

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COLOR VIEW TOWNHOMES**

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Note to Recorder:  
Record against the real property  
located in Washington County,  
Utah described in the Preamble

AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
COLOR VIEW TOWNHOMES

PREAMBLE

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Color View Townhomes amends, restates and supersedes the following: (i) Declaration of Covenants, Conditions, and Restrictions of Color View Townhomes, dated April 20, 1984, recorded on June 18, 1984, as Entry No. 262784, in Book 351, at Pages 935-964 (the "1984 Declaration"); (ii) the Amendment to Declaration of Covenants, Conditions and Restrictions of Color View Townhomes dated June 22, 1984, recorded on June 22, 1984, as Entry No. 263065, in Book 352, at Pages 509-510; (iii) the Supplementary Declaration of Covenants, Conditions, and Restrictions of Colorview Townhomes (Phase II) dated December 4, 1984, recorded on December 10, 1984, as Entry No. 269526, in Book 364, at pages 675-679; (iv) the Second Supplementary Declaration of Covenants, Conditions, and Restrictions of Colorview Townhomes (Phase III) dated March 29, 1985, recorded on April 12, 1985, as Entry No. 274529, in Book 374, at pages 89-92; (v) the Supplementary Declaration of Covenants, Conditions, and Restrictions of Colorview Townhomes (Phase IV) dated November 5, 1986, recorded on November 5, 1986, as Entry No. 304283, in Book 431, at pages 28-32; (vi) the Supplementary Declaration of Covenants, Conditions, and Restrictions of Colorview Townhomes (Phase V) dated February 12, 1986, recorded on February 12, 1986, as Entry No. 288884, in Book 402, at pages 392-396; (vii) the Supplementary Declaration of Covenants, Conditions, and Restrictions of Colorview Townhomes (Phase VI) dated May 19, 1986, recorded on May 19, 1986, as Entry No. 294695, in Book 413, at pages 148-152; (viii) the Amended Supplementary Declaration of Covenants, Conditions, and Restrictions of Colorview Townhomes (Phase VI-A) dated November 17, 1986, recorded on November 18, 1986, as Entry No. 304970, in Book 432, at pages 306-310, and any other amendments and/or supplements to the 1984 Declaration, whether recorded or unrecorded.

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Color View Townhomes affects the following real property, all located in Washington County, State of Utah:

Phase I

BEGINNING at a point on the south line of 950 North Street, said point being South 0°49' East, 42.28 feet along the Section Line and North 89°27'50" East, 500.00 feet along the South Line of 950 North Street from the Northwest Corner of Section 23, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running

thence North 89°27'50" East, 367.98 feet along the South Line of 950 North Street to a point of a 25.00 foot radius curve to the right; thence Easterly 21.03 feet along the arc of said curve, and said South Line of Street; thence South 0°49' East 115.165 feet; South 89°27'50" West, 386.57 feet; thence North 0°49' West, 123.50 feet to the point of beginning. Containing 1.095 acres.

Phase II

BEGINNING at a point on the South line of 1020 North Street, said point being North 0°08'00" West 384.60 feet along the Section line and North 89°27'50" East 1103.56 feet from the Southwest Corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence South 89°27'50" West 139.46 feet along said South line of Street to a point of a 15.00 foot radius curve to the left; thence Westerly and Southerly 23.46 feet along the arc of said curve to a point on the East line of 1725 West Street; thence South 0°08'00" East 331.26 feet along said East line of Street to a point of a 25.00 foot radius curve to the left; thence Southeasterly 21.03 feet along the arc of said curve and said East line of Street to a point of a 50.00 foot radius reverse curve to the right; thence Southerly and Westerly 162.30 feet along the arc of said curve, the East line of 1725 West Street and the South line of 950 North Street; thence South 0°49'00" East 115.165 feet; thence North 89°27'50" East 263.43 feet; thence North 292.00 feet; thence North 10°54'10" West 262.60 feet to the point of beginning. Containing 2.530 acres.

Phase III

BEGINNING at a point on the South line of 1020 North Street, said point being North 0°08'00" West 384.60 feet along the Section line and North 89°27'50" East 500.00 feet from the Southwest Corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 89°27'50" East 384.10 feet along said South line of Street to a point of a 15.00 foot radius curve to the right; thence Easterly and Southerly 23.67 feet along the arc of said curve to a point on the West line of 1725 West Street; thence South 0°08'00" East 136.78 feet along said West line of Street; thence South 89°27'50" West 399.21 feet; thence North 0°08'00" West 151.88 feet to the point of beginning. Containing 1.391 acres.

Phase IV

Parcel #1

BEGINNING at a point on the North line of 950 North Street, said point being North 0°08'00" West 7.72 feet along the section line and North 89°27'50" East 400.00 feet along the North line of 950 North Street from the Southwest corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 89°27'50" East 100.00 feet; thence North 0°08'00" West 125.00 feet; thence South 89°27'50" West 100.00 feet; thence South 0°08'00" East 125.00 feet to the point of beginning. Containing 0.287 acres.

**Parcel #2**

BEGINNING at a point on the East line of Dixie Downs Road, said point being South 0°49'00" East 165.78 feet along the Section line and North 89°27'50" East 40.00 feet from the Northwest Corner of Section 23, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 89°27'50" East 460.00 feet; thence North 0°49'00" West 123.50 feet to a point on the South line of 950 North Street; thence South 89°27'50" West 444.925 feet along said South line of 950 North Street to a point of a 15.00 foot radius curve to the left; thence Westerly and Southerly 23.64 feet along the arc of said curve to a point on the East line of Dixie Downs Road; thence South 0°49'00" East 108.425 feet along said East line of Road to the point of beginning. Containing 1.303 acres.

