

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
MESA VIEW TOWNHOMES**

(Phase 1 and 2)

This Declaration is made and executed this 30th day of January, 1997, by **Shadow Mountain Development Corp.**, a Utah Corporation, and **Classic Builders, Inc.**, a Utah Corporation, (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the record owner of that certain parcel of real property (the Property) described in Exhibit A of this Declaration. Declarant desires to create on the Property a planned townhouse development with certain Common Areas for the benefit of the Development and the Owners of Lots therein.

B. Declarant desires to provide for preservation and enhancement of the property values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, the Declarant desires to subject the Property described in Exhibit A of this declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

C. Declarant deems it desirable, for the efficient preservation of the values and amenities of the property, to create and entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah as a non-profit corporation, **MESA VIEW TOWNHOMES HOME OWNERS ASSOCIATION**.

NOW, THEREFORE, for the foregoing purposes, Declarant declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, as set forth, as set forth in the plat recorded concurrently herewith.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof under "RECITALS"), the following terms shall have the meaning indicated.

1. Declaration shall mean and refer to this instrument.

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FOR: SOUTHERN UTAH TITLE CO

2. Plat shall mean and refer to Phase 1 and 2 portions of the plat of the "Mesa View Townhomes Phase 1 and 2," consisting of one page, executed and acknowledged by Declarant, prepared and certified by Mark A. Schraut, a registered Utah Land surveyor, and recorded in Book 1081 at page 569 as Entry No. 559434.
3. Property shall mean and refer to all of the real property which is covered by the Plat, a description of which is stated in Exhibit A of the Declaration.
4. Lot shall mean and refer to any of the separately numbered and individually described plots of land shown as Phase 1 and 2 of the Plat.
5. Common Areas shall mean and refer to that portion of the property which is not included within the lots, including all improvements other than utility lines now or hereafter constructed or located thereon.
6. Living Unit shall mean and refer to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.
7. Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee or an undivided fee interest in the Lot. Notwithstanding any applicable theory relation to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a Mortgagee or beneficiary or trustee unless and until such party has acquired title pursuant to foreclosure or any arrangements or proceeding in lieu thereof.
8. Association shall mean and refer to Mesa View Townhomes Home Owners Association, a Utah non-profit corporation.
9. Articles and Bylaws shall mean and refer to the Articles of Incorporation and the Bylaws of the Association.
10. Board of Trustees and the Board shall mean and refer to the Board of Trustees of the Mesa View Townhomes Home Owners Association.
11. Member shall mean and refer to every person who holds membership in the Association.
12. Mortgagee shall mean any person named as a first mortgagee or beneficiary under or holder of a first deed of trust.
13. Development shall mean and refer to the Mesa View Townhomes Development created by this Declaration as it exists at any given time.

14. Declarant shall mean and refer to Shadow Mountain Development Corp., a Utah Corporation, and Classic Builders, Inc., a Utah Corporation, and their successors and assigns, or with any successor or assign to all or substantially all of its interest in the development of the Property.

15. Front Yard Area shall mean and refer to the yard area of each Living Unit extending from the street to the front line of the Living Unit.

16. Phase 2 Land shall mean and refer to that portion of land set forth in Exhibit A attached hereto and made a part hereof, and as also shown as Phase 2 on the Plat.

II. DESCRIPTION OF PROPERTY

The property which initially comprises the Development and which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the real property situated in Washington County, State of Utah, and more particularly described in Exhibit A and attached hereto and incorporated herein by this reference.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes; assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; and instruments of record which affect the above-described land or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; and easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (I) to construct and complete each of the Living Units on the Lots and all of the other improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith; (ii) to construct and

complete on the Phase 2 Land or any portion thereof such improvements as Declarant or said assignee or successor shall determine to build in its sole discretion; (iii) to improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners of Declarant or as such assignee or successor may reasonably determine to be appropriate. If, Pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire seven (7) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

III. MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all the Owners other than the Declarant. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to five (5) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member.

(b) The expiration of seven (7) years after the date on which this declaration is filed for record in the office of the County Recorder of Washington County, Utah.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owner, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another

Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may permit any person to the use and enjoyment described therein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

2. Form for Convincing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follow:

Lot No. _____ contained within the Mesa View Townhomes Phase 1 and 2, as the same is identified in the Plat recorded in the office of the Washington County Recorder, and in the Declaration of Covenants, Conditions and Restrictions of the Mesa View Townhomes Phase 1 and 2" (the Declaration) recorded in Book _____ at Page _____ as Entry No. _____ of the official records of Washington County, Utah, TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas, described and as provided for, in the Declaration. SUBJECT TO all of the provision of the Declaration, and subject, also, to liens for current taxes.

