springs Townhomes Homeowner's Association, Inc., its successors and assigns.

Section 10. Member shall mean and refer to every person or entity who holds membership in the Association.

Section 11. Trustees shall mean and refer to the governing body of the Association.

Section 12. Declarant shall mean and refer to John G. Graham and Gail Graham and their heirs, successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

## **ARTICLE II -- PROPERTY RIGHTS**

Section 1. Title to the Common Area The Declarant, its successors and assigns, will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, subject to covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, easements and rights-of-way of record, and a covenant by the Association 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 covenants shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

Section 2. Owners' Easements of Enjoyment Every 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 facility situated upon the common area.

(b) The right of the Association to limit the number of guests of



members using the common area.

(c) The right of the Association to suspend the voting rights of a member for any period during which any assessment against his lot remains unpaid; and for a period of not exceed sixty (60) days for any infraction of its published rules and regulations.

(d) With the approval of all first mortgagees on lots and sixty-seven percent (67%) of the owners, the right of the Association to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority, or utility.

(e) The 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 the next preceding subparagraph, and such grants may be made by the Association according to said Association's Articles and By-Laws.

(f) The right of the Association to take such steps as are reasonable necessary or desirable to protect the common area against foreclosure.

(g) The right of each individual lot owner to the exclusive use of the limited common area adjacent and appurtenant to his respective lot, and the right of each owner to exclusive use of the parking area, if any, designated with his lot number on the plat.

(h) The terms and condition of this Declaration.

Section 3. Limited Common Area Ownership of each lot shall entitle the owner thereof to the exclusive use of the limited common area adjacent and appurtenant thereto.

Section 4. Delegation of Use Any owner shall be deemed to delegate 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. No one who is a non-resident shall have any such right of enjoyment.

### **ARTICLE III --MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers, but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or other proceedings in lieu of foreclosure. Membership shall be appurtenant to, and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity without additional documentation beyond that necessary to transfer title.

Section 2. Voting Rights The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all members with the exception of the Declarant, and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be and constitute jointly, one member. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. A vote cast at any association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the lot concerned, unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-owner of the same lot. In the event objection is made, the vote involved shall not be counted for any person except to determine whether a quorum exists.

CLASS B. The Class B member shall be the Declarant (as defined in the Declaration,) and shall be entitled to six (6) votes for each lot owner. 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:

- (a) the expiration of four (4) months after conveyance of eighty-five percent (85%) of lots to purchasers;
- or
- (b) the expiration of five (5) years from the first lot conveyance to a purchaser.

#### **ARTICLE IV -- FINANCES AND OPERATIONS**

Section 1. Creation of the Lien and Personal Obligation of Assessments The Declarant, for each lot which has a completed structure on said lot and which is owned by Declarant within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance,

is deemed to covenant and agree to pay to the Association (1) annual assessments or charges; and, (2) special assessments for capital improvements. Such assessments, are to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with interest, costs of collection and a reasonable attorney's fee, as hereinafter provided, shall be a charge on the land, and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs of collection and a reasonable attorney's fee, as herein provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors-in-title unless expressly assumed by them, but such delinquent assessments shall continue as a lien upon such land.

**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 residents of the properties, and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the townhomes situated upon the properties. The assessments must provide for but are not limited to, the payment of taxes and insurance, the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas, the payment of the cost of repairing, replacing, and maintaining the exteriors of each lot, the payment of administrative expenses of the Association, insurance deductible amounts, and the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis, and the assessments may provide, at the direction of the Trustees, for the payment of other charges, including, without limitation, trash collection, sewer and water costs required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association.

**Section 3. Basis and Maximum Annual Assessments** Until January 1 following recording of this Declaration, the maximum annual assessment allowable shall be \$1200.00 per lot. This amount shall also be the basis of calculation for future maximum annual assessments.