**Phase V**

BEGINNING at a point on the North line of 1020 North Street, said point being North 0°08'00" West 434.60 feet along the Section line and North 89°27'50" East 500.00 feet from the Southwest corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 0°08'00" 127.00 feet; thence North 89°27'50" East 399.21 feet; thence North 0°08'00" West 3.00 feet; thence North 89°27'50" East 240.58 feet; thence South 0°32'10" East 130.00 feet to a point on the North line of 1020 North Street; thence South 89°27'50" West 640.70 feet along said North line of 1020 North Street to the point of beginning. Containing 1.883 acres.

**Phase VI****Parcel #1**

BEGINNING at a point North 0°08'00" West 534.00 feet along the Section line and North 89°27'50" East 328.00 feet from the Southwest corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 89°27'50" East 172.00 feet to a point on the West line of Colorview Townhomes Phase V; thence North 0°08'00" West 27.00 feet along the West line of said Colorview Phase V to the Northwest corner of said Colorview Phase V; thence North 89°27'50" East 399.21 feet along the North line of Colorview Phase V; thence North 0°08'00" West 83.00 feet; thence South 89°27'50" West 571.595 feet; thence South 0°20'00" East 110.00 feet to the point of beginning. Containing 1.1955 acres.

**Parcel #2**

BEGINNING at a point on the North line of Colorview Townhomes Phase V, said point also being North 0°08'00" West 564.60 feet along the Section line and North 89°27'50" East 949.21 feet from the Southwest corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 89°27'50" East 190.58 feet along the North line of said Colorview Phase V to the Northeast corner of said Colorview Phase V; thence South 0°32'10" East 30.00 feet



along the East line of said Colorview Phase V; thence North 89°27'50" East 31.93 feet; thence North 0°09'49" West 120.00 feet; thence South 89°27'50" West 207.76 feet to a point of a 15.00 foot radius curve to the left; thence Westerly and Southerly along the arc of said curve, a distance of 23.46 feet; thence South 0°08'00" East 75.105 feet to the point of beginning. Containing 0.481 acres.

Phase VI-A

BEGINNING at a point on the North line of Colorview Townhomes Phase V, said point being North 0°08'00" West 564.60 feet along the Section line and North 89°27'50" East 1108.71 feet from the Southwest corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence North 89°27'50" East 31.08 feet along the North line of Colorview Townhomes Phase V to the Northeast corner of said Phase V; thence South 0°32'10" East 30.00 feet along the East line of said Phase V; thence North 89°27'50" East 31.93 feet; thence North 0°09'49" West 120.00 feet; thence South 89°27'50" West 61.90 feet; thence South 0°32'10" East 72.00 feet; thence South 89°27'50" West 1.89 feet; thence South 0°32'10" East 18.00 feet to the point of beginning. Containing 0.15 acres.

The terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

RECITALS

A. Dean T. Terry Investments, a Utah corporation, as Declarant, has developed the real property described above.

B. Declarant established the Color View Townhomes Owners Association and assigned to the Association powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Property, promulgating Rules and Regulations through its Board, and collecting and disbursing the assessments and charges hereinafter created.

C. The Association intends that the Property shall be maintained, developed and conveyed pursuant to a general plan for all of the Property and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the Property as hereinafter set forth.

D. The Association hereby declares that all of the Property shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection,

maintenance, subdivision, improvement, and sale of the Property or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Property and shall be binding upon all persons having or acquiring any right, title, or interest in the Property, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Declarant, the Association, as hereinafter defined, each owner and their respective heirs, executors and administrators, and successors and assigns.

E. This Amended Declaration is undertaken pursuant to Article XII of the 1984 Declaration, and was approved under the terms of the 1984 Declaration by at least two-thirds (2/3) of all Class A membership votes represented in person or by proxy at a meeting held for the purpose of approving this Amended and Restated Declaration on the 19<sup>th</sup> day of November, 2003.

F. These Recitals shall be deemed covenants as well as recitals.

## ARTICLE I

### DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1 ACC. ACC shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

1.2 ACC Rules and Regulations. ACC Rules and Regulations shall mean such rules and regulations as may be adopted and promulgated by the ACC pursuant to Section 8.2 hereof as such rules and regulations may be amended from time to time.

1.3 Annual Assessment. Annual Assessment shall mean the annual charge against each Owner and his Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.4 Articles. Articles shall mean the Articles of Incorporation of the Association filed in the office of the Secretary of State of the State of Utah, as such Articles may be amended from time to time.

1.5 Association. Association shall mean COLOR VIEW TOWNHOMES OWNERS ASSOCIATION, a corporation formed under the Nonprofit Corporation Law of the State of Utah, its successors and assigns.

1.6 Beneficiary. Beneficiary shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgage or beneficiary.

1.7 Board. Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.8 Budget. Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration.

1.9 Bylaws. Bylaws shall mean the Bylaws of the Association, as adopted by the Board, as such Bylaws may be amended by the Board from time to time.

1.10 Corrective Assessments. Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association for corrective action set forth in Sections 2.5, 2.9, 8.8, 9.1, 9.7, 14.10, Article XI, and in any other Section authorizing the Association to spend money to take corrective action.

1.11 Common Area. Common Area means that portion of property owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the owners and all improvements constructed thereon.

1.12 Common Expenses. Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair, replacement and improvement of the Common Area; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities, certain landscaping and Improvements on the Common Area, gardening, against the Property, or portions thereof; and the costs of any, other items incurred by the Association for any reason whatsoever, in connection with the Property, for the benefit of all of the Owners.