3. Transfer of Title. Declarant agree that it shall, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Areas of the Development, and the Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in the Development.

4. Limitation on Easement. A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to suspend a Member's right to the use of any amenities included in the Common Areas for any period during which an assessment on such Member's Lot remains unpaid and for a period not exceeding ninety (90) days for any infraction by such member of the provisions of this declaration or of any rule or regulation promulgated by the Association;

(b) The right of the Association to impose reasonable limitation on the number of guests per Member who at any given time are permitted to use the Common Areas;

(c) The right of Washington County and any other governmental or quasi-governmental body having jurisdiction over the property to access and rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Encroachments. If any portion of a Living Unit constructed by Declarant, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed by Declarant, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

V. ASSESSMENTS

1. Personal Obligation and Lien. Declarant, for each Lot owned by it, and each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due.

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; maintenance, repair, replacement, and improvement of 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 obligation, function, or purposes under this Declaration or its Articles of Incorporation.

3. Base for Assessment. Each Living Unit which is certified for occupancy and each unimproved Lot which has been conveyed to an Owner shall be assessed at the same and equal rate. For the purpose of assessment, the term "Owner" shall exclude the Declarant, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, who shall pay no assessment unless a unit constructed on a lot is occupied for a permanent residence.

4. Special Assessments. In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) monthly assessments; or (b) the costs of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas. Any such special assessment must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Quorum Requirements. The quorum required for any action authorized by Section 4, above, shall be as follows: at the first meeting called the presence of Members or of Proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirements set forth in section 4) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

6. Equal rate of Assessment. Both monthly and special assessments shall be fixed at a uniform (equal) rate for all Lots, subject to the provision of paragraph 3, above, regarding the Declarant, or his assigns.

7. Monthly assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date deed is delivered to first purchaser of a Lot (or contract of sale) or the date of occupancy under an occupancy agreement whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At

least fifteen (15) days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

8. Certificate Regarding Payment. Upon the request of any Owner or Prospective purchaser or encumbrance of a Lot, the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

9. Effect of Non-Payment -- Remedies. Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the lot, provided, however that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior on the date any such assessments become due. The Association may, but shall not be required to, record a notice of its lien in the records of the Washington county Recorder at any time an assessment against any lot is more than thirty (30) days past due. The person who is the Owner of the Lot at the time the assessment falls due shall be and remain personally liable for payments. Such personal liability shall not pass to the Owner's successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus late payment service charge equal to five percent (5%) of each delinquent amount due and the Association may, in its discretion, bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association in either an action against the Owner or an action to foreclose a lien shall include reasonable attorney's fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

10. Tax Collection From Lot Owners by Washington County Authorized. It is recognized that under the Declaration, the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a required to pay to the Association his prorata share of such taxes. Notwithstanding anything to the contract contained in the Declaration, or otherwise, Washington County shall be, and is, authorized to collect such prorata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess Common Areas to the Association, the Board of Trustee may require each Owner to pay to the Association, in advance by separate assessment, and amount equal to said Owner's pro-rata share of the taxes. The Association may also assess the taxes as part of the regular assessment, as set forth above.

VI. OPERATION AND MAINTENANCE

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 appearance of the Property 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 paragraph 2 of this Article VI.

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. In addition thereto, the Association shall maintain repair and restore the Front Yard Area of each Lot including, but not by way of limitation, grass, landscaping, shrubs, watering and the sprinkling system. In the event that special need for maintenance or repair of the Front Yard Area should be necessitated through willful or negligent act of the member, his family or guests, or invitees, the cost of such maintenance shall be added to and become a part of assessment to which such Lot is subject. Notwithstanding the provisions regarding Lot (except the Front Yard Area) and Living Unit maintenance by Owner, in the event an Owner of any Lot in the Property shall fail to maintain his Lot (excluding Front Yard Area) and the exterior of his Living Unit situated thereon in a manner satisfactory to the Architectural Control Committee or the Board, the Association, after approval by 2/3 vote of the Board, shall have the right, through its agents, employees, or through an independent contractor to enter upon his Lot and repair, maintain, and restore the portion of the Lot maintainable by the Owner and the exterior of his Living Unit and any other improvements erected thereon (but not the interior of his Living Unit). The cost of such exterior maintenance shall be added to and become part of the assessment to which Lot is subject.

