

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

TABLE OF CONTENTS

	Page No.
RECITALS	1
DECLARATION	1
LEGAL DESCRIPTION	2
ARTICLE I	
DEFINITIONS	2
Section 1. "Board of Trustees"	3
Section 2. "Common Areas"	3
Section 3. "Conveyance"	3
Section 4. "Declarant"	3
Section 5. "Declaration"	3
Section 6. "Expandable Land"	3
Section 7. "Family"	3
Section 8. "Homeowners Association" or "Association"	3
Section 9. "Limited Common Areas"	3
Section 10. "Living Unit" or "Unit"	4
Section 11. "Lot"	4
Section 12. "Member"	4
Section 13. "Mortgagee"	4
Section 14. "Owner" or "Lot Owner"	4
Section 15. "Plat" or "Plat Map"	4
Section 16. "Property," "Properties" and "Project"	4
Section 17. "Supplementary Declaration"	4
Section 18. "Townhome"	4
Section 19. "Utilities"	5
ARTICLE II	
PROPERTY RIGHTS	5
Section 1. Owners' Easements of Enjoyment to Common Areas	5
Section 2. Owners' Easements of Enjoyment to Limited Common Areas.	6
Section 3. Delegation of Use	6
Section 4. Title to Common Areas.	7
Section 5. Limitation of Homeowners Association.	7
Section 6. Encroachments	8

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS	8
Section 1. Membership	8
Section 2. Board of Trustees	8
Section 3. Classes of Membership	8
(a) Class A	8
(b) Class B	8
(c) Changes in Voting Procedure	8
(d) Multiple Ownership Interests	8
(e) Limitation on Members' Votes	9

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS	9
Section 1. Creation of Lien and Personal Obligation of Assessments	9
Section 2. Purpose of Assessments	9
Section 3. Basis and Maximum of Annual Assessments	9
Section 4. Special Assessments	10
Section 5. Reserve Fund	10
Section 6. Declarant Subsidy	10
Section 7. Notice and Quorum for any Action Authorized Under Article IV, Sections 3 and 4	11
Section 8. Rate of Assessment	11
Section 9. Date of Commencement of Annual Assessments; Regular Assessments; Due Dates	11
Section 10. Effect of Non-Payment of Assessments; Remedies of the Association.....	11
(a) Non-Payment	11
(b) Remedies	11
(c) Right to Bring Action	12
Section 11. Non-use and Abandonment	12
Section 12. Subordination of Lien to Mortgages	12
Section 13. Exempt Property	13
Section 14. Additional Assessments	13

ARTICLE V

SEPARATION WALLS	13
Section 1. Separation Walls.	13
Section 2. General Rules of Law to Apply.	14
Section 3. Repair and Maintenance.	14
Section 4. Destruction by Fire or Other Casualty.	14
Section 5. Weatherproofing.	14
Section 6. Right to Contribution Runs with Land.	14
Section 7. Arbitration.	14
Section 8. Applicability.	14

ARTICLE VI

ARCHITECTURAL CONTROL	14
Section 1. Architectural Control Committee	14
Section 2. Submission to ACC	15
Section 3. Standard	15
Section 4. Approval Procedure	15
Section 5. Construction	15
Section 6. Disclaimer of Liability	16
Section 7. Non-Waiver	16
Section 8. Exception for Declarant	16
Section 9. Declarant's Obligation	16

ARTICLE VII

DEVELOPMENT STANDARDS	16
Section 1. Intent.	16
Section 2. Development Standards.	17
(a) Building Type.	17
(b) Ownership.....	17
(c) Driveways.	17
(d) Easements.	18
(e) Temporary Structures.	18
(f) Landscaping.	18
(g) Sight Distance at Intersections.	18
(h) Slope and Drainage Control.	18
(i) Golf Course Lots	18
(j) Preferred Builder.....	19
Section 3. Re-Subdivision of Lots.	19
Section 4. Damages.	19

ARTICLE VIII

OPERATION AND MAINTENANCE	20
Section 1. Maintenance by the Association	20
Section 2. Maintenance by Owner.	20
Section 3. Utilities	20
Section 4. Indemnification by Declarant	20
Section 5. Repair of Damage Caused by an Owner, His Tenants, Guests, Invitees and Pets	20
Section 6. Management Agreements	21
Section 7. Rules and Regulations	21