1.13 Declarant. Declarant shall mean DEAN T. TERRY INVESTMENTS, a Utah corporation, its successors and any Person to which it shall have assigned any rights hereunder, except that a party acquiring all or substantially all of the right, title and interest of DEAN T. TERRY INVESTMENTS in the Property by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of DEAN T. TERRY INVESTMENTS as Declarant under this Declaration.

1.14. Declaration: 1984 Declaration. Declaration shall mean this instrument as it may be amended or supplemented from time to time. The 1984 Declaration shall mean that certain Declaration of Covenants, Conditions, and Restrictions of Color View Townhomes, recorded on June 18, 1984, as Entry No. 262784, in Book 351, at Pages 935-964.

1.15 Deed of Trust. Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

1.16 Development. Development shall mean Color View Townhomes according to the Plat.

1.17 Dwelling Unit. Dwelling Unit shall mean a single family dwelling, with or without walls or roofs in common with other single family Dwelling Units. Dwelling Unit includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines.

1.18 Fiscal Year. Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.19 Holidays. Holidays shall mean Christmas, Thanksgiving and New Year's Day, and such other holidays as the Board may designate from time to time.

1.20 Improvement. Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to Dwelling Units and other buildings, walkways, sprinkler pipes, swimming pools, athletic fields or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, wind-breaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.21 Limited Common Area. Limited Common Area means that portion of the property owned by the Association 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 and as further provided for in Section 2.11.

1.22 Lot. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but outside the Dwelling Unit walls shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. To the extent the Lot boundaries are larger than the Dwelling Unit, the purpose of laying out a Lot larger than the Dwelling Unit is to allow flexibility in the original construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to all other provisions of this Declaration. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the Dwelling Unit and within the rear area of the surveyed boundaries of the Lot or the Limited Common Area, subject to approval of the Architectural Control Committee.

1.23 Manager. Manager shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

1.24 Member, Membership. Member shall mean any Person holding a membership in the Association, as provided in this Declaration. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Declaration and the Articles, Bylaws and Rules and Regulations.

1.25 Mortgage, Mortgagee, Mortgagor. Mortgage shall mean any Recorded first mortgage or first deed of trust. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.26 Notice of Board Adjudication. Notice of Board Adjudication shall mean notice of the decision of the Board, delivered in person or in writing by mail or personal service, of its decision rendered at a hearing held pursuant to a Notice of Noncompliance by the Board and Right to Hearing.

1.27 Notice of Members Meeting. Notice of meetings of the Members required or provided for in this Declaration shall be in writing, shall satisfy the notice requirements set forth in the Bylaws, and may be delivered either personally or by first class or registered mail. Notice of Members Meetings shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

1.28 Notice of Noncompliance by the ACC. Notice of Noncompliance by the Board and Right to Hearing Notice of Noncompliance by the ACC shall mean a notice from the ACC directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with the ACC Rules and Regulations. Notice of Noncompliance by the Board and Right to Hearing shall mean a notice from the Board directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with any provisions of this Declaration and the opportunity for the Owner to have a hearing before the Board as provided for in the Rules and Regulations.

1.29 Owner. Owner shall mean the Person or Persons, including Declarant, who is the owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.30 Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.31 Plans. Plans shall mean such plans and specifications as may be required by this Declaration and by ACC Rules and Regulations.

1.32 Plat. Plat shall mean the plat or survey maps recorded in the records of the Washington County Recorder, as the same may be modified or amended.

1.33 Property. Property shall mean all the property described in the Preamble.

1.34 Record, Recorded, Filed or Recordation. Record, Recorded, Filed or Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Washington County, Utah.

1.35 Rules and Regulations. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Declaration, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Property are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

1.36 Recreational Vehicles. Recreational Vehicles shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, all-terrain-vehicles and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, off road motorcycles, or devices similar to any of the foregoing, and trailers that carry any of the foregoing.

1.37 Special Assessments. Special Assessments shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI.

1.38 Streets. Streets shall mean private streets and thoroughfares on the Property.

1.39 Vehicle. Vehicle shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects -- or are designed to be transported on wheels, skids, skis or tracks--, including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircraft, trailers, Recreational Vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

## ARTICLE IA

## DESCRIPTION OF PROPERTY

The real property which is associated with the Development and which has been and shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of all the property described in the Preamble; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the 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; all instruments of record which effect the above-described land or any portion thereof, including without limitation, any Mortgage; 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; an 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 Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

## ARTICLE II

## OWNERS' PROPERTY RIGHTS

2.1 Owners' Easements of Enjoyment. Each Owner 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 Area. Such right and easement shall be appurtenant to and shall pass with title to each such Lot and in no event shall be separated therefrom. Any Owner may grant the use and enjoyment described herein to any tenant, lessee, guest, or family member, and to a contract purchaser who resides on such Lot. All such rights are subject to this Declaration.

2.2 Form For Conveyancing. 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 follows:

All of Lot \_\_\_\_\_ of Color View Townhomes, according to the official Plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions, on file in the office of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

2.3 Transfer of Title to Common Area. Declarant is obligated to convey to the Association title to all Common Area, and Declarant further agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and close of escrow of the last Lot.

2.4 Limitations on Common Area Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

- (a) Subject to the provisions of Article XIII of this Declaration, the right of the Association to dedicate or transfer all or any part of the Common Area 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, upon Notice of Members Meeting be assented to by two-thirds (2/3) of the vote of the Membership which Members present in person or by proxy are entitled to cast at a meeting duly called for the purpose. The quorum requirement for such meeting shall be as set forth in the Bylaws.
- (b) The right of the Association, to be exercised by the Board, to establish uniform Rules and Regulations as set forth in Section 14.9;
- (c) The right of the Association, to be exercised by the Board, to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement;
- (d) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area;
- (e) 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;
- (f) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
- (g) The easements reserved in Sections 2.6, 2.8, and 2.10; and
- (h) The right to suspend a Member's voting rights as provided for in the Bylaws and the right to suspend a Member's right to the Common Areas and Facilities during any



period of violation of any provision of this Declaration or any Rule or Regulation of the Association.