3. Water and Garbage Removal. The Association shall pay for all water and garbage removal services furnished to each Lot. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

4. Insurance. The Association shall secure and at all times maintain the following insurance coverages:

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Mesa View Townhomes Home Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.

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(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of Liability under such insurance shall not be less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

The following additional provisions shall apply with respect to insurance:

- (1) Additional Insurance. In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.
- (2) Requirements. All policies shall be written by a company holding a rating of class IV or better from Best's Insurance Reports. Each insurer must be specifically licensed in the State of Utah.
- (3) Adjustment. The Association shall have the authority to adjust losses.
- (4) Contribution. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.
- (5) Miscellaneous Requirements. Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A Waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior

written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

(6) Lot Owner Insurance. Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(7) Fidelity Coverage. The Association shall maintain fidelity coverage to protect against dishonest acts on the part of trustees, officers, manager, employees of the Association and all other (including volunteers) who handle, or are responsible for handling, funds of the Association. Such fidelity bonds shall:

(a) name the Association as an obligee as the named insured;

(b) be written in an amount sufficient to provide protection which is in no event less than one and one-half times the Association's estimated annual operating expenses and reserves;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to all first Mortgagees of Lots.

(8) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premised are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(9) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and each taken on such review to the Owner of each Lot and to holder of any mortgage on any Lot who shall have

requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(10) Lots Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot and acts and events thereon. Accordingly, each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the Mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount of coverage shall be sufficient so that in the event of any damage or loss to the Mortgaged premises of a type covered by the insurance. The insurance proceeds shall provide at least the lesser of: (i) Compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the Mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan. However, the Board may choose to obtain a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Living Units on the Lots with co-insurance clause and each Owner of such Lots shall be designated as additional insured. The cost of such insurance shall be part of the assessment for such Lot.

(11) Unacceptable Policies. Policies are unacceptable where: (I) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent Lot Owner, Mortgagee or Mortgagee's Designee from collecting insurance proceeds.

(12) The Development is not located in an area identified by the Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Development should be declared to be in such flood area, a blanket policy of flood insurance on the Project shall be maintained in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Living Units comprising the Development or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less. The name of the insurance under each required policy must be in form and

substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

5. Manager. The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association, shall be responsible for managing the Property for the benefit of the Association and the Owner, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

6. Term of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Declarant, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

VII. USE RESTRICTIONS

1. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units. No admission fees, charges for use, leases, or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas.

2. Use of Lots and Living Units. All Lots are improved with Living Units and are restricted to such use. Each Lot has been or will be improved with a living Unit, each to be used only a single-family residence. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. Parking Lot. Parking Lot must be large enough to accommodate one (1) parked automobile per unit. Parking stalls shall not be appurtenant to any unit, however, the Homeowners Association may assign one parking stall per unit if it deems advisable by adoption of a rule or regulation to that effect.

4. Minimum Square Footage. The minimum square footage requirements for any Living Unit shall be 1,000 square feet of finished interior living area exclusive of garages, patios, balconies, decks or other semi-external space.

5. Fences. No fences will be allowed in the front yards or in side yards from the average front line of the Living Unit forward. Fence hedges and landscaping will be permitted.

6. Non-Residential Use. No part of the Property shall be used for any commercial, manufacturing mercantile, storing, vending, or other such non-residential purposes. Declarant, its successors or assigns, may use the Property for a model home site display, and as a sales office during the construction and sales period.

7. Signs. No sign of billboard of any kind shall be displayed to the public view on any portion of the Property or any Lot advertising the property for sale or rent except signs used by Declarant, its successors or assigns, to advertise the property during the construction and sales period.

8. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, 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 of his respective Living Unit of which shall in any way increase the rate of insurance.

9. Temporary Structures, Equipment, Motor Vehicles, Etc. No structure of a temporary character, trailer, basement, tent, shack garage, barn, or other out building shall be used on any lot at any time as a residence, either temporarily or permanently. No trailer, camper, boat, truck larger than 3/4 ton, or similar equipment shall be permitted to be parked upon any lot, unless placed or maintained with a covered parking stall and written approval is given by the Board. No motor vehicle whatsoever may be parked on any street but shall be kept in the Owner's garage or driveway.

10. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept on the Lots provided that they are not kept, bred or maintained for any commercial purpose or kept in unreasonable numbers. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious, by noise or otherwise, to Lot Owners. All pets must be kept in a fenced Yard of the Lot or on a leash in the Common Areas.

11. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, woodpiles, storage areas and machinery and equipment shall be prohibited upon any Lot unless obscured from view of adjoining Lots and streets by a fence, building, or appropriate screen.

12. Electronic Antennas. No television, radio, or other electronic antenna or device of any type shall be erected, constructed, placed or permitted to remain on any of the Living Units or structures on the Lots in said tract unless and until the same shall have been approved in writing by the Architectural Committee of the Association.

13. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the seven-year period following the date on which this Declaration is filed for

record in the office of the County Recorder of Washington County, Utah, Declarant shall have the right to use any Lot or Living Unit owned by it and any part of the Common Areas reasonably necessary or appropriate, including, but not limited to, a sales office, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvements and/or sale of all Lots owned by Declarant. Declarant may also conduct collateral business activity on the Project.

VIII. ARCHITECTURAL CONTROL

1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three-member Committee, the function of which shall be to insure that all exterior 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.
2. Submission to Committee. No Living Unit, accessory or addition to a Living Unit which is visible from the Common Areas, landscaping, or other improvement of a Lot which is visible from the Common Areas shall be constructed, maintained, or accomplished, and no alteration, repaint, 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.
3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment 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 Resolutions and the Architectural Control Committee, or the Board, as the case may be, shall act in accordance with such guidelines and procedures.
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.
5. Construction. Once begun, any improvements, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupy unimproved portions of the Common Areas in the vicinity of the activity.
6. Disclaimer of Liability. Neither the Architectural Committee, nor any member thereof acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection

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of, or the failure to approved or reject, any plans, drawing and specification, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawing and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

7. Nonwaiver. The approval by the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications.

8. Completion of Construction. Once begun, any improvements, construction, landscaping or alterations approved by the Architectural Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Architectural Committee.

9. Exception for Declarant. The foregoing provisions of this Article VIII 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 and which occurs at any time during the six-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah. 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 paragraph.

10. 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.

IX. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used promptly by Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full thereof, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonable determine; provided, however, that in the event of taking in which any Lot is eliminated, the Association shall disburse the portion of the proceeds of the condemnation award allocable to the interest of the Owner of such Lot to such Owner and any first Mortgagee of such Lot, as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

X. RIGHTS OF FIRST MORTGAGEES

Not notwithstanding any other provisions of this Declaration, the following provisions concerning the rights of first Mortgagee shall be in effect:

1. Preservation of Regulatory Structure and Insurance. Unless the holders of 100% of all first Mortgagees and 75% of Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the Architectural design of the exterior appearance of Living Units, the exterior maintenance of Living Units under certain conditions provided in Section 2 of Article VI, or the upkeep of the Common Areas of the Property;

(b) to fail to maintain fire and extended coverage insurance on insurable portions of the Common Areas on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Areas for other than the repair, replacement or reconstruction of improvements on the Common Areas.

2. Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) one hundred percent (100%) of all first mortgagees (based on one vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Declarant), the Association shall not be entitled:

(a) by act of omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the Owner thereof.

Neither this Article X nor the insurance provision contained in Article VI may be amended without the approval of all first Mortgagors.

3. Notice of Matters Affecting Security. The Association shall give written notice to any first mortgagee of a Lot requesting such notice wherever:

(a) there is any default by the Owner of the Lot subject to the first mortgage in performance of any obligation under this Declaration or the Articles or Bylaws of the Association which is not cured within thirty (30) days after default occurs; or

(b) there occurs and substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonable estimated to be in excess of %\$15,000. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(c) there is any condemnation proceedings of proposed acquisition of a Living Unit or of any portion of the Common Areas within ten (10) days after the Association learns of the same; or

(d) any of the following matters come up for consideration or effectuation by the association:

(i) abandonment or termination of the Planned Unit Development established by this Declaration;

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association; or

(iii) any decision to terminate professional management of the Common Areas and assume self-management by the Owners.

4. Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same notice of all meetings of the Association; and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

5. Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audits financial statements of the Association.

6. Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Areas; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Declarant, for the Association as owner of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

7. Exemption for any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the lot pursuant to the remedies provided in the first

foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of the first refusal" which would otherwise affect the Lot.

8. Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or deed or trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosures of the Mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the Lot free of, and shall not be liable for, any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of all holders of first Mortgage liens on the Lots.

10. Mortgagees' Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XII of the Declaration, no material amendment to the Declaration, Bylaws or the Articles of Incorporation of the Association shall be accomplished or effective unless one hundred percent (100%) of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment.