ARTICLE IX

INSURANCE	21
Section 1. INSURANCE ON LOTS AND HOMES	21
Section 2. Assessments	21
Section 3. Required Insurances	21

(a)	Multi-Peril Coverage	22
(b)	Broad-Form Public Liability Coverage	22
(c)	Fidelity Coverage	22
Section 4.	Additional Provisions	22
(a)	Approval of Policies	22
(b)	Contribution	23
(c)	Flood Insurance	23
(d)	Premiums Maintained in the Name of the Association as Trustee	23
(e)	Review of Insurance Policies	23
(f)	Rebuilding After Damage or Destruction	23

ARTICLE X

EASEMENTS	23
Section 1. Minor Encroachments	23
Section 2. Utilities Easement	24
Section 3. Easements for Ingress and Egress and Landscaping Maintenance and Repair	24
Section 4. Easements by Declarant	24
Section 5. Easement for Sewer Line	25

ARTICLE XI

ANNEXATION OF ADDITIONAL PROPERTIES		25
Section 1.	Annexation by Declarant	25
Section 2.	Limitation on Annexation	25
Section 3.	Supplementary Declaration	26
Section 4.	Declarant's Right to Amend	27
Section 5.	Expansion of Definitions	27

ARTICLE XII

USE RESTRICTIONS	27
Section 1. Residential Use	27
Section 2. Fee Conveyed	27
Section 3. Uses Permitted by Declarant During Construction	27
Section 4. Commercial Activities.	28
Section 5. Household Pets Permitted	28
Section 6. Signs	28
Section 7. Obstruction of the Common Areas	28
Section 8. Prohibited Uses	28
Section 9. Oil and Mining Operations	28
Section 10. Hazardous or Toxic Wastes	28
Section 11. Alteration of Common Areas	29
Section 12. Time Sharing Prohibited	29
Section 13. Leases	29
Section 14. Recreational Vehicles	29
Section 15. Landscaping	29

Section 16.	Walls and Fences	29
Section 17.	Swimming Pools and Hot Tubs	29
Section 18.	Electronic Antennas	29

ARTICLE XIII

GENERAL PROVISIONS	30
Section 1. Enforcement	30
Section 2. Soils	30
Section 3. Severability, Construction and Validity of Restrictions	30
Section 4. Duration	30
Section 5. Gender and Grammar	30
Section 6. Conflicts	31

ARTICLE XIV

AMENDMENT	31
-----------------	----

ARTICLE XV

INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE	31
--	----

EXHIBIT A

EXPANDABLE LAND	33
-----------------------	----

EXHIBIT B

EASEMENT AGREEMENT.....	35
-------------------------	----

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE JOSHUAS AT SOUTHGATE
A RESIDENTIAL PLANNED UNIT DEVELOPMENT**

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in St. George, Washington County, State of Utah, this 14th day of Jan, 2000, by UTAH RESOURCES INTERNATIONAL, INC., hereinafter called "Declarant."

RECITALS

A. Declarant is the owner of certain real property located in the City of St. George, County of Washington, State of Utah, which is more particularly described below.

B. The property herein described has been platted and developed under the name of THE JOSHUAS AT SOUTHGATE, a Residential Planned Unit Development, said official plat having been or to be recorded in the Office of the Washington County Recorder, State of Utah.

C. Declarant desires to provide for preservation and enhancement of the property values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the properties referred to in Recital A, as well as those described in Exhibit A attached hereto if and at such time as said lands are annexed to THE JOSHUAS AT SOUTHGATE, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

DECLARATION

Declarant declares that all of the Property described below shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, and liens, and to the Plat Map recorded concurrently. This is for the purpose of protecting the value and desirability of said Property. This Declaration and the Official Plat Map shall be construed as covenants of equitable servitude which shall run with the land and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

The Property is located in the City of St. George, Washington County, State of Utah, and is more particularly described as follows:

THE JOSHUAS AT SOUTHGATE - PHASE 1

BEGINNING AT A POINT N89°25'30"W, 2178.50 FEET ALONG THE 1/4 SECTION LINE AND S01°29'41"W 1283.69 FEET FROM THE CENTER OF SECTION 1, T43S, R16W, SLB&M, SAID POINT BEING ON THE BOUNDARY OF SOUTHGATE PARTNERS "GOLF COURSE EXTENSION PARCEL NO. 2"; THENCE ALONG SAID PARCEL NO. 2 S48°40'51"W, 74.70 FEET; THENCE LEAVING SAID BOUNDARY S33°11'14"W, 423.51 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE N54°06'16"W 20.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL NO. 2; THENCE N35°53'44"E, 5.00 FEET TO THE NORTHEAST CORNER OF THE LEGACY NO. 5 TOWN HOME SUBDIVISION PARCEL NO. 1; THENCE ALONG SAID PARCEL NO. 1 N60°30'26"W, 76.56 FEET; THENCE S73°01'29"W, 51.75 FEET; THENCE S06°51'19"W, 75.53 FEET; THENCE LEAVING SAID SUBDIVISION PARCEL NO. 1 S89°44'32"W, 159.50 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TONAQUINT DRIVE SAID POINT BEING ON A 1731.41 FOOT RADIUS CURVE (RADIUS POINT BEARS S78°26'10"E); THENCE RADially N78°26'10"W, 40.00 FEET TO A POINT ON THE CENTERLINE OF TONAQUINT DRIVE; THENCE EASTERLY, 38.05 FEET ALONG THE ARC OF A 1771.41 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 1°13'51"; THENCE N12°47'41"E, 330.45 FEET; THENCE LEAVING SAID CENTERLINE S77°12'19"E, 114.55 FEET; THENCE S59°04'00"E, 12.78 FEET TO A POINT ON A 114.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS S59°04'00"E); THENCE 9.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 4°57'44"; THENCE N35°53'34"E, 33.69 FEET; THENCE S54°06'16"E, 95.00 FEET; THENCE N35°53'44"E, 180.43 FEET; THENCE N29°09'16"E, 15.84 FEET; THENCE N41°14'09"E, 50.27 FEET; THENCE N48°40'51"E, 73.81 FEET; THENCE S41°19'09"E, 70.00 FEET; THENCE N48°40'51"E, 7.08 FEET; THENCE S41°19'09"E, 99.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.699 ACRES

BASIS OF BEARING IS N89°25'30"W [GRID BEARING] BETWEEN THE CENTER 1/4 CORNER (HCN NO. 265) AND THE WEST 1/4 CORNER (HCN NO. 157) AS SHOWN ON THE CITY OF ST. GEORGE HORIZONTAL CONTROL NETWORK.

ARTICLE I
DEFINITIONS

The following definitions control in this Declaration. Words and phrases not defined in this Article shall be given their ordinary meaning.

Section 1. "Board of Trustees" means and refers to the governing board of the Association.

Section 2. "Common Areas" means and refers to all real property (including the improvements thereon) owned by the Association or hereafter acquired for the common use and enjoyment of the Members and not dedicated for the general public located in Washington County, State of Utah. The Association may increase the Common Areas by purchasing additional adjacent land as provided herein, and (1) filing additional subdivision plats in the Washington County Recorder's Office and stating thereon that said land is subject to this Declaration and any supplemental or amended declarations, and (2) filing a Supplement to this Declaration in accordance with the terms of this Declaration and the same thereafter shall be included within this definition as Common Areas, and such shall also be additional land in the legal description of the Project.

Section 3. "Conveyance" means and refers to an actual conveyance of fee title to any Lot to any Owner by warranty deed or other document of title, and shall not mean the mere execution of an installment sales contract.

Section 4. "Declarant" means and refers to UTAH RESOURCES INTERNATIONAL, INC., its successors and assigns, if such successors or assigns shall acquire more than one (1) undeveloped Lot from Declarant for the purpose of development.

Section 5. "Declaration" means and refers to this Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the Office of the Recorder of Washington County, State of Utah, and any amendments thereto.

Section 6. "Expandable Land" means and refers to those portions of land set forth in Exhibit A attached hereto and made a part hereof, which sets forth property which Declarant may obtain in order to expand the THE JOSHUAS AT SOUTHGATE.

Section 7. "Family" means persons related by blood or marriage, by legal adoption, or by operation of law.

Section 8. "Homeowners Association" or "Association" means and refers to THE JOSHUAS AT SOUTHGATE TOWNHOMES HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, its successors and assigns.

Section 9. "Limited Common Areas" means and refers to those Common Areas as referred to herein and designated on the Plat as reserved for use of a certain Unit to the exclusion of the other Units which are or may include the driveways, adjacent yard areas, and patios, which lead to or are associated with certain Units or both. Limited Common Areas are a subcategory of and are included in Common Areas.