2.5 Parking Restrictions. In addition to the parking restrictions provided for in Section 10.6 (a), the Association, through its Board, is hereby empowered to establish "parking," "guest parking" and "no parking" areas within the portions of the Common Area improved as Streets, driveways, turnarounds or community parking areas. The Association, through its Board, is also empowered to include in the Rules and Regulations, the ability to enforce the parking restrictions imposed pursuant to this Section 2.5 and those set forth in Section 10.6(a) by all means lawful for such enforcement, including the removal of any violating Vehicles at the expense of the owner of the Vehicle and imposing fines.

2.6 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future owners within the Property, easements for public services of the City of St. George in which the Property are located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.7 Waiver of Use. No owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any Improvements thereon or by abandonment of his Lot or any other property in the Property.

2.8 Easements for Water and Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Property, easements for public and private utility purposes, including but not limited to, the right of any public utility of ingress or egress over the Common Area for purposes of reading and maintaining meters, and using and maintaining fire hydrants located on the Common Area. The Lots shall also be subject to such public utility easements as shown on the Plat and as required by the City of St. George.

2.9 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Board to obtain separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Board, become a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense, and the Association may levy against the Lot as a Corrective Assessment any amounts paid by the Association to rectify the problem.

2.10 Easement for Encroachments. If any portion of a Dwelling Unit or other Improvement constructed by Declarant, or if any portion of a Dwelling Unit or other Improvement reconstructed so as to substantially duplicate the Dwelling Unit or other Improvement originally constructed by Declarant, encroaches upon the Common Areas, Limited Common Areas, or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any

portion of the Property, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

2.11 Lot/Limited Common Area. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but outside the Dwelling Unit walls shall be treated as Limited Common Area for use purposes and as exterior area for maintenance purposes. The purpose of laying out a Lot larger than the Dwelling Unit is to allow flexibility in the original construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to all other provisions of this Declaration. An Owner may construct appurtenant structures that do not contain a roof or footings and personal landscaping outside the boundaries of the Dwelling Unit and within the boundaries of the Lot or Limited Common Area appurtenant to the Lot, subject to approval of the Architectural Control Committee. The foregoing shall not limit the ability of an Owner to have a shed in compliance with Section 10.10. The Board may adopt rules and regulations concerning the use of the Limited Common Areas.

### ARTICLE III

#### COLOR VIEW TOWNHOMES OWNERS ASSOCIATION

3.1 Organization of Association. Declarant has caused the Association to be organized and the Articles filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

3.2 Parties and Powers. The Association shall have such duties and powers as set forth in the Articles, Bylaws, and this Declaration (and such other powers and duties as properly delegated or assigned through the Rules and Regulations), as such documents are amended from time to time.

3.3 Membership. Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.

3.4 Transfer. Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

### ARTICLE IV

#### VOTING RIGHTS

4.1 Vote Distribution. The Association shall have the following two classes of voting membership:

(a) Class A. Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Lot which he or it owns. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) Class B. Class B Membership was formerly held by Declarant. Declarant's Class B Membership rights have expired and Declarant's Membership rights have reverted to that of a Class A member.

4.2 Multiple Ownership. 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 Owners, 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.

## ARTICLE V

### JURISDICTION OF ASSOCIATION

The Association has been organized to provide for the operation, maintenance, preservation and architectural control of the Property and Improvements and to administer the Common Areas of the Association. The Association shall have jurisdiction and authority over the Property and the Members of the Association to the full extent allowed by law and also as provided for in this Declaration and in the Articles, Bylaws, and Rules and Regulations, as such documents may be modified from time to time.

## ARTICLE VI

### COVENANT FOR ASSESSMENTS

6.1 Creation of Assessment Obligation. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Corrective Assessments, and (4) any other amount or assessment levied by the Board pursuant to this Declaration; all such assessments to be established and collected as provided in this Declaration. The Association shall not levy or collect any Annual Assessment, Special Assessment or Corrective Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be

avoided by abandonment of a Lot or by an offer to waive use of the Common Area. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Board of Directors setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth. 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 residence on a permanent or part time basis, provided that the Declarant or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses (not including reserves or capital replacement). The determination of the reasonable cash needs for ordinary and necessary maintenance expenses shall be within the sole discretion of the Board and Declarant shall have no liability to the Association if subsequent Boards shall disagree with the determination of the Board which made such determination. In no event, however, shall the subsidy exceed the monthly assessments.

6.2 Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area, including establishing and funding a reserve to cover major repair or replacement of Improvements within the common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles.

6.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The Annual Assessment as of the date this Amended and Restated Declaration is recorded shall be Twelve Hundred Dollars (\$1,260.00) payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment may thereafter be adjusted by the Board and shall be based upon the Budget prepared by the Board.

6.4 Special Assessments. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

(a) Approved by Board. Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:

(i) An extraordinary expense required by an order of a court;

(ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment; and

(iii) Taxes payable to Washington County as described in Section 7.2 of this Declaration.

(b) Approved by Association. Special projects which must be assented to by more than fifty percent (50%) of all votes which Members represented in person, by proxy, or ballot are entitled to cast at a meeting duly called and held for such purpose pursuant to the Bylaws involve:

(i) the replacement or improvement of the Common Area or Improvement thereon; and

(ii) an extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible.