(a) From and after the above-referenced date the maximum annual assessment may only be increased above the Annual Cost of Living percentage increase by a vote of sixty-seven percent (67%) of each class of members voting, in person or by proxy, at a meeting duly called for this purpose.

(b) The maximum annual assessment may be increased automatically, without vote, by an amount equal to actual increases in the amounts payable for taxes, special assessments and other governmental assessments or charges by the Trustee.

(c) The Trustees may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not to exceed the maximum described hereinabove.

**Section 4. Special Assessments for Capital Improvements** In addition to the annual assessments authorized by Section 3 hereof, 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 or reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of all of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Change in Basis and Maximum of Annual Assessments The Association may change the basis and maximum of the assessments fixed by Section 3 hereof prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 6. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 7. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5 Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least ten (10) days in advance of said meeting, and no more than thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership combined shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Uniform Rate of Assessment: Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all lots. Notwithstanding the foregoing, no assessment shall be levied upon a lot upon which no townhome has been constructed. Further, the rate of assessment upon a lot upon which a townhome has been constructed but not certified for occupancy shall be one-half (1/2) the assessment of other lots. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees.

Both annual and special assessments may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments; Duties of Trustees; Due Dates; Adjustment of Assessments in Certain Cases The annual assessment provided for herein shall commence to accrue on the date fixed by the Trustees of the Association to be the actual date of commencement.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year, and may commence immediately upon determination by the Trustees. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The due dates shall be established by the Trustees, upon which dates the assessments for any year shall become due and payable; provided, that the Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The due date of any special assessments authorized herein shall be fixed by the Trustees, subject to the same notice and payment requirements pertaining to annual assessments.

The Trustees shall prepare a roster of the properties, and the assessments applicable thereto at the same time that the Trustees fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, said Trustees shall record payments of assessments, and shall allow inspection of the roster by any member at all reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

A first mortgagee who has made a written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on, is entitled to a written certificate from the Association advising of any default in the performance by an owner of any obligation due under the Declaration which is not cured within sixty (60) days, provided however that said mortgagee shall be responsible for the actual cost of providing such certificate.

**Section 10. Effect of Non-Payment of Assessment - Remedies of the Association**  
Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such different rate as the Trustees shall determine appropriate) until paid.

The Association may bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, or may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member, and there shall be added to the amount of such delinquent assessment the costs and expenses of said action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure and the Association shall be

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entitled to the appointment of a receiver to collect the rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise, and under which the lot of an owner may be sold in the manner provided by Utah law pertaining to deeds of trust, as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for the purposes of power of sale foreclosure.

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

Section 11. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien resulting from such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot or owner from liability for assessments thereafter becoming due or from the lien attaching for such after occurring assessments.

Section 12. Exempt Properties The following property subject to this declaration shall be exempt from the assessment, charge and lien created herein:

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All common and limited common area;
- (c) Lots owned by Declarant which do not have a completed townhome structure built thereon.

However, no land or improvement devoted to dwelling use shall be exempt from said assessment, charge and lien.

Section 13. Insurance The Trustees of the Association, or their duly authorized agents, shall obtain and continue in effect:

- forms:
- (a) Property damage insurance, in one of the following alternate forms:
    - (1) a policy of property insurance equal to full replacement costs (exclusive of land, foundation, excavation and other like items) of the common area, limited common area, and improvements thereon.

The Association shall also require each owner to obtain a similar policy of insurance covering full replacement value (exclusive of land, foundation, excavation and other

like items) of his lot and the improvements thereon with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with the provision that the policy may not be canceled with less than thirty days written notice to the Association;

or

- (ii) in the alternative to the obtaining of insurance specified previously in subparagraph (i) the Association may obtain a "master" or "blanket" policy of insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the lots, common area, limited common areas and improvements thereon, with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with a provision that the policy may not be canceled upon less than Thirty days written notice to the Association.