Section 10. “Living Unit” or “Unit” means and refers to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

Section 11. “Lot” means and refers to any plot of land shown upon any recorded subdivision map of the Property, and specifically excepting the Common Areas and areas dedicated to the use of the general public.

Section 12. “Member” means and refers to every person or entity holding membership in the Association.

Section 13. “Mortgagee” means and refers to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

Section 14. “Owner” or “Lot Owner” means and refers to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract purchasers, but excluding those having an interest merely as security for the performance of an obligation.

Section 15. “Plat” or “Plat Map” mean and refer to THE JOSHUAS AT SOUTHGATE, a Residential Planned Unit Development, as recorded in the Office of the County Recorder of Washington County, State of Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which may occur in conjunction with the expansion of the Project as provided herein. “Plat” and “Plat Map” shall also mean and refer to subsequent official Plats as the same may be filed in the Office of the Washington County Recorder from time to time by Declarant, with each such Plat or Plat Map designating additional Lots and Common Areas added to and lying within the Expandable Property.

Section 16. “Property,” “Properties” and “Project” mean and refer to that certain real property herein before described and such additions thereto as may hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with an expansion of the Project as provided herein.

Section 17. “Supplementary Declaration” means and refers to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which may extend the provisions of this Declaration to all or any portion within the Expandable Land and containing such complementary or amended provisions for such additional land as are required.

Section 18. “Townhome” means and refers to a single family dwelling unit constructed on a Lot.

Section 19. "Utilities" means and refers to public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment to Common Areas. Every Lot 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 Areas, which easement is appurtenant to and passes with title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws and with the approval of two-thirds (2/3) of each Class of Members, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said property; the rights of any such mortgagee in said property to be subordinate to the rights of the Owners hereunder;

(b) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for each separate violation of the Association's published Rules and Regulations. Notwithstanding the foregoing, for any continuing and ongoing violation of the Association's published Rules and Regulations, the Member's voting right will be suspended until the rule or regulation is complied with.

(c) With the approval of all the holders of first mortgage liens on Lots, and Owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as agreed to by the Members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Areas by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication, sale or transfer shall be effective unless (i) all Owners consent in writing to the dedication, sale or transfer, or (ii) an instrument has been signed by two-thirds (2/3) of each Class of Members agreeing to such dedication, sale, or transfer.

(d) The right of the Association, with the approval of two-thirds (2/3) of each Class of Members to enter into agreements or leases which provide for use of the Common Areas by a similar association in consideration for use of the Common Areas and facilities of the other association, or for cash consideration.

(e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure.

(f) The right of the Association, with the approval of all of the holders of first mortgage liens on Lots and Owner approval as provided below, to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Areas by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication, sale or transfer shall be effective unless (i) all Owners consent in writing to the dedication, sale or transfer, or (ii) an instrument has been signed by two-thirds (2/3) of each Class of Members agreeing to such dedication, sale, or transfer.

(g) The right of Declarant and Association to grant and reserve easements and rights-of-way through, under, over and across the Common Areas for installation, maintenance and inspection of lines and appurtenances for public or private utilities and construction of additional Townhomes.

(h) The right of the City of St. George and any other governmental entity or quasi-governmental body having jurisdiction over the Property to access and have rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

(i) The terms of this Declaration.

(j) The right of the Association to make, publish and enforce rules and regulations pertaining to the use of all Common Areas and facilities by Owners, guests, invitees and tenants of Owners.

Section 2. Owners' Easements of Enjoyment to Limited Common Areas. Each Lot Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas appurtenant to certain Lots and identified on the official Plat of the Project. The exclusive right to use and occupy such Limited Common Areas shall be appurtenant to and shall pass with the title to every Lot with which it is associated. A Lot Owner's exclusive right of use and occupancy of Limited Common Areas reserved for their Lot shall be subject to and in accordance with the Declaration and Bylaws.

Section 3. Delegation of Use. Any Owner may designate, in accordance with the Bylaws, his right of enjoyment to the Common Areas to the members of his family, his tenants, guests or contract purchasers who reside on the Property. All such use by family members, tenants, contract purchasers or guests shall be subject to this Declaration, including all supplements and amendments thereto, the Bylaws, and the Rules and Regulations. Any damage caused to the

Common Areas or property owned by the Association by a Member or by a person who has been delegated the right to use and enjoy such Common Areas by an Owner shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Areas shall be an assessment charged to the Lot Owner as provided in Article IV.