6.5 Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to subsections 6.2, 6.3, and 6.4(a) and (b) of this Declaration shall be assessed equally and uniformly against all Owners and their Lots.

6.6 Date of Commencement of Annual Assessments. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board. Annual Assessments shall commence on all Lots on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in the Property. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. The Board shall fix the amount of the Annual Assessment against each Lot at least thirty (30) days in advance of each Annual Assessment period. Written notice of any change in the amount of any Annual Assessment shall be sent to every owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

6.7 Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his

Lot to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, including Sections 2.5, 2.9, 8.8, 9.1, 9.7, Article XI, and in any other Section authorizing the Association to spend money to take corrective action, plus interest, an administration fee of fifteen percent (15%) of the total cost of the corrective action, and other charges on such Corrective Assessments.

The Board shall deliver a Notice of Noncompliance and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and payable within (45) days following delivery of Notice of Board Adjudication and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

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

- (a) All portions of the Property dedicated to and accepted by a local public authority; and
- (b) The Common Area owned by the Association in fee.

6.9 Notice of Members Meetings; Quorum Requirements. Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by Section 6.4(b) 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 any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half of the quorum which was required at such preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

6.10 Additional Assessments. In addition to the Annual Assessments, Special Assessments, and Corrective Assessments, the Association shall levy such additional 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 the City's utility lines and facilities thereon. It is acknowledged that the ownership of said 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.

6.11 Preparation of Budget. The Board shall prepare a Budget to be presented to the Members at the Annual Meetings of the Members held as provided in the Bylaws.

6.12 Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacement to the Common Areas.

## ARTICLE VII

### NONPAYMENT OF ASSESSMENTS; REMEDIES

7.1 Nonpayment of Assessments; Remedies. Any assessment installment payment 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 Mortgage on the Lot recorded prior to the date any such installment payment on assessments become due. If any installment payment on the assessment is not paid within ten (10) days after the date upon which it becomes due, a late payment service charge of Ten Dollars (\$10.00) will be assessed or such larger amount as set by the Board of Directors, provided the charge does not exceed twenty-five percent (25%) of the amount of the installment payment. If any installment payment on the assessment is not paid within thirty (30) days after the date on which it becomes due, (a) the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, (b) the entire unpaid balance of the annual assessment shall be accelerated and shall become immediately due and payable; and (c) the Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights.

7.2 Washington County Tax Collection. It is recognized that under the Declaration the Association will own the Common Area and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his assessment will be required to pay to the Association his pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an 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 to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

7.3 Foreclosure Sale. The Board may elect to file a claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. The lien shall be prior to any

other lien arising thereafter, except for liens which, by law, are deemed prior to liens of a nature similar to such assessment liens. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or deed of trust. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner.

7.4 Curing of Default. Upon the timely curing of any default for which a Notice of Lien was filed by the Association, the Board shall Record an appropriate Release of Lien, upon payment by the defaulting Owner of a reasonable fee to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request at a reasonable fee, to be determined by the Board.

7.5 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.6 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Declaration, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded first Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Declaration and the payment of all installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.7 Priority of Assessment Lien. The lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first Mortgage, or conveyance of a deed in lieu of foreclosure, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. When the Beneficiary of a first Mortgage of record or other purchaser of a Lot obtains title pursuant to a judicial or non-



judicial foreclosure of the first Mortgage (or deed given in lieu of foreclosure), such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such Person.

7.8 Rent After Foreclosure. In the event of foreclosure, if the Board desires to allow the occupant to remain in the Dwelling Unit, the occupant shall be required to pay a reasonable rental for the Dwelling Unit.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

8.1 Members of Committee. The ACC shall consist of three (3) to five (5) members. The Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board need not be Members of the Association. If the ACC is not appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members.

8.2 ACC General Powers. The ACC shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed Plans conform harmoniously to the exterior design and existing materials of the Improvements on the Property. This power shall include the power to issue ACC Rules and Regulations which, among other provisions, may set forth procedures for the submission of Plans for approval, and state additional factors which it will take into consideration in reviewing submissions.

8.3 Review of Plans and Specifications. The ACC shall consider and act upon any and all Plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and specifications approved by the ACC. No exterior construction, alteration, removal, relocation, repainting, demolition, addition, modification, external decoration or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, in the Property shall be commenced or maintained, until the Plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC (together with such fees for review and inspection as may be reasonably required by the ACC) and approved in writing by the ACC. The ACC shall approve Plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Lots

and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

The ACC may condition its approval of any Improvement upon such changes, alterations or modifications of such Improvement as it deems appropriate and may require submission of additional Plans and specifications or other information prior to approving or disapproving material submitted. Such conditions may also include a requirement that the applicant complete the proposed Improvement within a stated period of time. The ACC may require such detail in Plans and specifications submitted for its review as it deems proper, including, without limitation, landscape plans, floor plans, as they relate to exterior appearance, site plans, exterior lighting plans and interior lighting plans as they relate to exterior illumination, drainage plans, elevation drawings and description or samples of exterior material and colors. Decisions of the ACC shall be transmitted by the ACC to the applicant at the address set forth in the application for approval, after receipt by the ACC of all materials required by the ACC and within sixty (60) days after its next duly scheduled meeting at which there is a quorum in attendance. Any application submitted pursuant to this Section 8.3 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ACC shall have been transmitted to the applicant within the time herein set forth. In addition to complying with the ACC Rules and Regulations, the Applicant shall meet any review or permit requirements of the City of St. George, Utah, prior to making any alterations or engaging in construction, reconstruction or remodeling permitted hereunder.

8.4 Meetings of the ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC, shall be sufficient to enact resolutions or motions of the ACC. The attendance of a majority of the members at any meeting shall constitute a quorum.