XII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner, at the latest address for such person as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or the President of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Chairman of any member of such Committee.

2. Rules and Regulation. The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Owners.

3. Amendment. Any amendment to this Declaration, except as otherwise set forth herein, shall require: (a) the affirmative vote of at least two-thirds of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and (b) so long as the Class B membership exists, the written consent of Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least at least ten (10), but not more than thirty (30), days prior to the meeting

date. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. Any amendment authorized pursuant to this Association (and by the Declarant if the Class B membership then exists). In such instrument, an officer or director of the Association shall certify that the vote required by this section for amendment has occurred. Notwithstanding anything herein contained to the contrary, until eighty percent (80%) of the Lots in the Development have been sold to purchasers, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration as may be reasonably necessary or desirable; (c) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information or mortgagee requirements, or (d) to better insure, in the light of then existing circumstance or information, workability of the Arrangement which is contemplated by this Declaration.

4. Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the class of membership concerned. The following additional provisions shall govern any application of this Section 4:

- (a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.
- (b) The total number of votes required for authorization or approval under this section 4 shall be determined as of the date on which the last consent is signed.
- (c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner of give or withhold his consent.
- (d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured, the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common

Areas and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

6. Lease Provisions. Any Owner may lease his Lot or Living Unit, provided, however, that any lease agreement between a Lot Owner and Lessee must be in writing and must provide, *inter alia*, that:

(a) The terms of the Lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation of the Association and the Bylaws; and

(b) Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease.

7. Declarant's Covenant to Construct Common Areas. Declarant hereby covenants to construct all Common Areas and amenities thereto indicated on the Plat.

8. Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

9. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity of enforceability of the remainder hereof.

10. Covenants to Run With Land. This declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to, terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration and failure to comply with any of the foregoing shall be grounds for any action by the Association or any aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

11. Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Washington County, Utah.

EXECUTED the day and year first above written.

DECLARANTS:

Shadow Mountain Development Corp.,
a Utah Corporation

By Paul S. Jensen,
Paul S. Jensen, Vice President

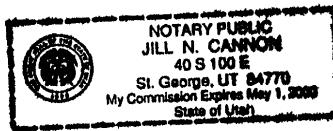
Classic Builders, Inc.,
a Utah Corporation

By Mark Burgess,
Mark Burgess, President

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 30th day of January, 1997, before me personally appeared Paul S. Jensen, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the vice-president of **Shadow Mountain Development Corp.**, a Utah Corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.

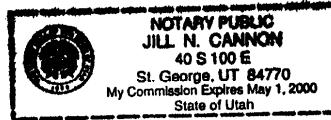
Jill N. Cannon
NOTARY PUBLIC
Address: St. George, Utah
My Commission Expires: 5/1/00



STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 30th day of January, 1997, before me personally appeared Mark Burgess, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the President of **Classic Builders, Inc.**, a Utah Corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.

Jill N. Cannon
NOTARY PUBLIC
Address: St. George, Utah
My Commission Expires: 5/1/00



**EXHIBIT A
LEGAL DESCRIPTION**

PHASE 1:

A portion of Lot 7, Block 23, St. George and Santa Clara Bench Irrigation Survey, being more particularly described as follows:

Beginning at a point which lies North 89°24'13" East 654.92 feet along the Section Line, North 1470.72 feet and North 88°59'01" East 173.46 feet from the Southwest Corner of Section 5, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 1°01'01" West 73.00 feet; thence North 88°58'59" East 15.44 feet; thence North 1°00'58" West 59.00 feet; thence North 88°59'02" East 114.46 feet; thence South 0°05'22" East 132.01 feet; thence South 88°59'01" West 127.77 feet to the point of beginning.

PHASE 2:

A portion of Lot 7, Block 23, St. George and Santa Clara Bench Irrigation Survey, being more particularly described as follows:

Beginning at a point which lies North 89°24'13" East 654.92 feet along the Section Line and North line and North 1470.72 feet from the Southwest Corner of Section 5, Township 42 South, Range 16 West Salt Lake Base and Meridian, said point being also on the West line of said Lot 7, and running thence North 0°34'26" West 129.50 feet along said West line; thence North 88°59'02" East 67.50 feet; thence North 1°00'58" West 2.50 feet; thence North 88°59'02" East 120.40 feet; thence South 1°00'58" East 59.00 feet; thence South 88°58'59" West 15.44 feet; thence South 1°01'01" East 73.00 feet; thence South 88°59'01" West 173.46 feet to the point of beginning.

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