Section 4. Title to Common Areas. Declarant covenants that it will on or prior to the last conveyance of a Lot in a particular phase, convey to the Association fee simple title to all Common Areas within said phase. Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in each phase, except for (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, and (iii) easements and rights-of-way of record.

Section 5. Limitation of Homeowners Association. The Association shall not be entitled to take any of the following actions unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each Lot mortgaged) or two-thirds (2/3) of the Class A Members shall have first given their prior written approval:

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

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

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

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

(e) To purchase additional adjacent land as Common Areas.

(f) Except that nothing contained herein shall be construed to limit or prohibit the right of the Board of Trustees from entering into joint use agreements with neighboring associations for the purpose of enhancing and promoting the property rights of Owners consistent with the spirit and intent of this Declaration.

Section 6. Encroachments. If any portion of a Living Unit constructed, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, or due to the installation of necessary items or appurtenances to the living unit including, but not limited to, patios, heating/cooling units, eaves, etc., a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Board of Trustees. The Board of Trustees shall initially consist of three (3) members. Declarant reserves the right to appoint the Board of Trustees and to exercise all powers and responsibilities associated with the Board of Trustees until December 31, 2006.

Section 3. Classes of Membership. The Association shall have two (2) classes of membership:

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned.

(b) Class B. The Class B Member shall be Declarant and shall be entitled to five (5) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or,
- (ii) on December 31, 2006.

(c) Changes in Voting Procedure. If Declarant shall exercise its option to expand and add additional Lots, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, and Declarant may regain its Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

(d) Multiple Ownership Interests. In the event there is more than one (1) 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 such Owner,

whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

(e) Limitation on Members' Votes. Electing members to the Board of Trustees shall be subject to the reservation in Article III, Section 2.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. Declarant (as applicable) and Members, for each Lot owned within the Property, hereby covenant, and 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 (i) annual assessments, (ii) special assessments, and (iii) additional assessments as set forth in this Declaration. Assessments shall be levied, fixed, established and collected from time to time as provided below. The assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Notwithstanding any assessment obligation otherwise described in this section, Declarant shall pay no assessment (annual, special or additional) unless a Unit owned by Declarant is constructed on a Lot and is occupied as a residence.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of taxes and insurance on the Common Areas; management and supervision of the Common Areas, including personal property owned by the Association; repair and maintenance of the Common Areas; funding the purchase of (i) personal property to be used by Association Members, and (ii) adjacent land to be used as Common Areas; establishing and funding a reserve to cover the repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

Section 3. Basis and Maximum of Annual Assessments. Each Lot on which a Living Unit has been constructed and which is certified for occupancy shall be assessed according to the schedule set forth below. The annual assessment for each Lot shall be determined by the Board of Trustees setting an annual base assessment.

The Board of Trustees shall fix the base annual assessment at an amount not in excess of the maximum allowed.

(a) Until December 31, 2000, the maximum annual base assessment shall be \$504.00 per Lot (or \$42.00 per month).

(b) From and after December 31, 2000, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without approval of two-thirds (2/3) of the Members of each Class. Any such vote must be taken at a meeting to be called for this purpose.

(c) The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to (i) a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation, or (ii) an expansion of the Project in phases.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association, upon assent of two-thirds (2/3) of Class A Members at a meeting called for this purpose, may levy in any assessment year a special assessment applicable to the year for the purpose of (i) defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property related thereto; (ii) purchasing adjacent property as additional Common Areas; (iii) providing for capital improvements and personal property to be used by Association Members upon the Common Areas on additional phases of the Project; and (iv) such other purpose as two-thirds (2/3) of all Class A Members approve.

Section 5. Reserve Fund. The Association shall maintain a reserve fund, funded by annual assessments. Special assessments for the purpose of defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property related thereto on any phase of the Project, will be allowed only after the reserve fund has been expended and not replenished.

Section 6. Declarant Subsidy. Declarant or its assigns shall have the obligation to subsidize the Association until Declarant's rights as a Class B Member terminate as provided in Article III, Section 3. Subsidization shall be defined as the payment of the reasonable cost needs of the Association for ordinary and necessary maintenance expenses of the Common Areas of uncompleted (i.e., all Lots not being sold to first-time buyers) phases of the Project (excluding construction, reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property related thereto).