8.5 No Waiver of Future Approvals. The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted for approval or consent.

8.6 Compensation of Members. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

8.7 Inspection of Work and Costs of Correction. Inspection of work and correction of defects therein shall proceed as follows:

- (a) The ACC or its duly authorized representative may inspect during reasonable daylight hours, any work for which approval of Plans is required under this Article VIII. However, the ACC's right of inspection of Improvements for which Plans have been

submitted and approved shall terminate sixty (60) days after the Improvement has been completed, as evidenced in the case of a Dwelling Unit by a certificate of occupancy issued by the City of St. George, Utah, and the respective Owner has given written notice to the ACC of its completion. The ACC's rights of inspection shall not terminate pursuant to this paragraph if Plans for the Improvement have not previously been submitted to and approved by the ACC. If, as a result of such inspection, the ACC finds that the Improvement was constructed without obtaining approval of the Plans therefor or was not done in substantial compliance with the Plans approved by the ACC, it shall deliver to the owner a Notice of Noncompliance by the ACC within five (5) days from the inspection. The ACC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If upon the expiration of ten (10) days from the date of delivery of the Notice of Noncompliance by the ACC as provided for above, the Owner has failed to remedy the noncompliance, the ACC shall notify the Board in writing of such failure. The Board shall then deliver to such Owner a Notice of Noncompliance by the Board and Right to Hearing. At hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from delivery of Notice of Board Adjudication to the Owner. If the Owner does not comply with the Board determination within that period, the Board may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance. In addition, the Board may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorney fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Corrective Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(c) If for any reason the ACC fails to notify the Owner of any noncompliance with previously submitted and approved Plans within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with the approved Plans.

8.8 Scope of Review. The ACC shall review and approve, conditionally approve or disapprove all Plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar architectural features, all as may be required by the Basic ACC Standards and the ACC Rules and Regulations. The ACC's approval or disapproval shall be based

solely on the considerations set forth in this Article VIII, and the ACC shall not be responsible for reviewing, nor shall its approval of any Plan or design be deemed approval of, any Plan or design from the standpoint of structural safety or conformance with building of other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all City of St. George, Utah, requirements with respect to the implementation of such Plans.

8.9 Limitation on Liability. Neither the ACC, the Board nor Declarant, 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 (i) the approval or rejection of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests (ii) the construction or performance of any work, whether or not pursuant to approved Plans, (iii) the development or manner of development of any of the Property, or (iv) any engineering or other defect in approved Plans, drawings and specifications.

## ARTICLE IX

### MAINTENANCE AND REPAIR OBLIGATIONS

9.1 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 IX.

9.2 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. The Association shall maintain, repair and restore the Front Yard Area on the common areas in front of each Lot including, but not by way of limitation, grass, landscaping, shrubs, watering and the sprinkling system. In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot which is subject to assessment under Article V hereof, including, but not limited to the following: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, fences, street signs, lights, mailboxes, walkways and other exterior improvements. In the event that special need for maintenance or repair of the Common Areas and Lot exteriors 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 and Living Unit maintenance by Owners, in the event an Owner of any Lot in the Property shall fail to maintain his Lot 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 a majority 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.

9.3 Air Conditioning. Each Owner shall contract and pay for periodic normal maintenance of the evaporative coolers and shall also be responsible for repairs or replacement of the same. Any damage to a Dwelling Unit or Common Area and Facilities caused by the air conditioning system of an Owner's Dwelling Unit shall be assessed as a Corrective Assessment to the Owner of such Dwelling Unit.

9.4 Water and Utilities. The Association shall pay for water 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, including without limitation sewer and garbage.

9.5 Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

9.6 Alteration of Certain Maintenance Duties by Rules. The duty of maintenance for the area of a Lot outside the walls of the Dwelling Units, and the Limited Common Areas adjacent and appurtenant to the Dwelling Units may be altered by rule of the Association.

9.7 Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, including common walls between Dwelling Units and patio fences, 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.

(b) 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. However, any utilities (including without limitation water, power and sewer) within the wall and principally serving one Dwelling Unit shall be the responsibility of that Dwelling Unit's Owner, including without limitation all costs of maintenance, repair, and replacement. Any damage resulting from or associated with the utilities principally serving a particular Dwelling Unit shall be the responsibility of the Owner thereof. The Association, through the Board, has the right, but not the obligation, to make repairs associated with or caused by such utility services, and the Association may levy a Corrective Assessment for the cost of the repairs against the Dwelling Unit of the responsible Owner. Further, if the Association's insurance provides any coverage for the

damage, the responsible Owner shall pay the deductible and, if such Owner fails to pay the deductible, the Association may also levy a Corrective Assessment against the Owner's Dwelling Unit for the amount of the deductible.

(c) 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.

(d) 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.

(e) 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.

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

(g) Exception for Patio Fences. This Section 9.3 shall also govern the maintenance, repair and replacement of patio fences, except as otherwise specifically provided for in Section 10.18.

## ARTICLE X

### USE RESTRICTIONS

All real property within the Property shall be held, used and enjoyed subject to such limitations and restrictions set forth below.

10.1 Single Family Residence. Subject to the provisions of Section 10.2, each Lot shall be used as a residence for a single family, except as may be authorized below.

10.2 Accountability of Members. As more fully provided in Article XI(d), each Member shall be liable to the Association for any damage to the Common Area sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult.

10.3 Business or Commercial Activity. Subject to the following exceptions, no part of the Property shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes without the prior written approval of the Board; provided, however, that the Declarant, its successors and assigns, may use any portion of the Property for a model home site, display and sales office in connection with the sale of Lots on the Property by Declarant. Occupations without external evidence thereof, including, without limitation, traffic generation, which are merely incidental to the use of the Dwelling Unit as a residential home and for so long as such occupations are conducted in conformance with all applicable governmental ordinances and licensing shall be permitted.