Insurance procured under this subparagraph: (a) shall (1) include an agreed amount endorsement or its equivalent, if available, or an inflation guard endorsement, (2) include construction code endorsement, providing that coverage shall be extended to the cost of construction, if any, required by reason of code provisions requiring changes to undamaged portions of partially demolished premises be made in accordance with current building codes, and (3) afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and of debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and such other risks as are customarily covered in similar projects. The maximum deductible shall be \$10,000.00 or 1% of the policy amount whichever is lesser, except in case of coverage related to individual units, in which case the deductible shall be the \$1,000.00 or 1% of the policy amount, whichever is lesser.

(b) a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal and legal liability that results from employment contracts to which the Association is a party. Such liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

(c) fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers management agents of others responsible for handling funds held and collected for the benefit of the owners or members. Said fidelity insurance shall (a) name the Association as obligee or beneficiary, and (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 14. Insurance Policy Provisions Any insurance obtained by the Association shall provide that:

(a) the named insured under any such policies shall be the Association "for the use and benefit of the lot owners" and shall have standard mortgagee clauses;

(b) insurance coverage may not be brought into contribution with insurance purchased by the lot owners or their mortgagees;

(c) coverage must not be prejudiced by (i) any act or neglect of the lot owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(d) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice to the Association;

(e) the insurer shall waive subrogation as to any and all claims against the Association, the owner of any lots and/or their respective agents, employees or tenants, or invalidity arising from the acts of the insured;

(f) the insurer shall waive any defenses based on co-insurance (i.e., the insurance shall be primary, even if a lot owner has other insurance that covers the same loss); and

(g) any provision that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

**Section 15. Insurance Related Provisions** Premiums for insurance obtained by the Trustees pursuant to these sections shall be a common expense of the Association, and shall be collectable from members of the Association as part of the annual assessments.

Each owner shall insure his own personal property, and may insure his real property for his own benefit.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirement for planned unit development projects established by the Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a lot within the project, except to the extent such coverage is not available, or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association at said mortgagee's cost.



Section 16. Damage or Destruction In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements, the Association being appointed attorney-in-fact of each owner for this purpose. The Association shall, with concurrence of the mortgagees, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition, unless at least sixty-seven percent (67%) of the owners, and sixty-seven percent (67%) of first mortgagees have given their prior written approval and direction that the Association shall not be entitled to use insurance proceeds for other than the repair, replacement or reconstruction of the damaged or destroyed property.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of destruction that affects a material portion of the properties, or a material portion of the unit securing its mortgage at mortgagee's expense.

In the event the insurance proceeds are insufficient to pay all the costs of repairing, restoring or rebuilding, the Trustees shall be empowered to levy a special assessment against all owners of damaged townhomes, or owners with damaged adjacent common area, in such proportion as the Trustees deem equitable to make up any deficiency for repair of townhomes or limited common area, and the Trustees shall further be empowered to levy a special assessment against all owners to make up any deficiency for repair or rebuilding of the common area or limited common area.

Section 17. Payments by First Mortgagees First mortgagees of lots may jointly or singly pay taxes or other charges which are in default, and which have or may become a charge against any or limited common area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such common property. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 18. Condemnation A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on, shall be entitled to receive a written notice of condemnation action that affects a material portion of the properties, or a material portion of the unit securing its mortgage. In any proceedings, negotiations, or settlements for condemnation of all or part of the properties, the Association shall be the agent of the owners, and is hereby appointed their attorney-in-fact for such purpose. Any proceeds shall be payable to the Association for the benefit of the owners and their mortgagees, as their interests may appear. In the event the Association is required to interplead, as required by law, such funds, it shall be entitled to reasonable attorney's fees and costs incurred in such action.

Section 19. Management Any agreement for professional management of the property by the declarant may not exceed three years duration, and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

[REDACTED]

**ARTICLE V -- PARTY WALLS**

Section 1. General Rules of Law to Apply Any wall which is built as a part of the original construction upon the properties and placed on the dividing line between the lots 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 by the owners who make use of the wall in proportion to such use.