Section 7. Notice and Quorum for any Action Authorized Under Article IV, Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Article IV, Sections 3 and 4, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast two-thirds (2/3) of all the votes of each Class of Members shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Rate of Assessment. Annual and special assessments shall be fixed at uniform rates for all Lots and may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments; Regular Assessments; Due Dates. The assessment provided for herein shall commence to accrue on the first day of the month following conveyance to an Owner. The first assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Board of Trustees as to the amount of said assessment, the assessment shall be an amount equal to ninety percent (90%) of the maximum assessment provided above.

The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot Owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) Non-Payment. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the Association shall have the remedies provided in subsection (b) below.

(b) Remedies. For any delinquent payment as provided in subsection (a) above, the Association shall be entitled to all or any combination of the following remedies against a Member whose assessment is delinquent:

- (1) File a notice of lien on the Lot.
- (2) Bring an action at law against the Owner personally obligated to pay for the following:
 - (a) the principal amount of the unpaid assessment;
 - (b) interest from the date of delinquency at a rate of eighteen percent (18%) per annum, or such other rate as the Board of Trustees may establish from time to time; and
 - (c) all court costs and attorney fees.
- (3) Foreclose the lien against the Lot to satisfy judgment rendered for the full amount of the delinquent assessment, including interest, costs and attorney fees as specified above.
- (4) Levy, as an additional sum to such delinquent assessment, all expenses for preparation of the notice of lien (whether or not prepared by an attorney), court costs, interest and reasonable attorney fees.
- (5) Withhold and interrupt the service of utilities to any such Unit on which the assessment is delinquent.

(c) Right to Bring Action. Each Owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns or agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 11. Non-use and Abandonment. No Owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Areas or Limited Common Areas or abandonment of his Lot.

Section 12. Subordination of Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or

equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all Lots including the mortgaged Lot. Any first mortgagee, who obtains title to a Lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the Lot's unpaid dues or charges which have accrued before the acquisition of title to the Lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Areas; and
- (c) Lots owned by Declarant, except for Lots owned by Declarant on which a unit is constructed which is occupied as a residence.

Section 14. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to the streets or other Common Areas or Limited Common Areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise, is in the City up to and including the meters for individual Units, and that they are installed and shall be maintained to City specifications.

ARTICLE V SEPARATION WALLS

Section 1. Separation Walls. Declarant may construct block landscaping walls which border the Project and separate same from other developments and public rights-of-way; such walls shall be deemed separation walls and shall be a part of the Common Areas. Separation walls do not include yard walls and fences constructed by Lot Owners. It is the intent of Declarant that all such separation walls shall be deemed to be owned and to be maintained by the Association. Separation

walls shall also include walls constructed by Declarant for the purpose of separating the Common Areas from Lots.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, general rules of law regarding separation walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 3. Repair and Maintenance. The Association shall be responsible for the cost of reasonable repair and maintenance. The Association shall have the right to enter upon any Owner's Lot for the purpose of repairing and maintaining separation walls. No changes or alterations to separation walls shall be made by Lot Owners without approval of the Architectural Control Committee. The cost of repair for damage caused to separation walls by the willful or negligent acts of Lot Owners or their guests and assigns shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article IV.

Section 4. Destruction by Fire or Other Casualty. If a separation wall is destroyed or damaged by fire or other casualty, any Owner or the Association who has used the wall may restore it, and if other Owners or the Association thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, except as to the right of any such Owner or the Association to call for a larger contribution from the Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner or the Association who by negligent or willful act causes a separation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner or the Association to contribution from any other Owner and/or the Association under this Article shall be appurtenant to the land and shall pass to such successors in title or assignees of the Association.

Section 7. Arbitration. In the event of any dispute arising concerning a separation wall, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 8. Applicability. This Article shall be applicable to walls built by Declarant for the purposes stated in Section 1.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC"), the

function of which shall be to insure that all exteriors of Living Units and landscaping within the Property harmonize with existing surroundings and structures. Declarant shall have the right to appoint members of the ACC until the happening of either of the following events, whichever occurs earlier: (i) seven (7) years after the recording of this Declaration; or (ii) within one hundred twenty (120) days after seventy-five percent (75%) of the Lots owned by Declarant in the Project are sold.