10.4 Signs. Except for one professional quality "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot. Such sign shall not be placed on the Common Areas, but shall be placed on the inside of the window of a Dwelling Unit. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Property.

10.5 Quiet Enjoyment. No noxious or offensive activity or noise shall be carried on upon 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 or which shall in any way increase the rate of insurance.

10.6 Parking and Vehicular Restrictions.

(a) Parking:

(i) Parking Lot. At least one parking stall shall be appurtenant to the corresponding Dwelling Unit as assigned by the Board and shall be Limited Common Area appurtenant to the Dwelling Unit. The Board may also assign an additional parking stall to be appurtenant to a Dwelling Unit. Additional parking shall be available on a first come first served basis to other Dwelling Unit Owners or their tenants, guests or invitees. The Board may regulate the parking of vehicles on the Property, including without limitation limiting the number of parking areas assigned to an Owner and designating guest parking areas.

(ii) Guest Parking Areas. The guest parking areas on the Property shall be used only for temporary parking.

(b) Vehicle Repairs. No Person shall conduct repairs (including without limitation changing the oil, air filters, and spark plugs) or restorations of any Vehicle upon any portion of the Property or visible from the Property.

(c) Vehicles Permitted. Only operable, currently licensed vehicles are permitted on the Property.

(d) Recreational Vehicles. No Recreational Vehicles can be kept on the Property, except for brief periods for loading and unloading, which shall not exceed forty-eight (48) hours in any seven (7) day period.

(e) Violation. Any Vehicle or Recreational Vehicle in violation of this Section 10.6 may be towed at the owner's expense.

10.7 Animals. No pets, animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots. Those Owners having pets at the time this Declaration is recorded are entitled to keep such pets for their remaining life only. To qualify for the exemption set forth in the preceding sentence, the Owner must register the identifying information for the pet with the Board, i.e., age, type (cat, dog, etc.), number, size, color, and such other information as the Board may reasonably require.

10.8 Insurance and Governmental Requirements. No Owner shall permit or cause anything to be done or kept on the Property, or on any Street visible from the Property, which may increase the rate of insurance on the Property, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit.

10.9 Construction. Construction of Dwelling Units shall be diligently pursued to substantial completion which generally shall occur within fifteen months of commencement, subject to extensions by the ACC in its sole discretion. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or his contractor.

10.10 Temporary Buildings. No outbuilding, tent, shack, shed or other temporary building or Improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Property either temporarily or permanently, except that storage sheds may be permitted by the ACC upon request from an Owner.



10.11 Drilling. Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Property, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth-coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted on the Property.

The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot.

10.12 Further Subdivision; Lease Provisions. No Owner shall further partition or subdivide his Lot or the rooms in the Dwelling Unit and Limited Common Area, including without limitation any division of his Lot into time-share estates, time-share uses, creation of additional living quarters, or providing short term rentals of less than six months; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease his entire Lot to a single family by means of a written lease or rental agreement for a term of not less than six (6) months subject to the restrictions of this Declaration, the Bylaws, and the Association Rules and Regulations, so long as the Lot is not leased for transient or hotel purposes; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or some other form of joint ownership. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration and the Bylaws of the Association. Any failure by the lessee of such Lot to comply with the terms of this Declaration, the Bylaws, or the Association Rules and Regulations shall constitute a default under the lease or rental agreement and a default of this Declaration by the Owner of such Dwelling Unit, and may subject the Owner to fines, legal action, and loss of privileges to Common Areas and amenities as provided for in this Declaration, the Bylaws, or the Rules and Regulations.

10.13 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot on the Property, unless an adequate alternative provision is made for proper drainage. For the purposes hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Declarant, and shall include drainage from the Lots on the Property onto the Common Area.

10.14 Water Supply and Sewage Disposal Systems. No individual water supply or sewage disposal system shall be permitted on any Lot on the Property unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations, if any, of the ACC and of any public agency having jurisdiction over the Property, the Washington County, Utah, Health Department, and all other applicable governmental authorities.

10.15 External Apparatus. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on

the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Board. Without the written permission of the ACC, no stove flue chimney or other similar venting system shall be installed or affixed to the exterior of a Dwelling Unit, nor shall any heating device be installed other than the type provided with the Dwelling Unit.

10.16 Exterior Television or Other Antennas. No exterior radio or other antennas are allowed, except as permitted by law.

10.17 Fences. No fences will be allowed on the Front Yard Common Areas. Back yards shall be fenced and any alteration, addition, modification or reconstruction of such back yard fences must be approved by the ACC. The Association shall have the obligation to replace all fences and to maintain the outside surface facing the Common Areas. The Owners shall be responsible for maintaining and repairing the inside surfaces of the fences.

10.18 Windows. Windows shall be kept clean and free from offensive signs or coverings, which detract from the exterior appearance of the project. In the event of a complaint in this regard, the Architectural Control Committee shall meet and determine whether the condition detracts from the exterior appearance and if it is so determined, the unit owner shall remove or correct the condition. The Architectural Control Committee shall also have the power to issue appropriate Rules and Regulations regarding this subject.

10.19 Limited Common Area Restrictions. The carports may only be used to park operable Vehicles. Only clean, neat patio furniture may be kept on the patios.

10.20 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.

## ARTICLE XI

### DAMAGE AND CONDEMNATION

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) If the Common Area is damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.

(b) If the cost of effecting total restoration of such Common Area exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for in Section 6.4(b), cause the same to be

repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Lot and its respective Owner.