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 said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, 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 negligent or willful acts or omissions.

Section 4. Weatherproofing Notwithstanding any other provision of this article, an owner who by his negligent 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 to the extent that said protection is not covered by insurance, and paid for out of the proceeds of the same.

Section 5. Right to Contribution Runs with Land The right of any 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.

**ARTICLE VI -- ARCHITECTURAL CONTROL COMMITTEE**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to, and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees, or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within fifteen (15) days after said plans and specifications have been submitted to it, approval will not be required, and compliance with article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees, neither the Association nor the Architectural Control Committee shall, by act or omission change, waive

or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of lots, the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

#### **ARTICLE VII -- EXTERIOR MAINTENANCE**

Section 1. **Exterior Maintenance** Each unit owner shall be primarily responsible for maintenance of the exterior of the townhome owned by said owner, and any limited common area appurtenant thereto. The Association shall, however, in addition to maintenance upon the common area, have the right upon default of the owners, to properly maintain said exterior, and after ten days written "notice to provide exterior maintenance" upon each lot and limited common area, to maintain said exterior and limited common area, but not limited to the following: paint, general repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, street signs, lights, mailboxes, trees, shrubs, grass, walks, driveways, glass doors and screens on the lot, and maintenance to other exterior improvements.

Section 2. **Assessment of Cost** The cost of such exterior maintenance performed by the Association, shall be assessed against the lot upon which maintenance is done, and shall be added to and become part of the annual maintenance assessment or charge to which such lot is subject under Article IV hereof, and, it shall be subject to all collection or enforcement rights held by the Association for such assessment including lien rights and shall be the obligation of the owner, and shall become due and payable in all respects as provided in Article IV hereof.

#### **ARTICLE VIII -- USE RESTRICTIONS**

Section 1. **General Use Restrictions** All of the properties which are subject to this declaration of covenants, conditions and restrictions are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to, community buildings. All buildings or structures erected in the properties shall be of new construction, and no buildings or structures shall be removed from other locations and brought to the properties, and no subsequent buildings or structures dissimilar to those initially constructed shall be built on any lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

Section 2. **Construction, Business and Sales** Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of townhomes and sale of lots during the period of construction and sale of said lots, and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, construction trailers, signs, model units and sales offices.

Section 3. **Signs: Commercial Activity** Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any

portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or their agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

Section 4. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners or which shall in any way increase the rate of insurance.

Section 5. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number, may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance, or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas.

Section 6. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period.

Section 7. Parking spaces within the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle which is inoperable shall be placed in parking areas, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. Such expense of removal shall be secured by the lien for assessment obligations as previously provided herein. If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner. All lot owners shall have co-equal right to use of common parking spaces, and no owner may use more than his proportionate share of such common parking area. Recreational vehicles, boats, travel trailers and similar property may not be parked in common parking areas, and unless permitted by rule of the Association, may not be parked in parking areas designated on the plat for exclusive use.

Section 8. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such are

installed in accordance with the initial construction of the buildings located thereon, or as approved by the Trustees.

Section 9. External Apparatus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof of any lot or townhome, or on the outside of window or doors of any lot or townhome, without the prior written consent of the Trustees.

Section 10. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, may be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees.

Section 11. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots, and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 12. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 13. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 14. Leases Any lease or rental agreement shall be in writing, and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

#### **ARTICLE IX -- EASEMENTS**

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structures of improvements on lots are partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone, and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant, or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the Terms hereof. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained by the Association.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

Section 5. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

#### **ARTICLE X -- EXPANSION**

Declarant reserves the right at its sole election to expand the Properties to include additional property more particularly described below by unilateral action of Declarant without the consent of owners for a period of ten (10) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property all or part of which may be included in one or more expansions, is located in Washington County, Utah and is more particularly described as follows:

See EXHIBIT "A"

Expansion shall occur upon filing by the declarant of:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the

terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation and

2. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes, substantially identical to the townhomes already constructed, constructed out of similar materials, with substantially similar lot size. The maximum number of units to be added shall be five hundred (500). The Declarant shall have the sole discretion as to development of the common area in any expansion area, and may include any facilities or amenities thereon that Declarant deems necessary, and such common areas after development shall be owned by the Association. Additional common and limited common areas shall be added in any expansion area to maintain a ratio of common and limited common area to total lot area approximately similar to the ratio which now exists.