(c) To the extent of funds available for restoration, any restoration or repair of such Common Area shall be performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Board.

(d) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. In the event of such damage to the Common Area or Improvement thereon the Board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Area or Improvement thereon with the proceeds from the Association's insurance and assign to the Association's insurance company, its claims against the Member who, by his own acts or the acts (both minor and adult) of his family member, guest, invitee, or assignee, damaged the Common Area or Improvement thereon. In the case of joint ownership of a Lot, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. All such expenses may be levied by the Association as a Corrective Assessment.

(e) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, 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 Area shall be disposed of in such manner as the Association shall reasonably determine.

## ARTICLE XII

### INSURANCE

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

(a) A policy or policies of fire, casualty, and hazard insurance, with extended coverage endorsement, for the full insurable replacement value of all exterior portions of the Dwelling Units, party walls (excluding patio fences), and Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Color View Townhome Owners Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(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 or 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 \$1,000,000.00 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.

12.2 Additional Provisions. The following additional provisions shall apply with respect to insurance:

(a) 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.

(b) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or other similar standard yielding this minimum quality of insurer. Each insurer must be specifically licensed in the State of Utah.

(c) the Association shall have the authority to adjust losses.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(e) 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 cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, 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.

(f) 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.

(g) The Owner of the Dwelling Unit from which a claim arises shall be responsible for the deductible, unless the damage is attributable primarily to a wrongful act or omission of the Association. If the Owner fails to pay the deductible, the Association may levy a Corrective Assessment against the Owner's Dwelling Unit for the same.

12.3 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 others (including volunteers) who handle or are responsible for handling funds of the Association. Such fidelity bonds shall:

- (a) name the Association as the obligee as the named insured;
- (b) be written in an amount sufficient to provide protection which is in no event less than one-half (1 ½) 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 cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to all first Mortgagees of Lots.

12.4 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 premises 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.

12.5 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 action taken on such review to the

Owner of each Lot and to the 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.

12.6 Contents Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance coverage or other insurance covering the contents of a Dwelling Unit and its appurtenant Limited Common Area and acts and events therein or thereon. Accordingly, each Owner is encouraged to secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire, liability, 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.

12.7 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 (888) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's designee from collecting insurance proceeds.

12.8 Flood Insurance. The Development is not located in an area identified by the Department of 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 Dwelling 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 insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

### ARTICLE XIII

#### MORTGAGEE PROTECTION CLAUSE

Notwithstanding any other provision of this Declaration, the following provisions concerning the rights of first Mortgagees shall be in effect:

13.1 Preservation of Regulatory Structure and Insurance. Unless the holders of seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the 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

Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.2, or the upkeep of the Common Area;

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

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

13.2 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least seventy-five percent (75%) of all first mortgagees (based on one (1) 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 or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, 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 XIII nor the insurance provisions contained in Article XII may be amended without the prior approval of all first Mortgagees.

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

(a) there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(b) there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area within ten (10) days after the Association learns of the same the Association plans to abandon or terminate the planned unit development established by this Declaration.

13.4 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.

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

13.6 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 Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; 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, hereby covenants and the Association by acceptance of the conveyance 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.

13.7 Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a 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.

13.8 Exemption From 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 Mortgage, or by foreclosure of the first Mortgage, or by deed or assignment in lieu of foreclosure, or by sale pursuant to any power of sale or otherwise shall be exempt from any "right of first refusal" which would otherwise affect the Lot.

13.9 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.

13.10 Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article IV of the Declaration, no material amendment to the Declaration, Bylaws, or the Articles of Incorporation of the Association shall be accomplished or effective unless at least 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.

#### ARTICLE XIV

#### GENERAL PROVISIONS

14.1 Enforcement. This Declaration may be enforced by the Association, Declarant, and any Owner as follows:



(a) Breach of any of the provisions contained in the Declaration and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Declarant so long as Declarant owns a Lot in the Development, and by the Association. The offending party is entitled to such notice and rights to a hearing as provided for in the Bylaws. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(b) The result of every act or omission whereby any of the provisions contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Declarant for so long as Declarant owns a Lot.

(c) The remedies herein provided for breach of the provisions contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association to enforce any of the provisions contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

(e) Any breach or amendment of the provisions contained in this Declaration, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Declaration, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

14.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.3 Term. Unless earlier terminated pursuant to Section 14.5 below, the covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, the Declarant for so long as Declarant owns a Lot in the Development, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which the term shall be automatically extended for successive periods of ten (10) years unless a declaration of termination satisfying the requirements of an amendment to the Declaration as set forth in Section 14.5 is Recorded.

14.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and

for the maintenance of the Common Area. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

14.5 Amendment.

(a) Amendment by Vote. Any amendment to this Declaration shall require (a) the affirmative vote of at least two-thirds (2/3) of all Class A Membership votes which Members are present in person, represented by proxy, or by ballot 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 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 fifty percent (50%) of all the votes of the Class A Membership 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 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. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the 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 Property (including additional phases as may be added) 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; (a) to more accurately express the intent of any provision of this Declaration in light of then existing circumstances, information or mortgage requirements, or (b) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Declaration.

(b) 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:

(i) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(ii) The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is signed.

(iii) 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 to give or withhold his consent.

(iv) 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.

14.6 Notice. Any notice, including, without limitation, Notice of Noncompliance by the ACC, Notice of Noncompliance by the Board and Right to Hearing, and Notice of Board Adjudication, permitted or required to be delivered as provided herein shall be fair and reasonable if given in writing and may be delivered either personally or by first class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

14.7 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. Such Manager shall be responsible for managing the Property for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself.

14.8 Terms 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 termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