The general area improvements in an expansion area shall be substantially completed prior to recordation of the Declaration of Annexation. The common area and limited common area in such area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, at the time of the recordation of the Declaration of Annexation, and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association in the original area and in the expansion area. Owners in the original and expansion areas shall have all have equal membership status in the Association. The liability for assessments of each lot and lot owner in any expansion area shall be equal to the liability of each lot and lot owner in the original properties.

#### **ARTICLE XI -- GENERAL PROVISIONS**

Section 1. Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation, or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee upon successful enforcement against said party.

Section 2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

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

Section 4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners as defined herein. Amendments affecting the rights of first mortgagees shall require their written approval. Prior to making any material amendment, thirty (30) days written notice must be given to all holders of liens of first priority, setting forth the nature of the amendment and the date of the members' meeting to vote thereon.

Any amendment of the Declaration affecting the following shall not be effective without consent of at least fifty-one percent (51%) of the first mortgagees: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of common areas; responsibility for maintenance and repairs; reallocation of interests in the common or limited common areas, or rights to their use; boundaries of any lot; conversion of lots into common areas or vice versa; expansion or contraction of the properties, or the addition, annexation or withdrawal of property to or from the properties; insurance or fidelity bonds; leasing of townhomes, imposition of any restrictions on an owner's right to sell or transfer his or her unit; a decision by the Association to establish self management when professional management had been required previously by a mortgagee; restoration or repair of the properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the properties after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. When owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property, the consent of at least eighty percent (80%) of first mortgagees must be obtained.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on, shall be entitled to receive written notice of any proposed action that requires the consent of first mortgagees.





**EXHIBIT A**

**EXPANDABLE AREA**

BEGINNING AT A POINT N 0°19'19" W 968.19 FEET ALONG THE CENTER SECTION LINE FROM THE S ¼ CORNER OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE S 88°45'56" W 246.36 FEET; THENCE S 0°00' E 43.10 FEET; THENCE N 90°00' W 50.00 FEET TO A 25.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS S 90°00' W); THENCE SOUTHWESTERLY 38.73 FEET ALONG THE ARC OF SAID CURVE TO THE POINT OF TANGENCY; THENCE S 88°45'56" W 75.51 FEET; THENCE N 0°00' E 215.02 FEET; THENCE N 90°00' W 201.19 FEET; THENCE S 00°19'19" E 141.32 FEET; THENCE S 89°40'41" W 91.83 FEET; THENCE N 00°00' E 811.24 FEET; THENCE N 90°00' W 835.00 FEET; THENCE N 19°00' W 877.71 FEET TO THE CENTER SECTION LINE; THENCE N 88°48'14" E 4478.37 FEET ALONG SAID CENTER SECTION LINE TO THE EAST ¼ CORNER OF SAID SECTION 11; THENCE S 0°09'36" E 606.40 FEET ALONG THE SECTION LINE; THENCE S 69°03'06" W 1779.55 FEET TO A 250.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE WESTERLY 42.44 FEET ALONG THE ARC OF SAID CURVE; THENCE S 1°11'40" E 103.82 FEET TO A POINT ON A 1/16 LINE; THENCE S 88°48'20" W 971.57 FEET ALONG SAID 1/16 LINE TO THE CENTER SECTION LINE; THENCE S 00°19'19" E 354.55 FEET ALONG SAID CENTER SECTION LINE TO THE POINT OF BEGINNING. CONTAINING 110.02 ACRES.