When Declarant ceases to have the power to appoint, it shall give written notice of this event to each Lot Owner and thereafter the Lot Owners shall, within sixty (60) calendar days, select new members of the ACC by one (1) vote for each Lot. The initial ACC members shall be elected for terms of one, two and three years each, and thereafter ACC members shall be elected for terms of three years. The ACC need not be composed of Owners. If such ACC is not appointed, the Board itself shall perform the duties required of the ACC. No member of the ACC shall receive any compensation or make any charge for services rendered. The ACC shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request.

Section 2. Submission to ACC. No Living Unit, accessory or addition to a Living Unit, landscaping, or other improvement of a Lot shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the ACC. No planting, replanting or replacing of any plant, seedling, flower, tree, bush, shrub, grass or lawn area shall be done or undertaken on any Lot by any Owner unless first approved by the ACC.

Section 3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The ACC may, by majority vote, promulgate rules and regulations to guide it in its activities. By majority vote of the Lot Owners, by one (1) vote for each Lot, any rule or regulation may be amended, adopted or repealed.

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

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

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

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

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

Section 8. Exception for Declarant. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed of record in the Office of the County Recorder of Washington County, State of Utah. Declarant shall further have the right to designate the location and design of any Common Areas amenities, provided that Declarant shall not be required to provide any such amenities by virtue of this Section.

Section 9. Declarant's Obligation. Declarant hereby covenants in favor of each Owner:

- (a) That all Living Units erected by it, or caused to be erected by it, and all improvements of the Common Areas accomplished by it shall be architecturally compatible with respect to one another; and
- (b) That on or before seven (7) years from the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, State of Utah, there shall be substantially completed and usable as part of the Common Areas all open spaces in the locations shown on the plat.

ARTICLE VII DEVELOPMENT STANDARDS

Section 1. Intent. The intent of the The Joshuas at Southgate Townhomes Development Standards is to protect the views of the Southgate Golf Course; to respect the climatic conditions and environment of the region and to maintain and enhance Project property values. Also within this intent, it is important to allow individual ideas to flourish and enrich the Project, provided that standards are maintained.

These Development Standards provide an overall framework and comprehensive set of guidelines to allow the Project to develop and progress in an orderly and cohesive manner. They establish criteria for architectural style and design, landscape concepts, site improvements, colors and materials. They also establish a process for judicious review of proposed new developments and changes within the Project. These Development Standards additionally set forth the means by which the standards and guidelines contained herein may be changed and amended to better serve the needs of an evolving Project.

These standards have been adopted by the Board of Trustees of THE JOSHUAS AT SOUTHGATE TOWNHOMES HOMEOWNERS ASSOCIATION and the Architectural Control Committee pursuant to this Declaration.

To the extent that any local government ordinance, building code or regulation requires a more restrictive standard than that found in these Development Standards, the local government standard shall prevail. To the extent that the local ordinance is less restrictive than these Development Standards or this Declaration, the Development Standards and this Declaration shall prevail.

Section 2. Development Standards.

(a) Building Type. All buildings shall conform to one of the approved plans designated by the developer for this project. However, modifications to an approved plan may be allowed if approved by the ACC as long as such modifications otherwise comply with the requirements of this section. All buildings shall be one story, detached single family residences, and every residence shall have as a minimum a fully enclosed two-car garage. The residence must be located within the "pad area" as defined on the Plat. Construction of residences shall be of southwest design, approved by the ACC, and of new materials. All residences shall have a paved driveway connecting parking to the street and allowing for safe ingress and egress. All structures shall be constructed in accordance with the zoning and building ordinances of the City of St. George.

(b) Ownership. The Property is divided into two (2) classifications of ownership: (i) Private, which shall consist of all residential Lots as defined on the subdivision Plat; and (ii) Common Areas, including Limited Common Areas, which shall consist of all lands other than Private. The Common Areas shall be owned by the Association and are dedicated as open space for the enjoyment of all Owners. The Common Areas shall be maintained by the Association.

(c) Driveways. All driveways, walkways, parking areas and other areas of similar nature shall be constructed out of concrete. They must be built in accordance with the approved plans and specifications and be completed with the residence.

(d) Easements. Easements for installation and maintenance of utilities, drainage facilities, and ingress and egress are reserved as shown upon the recorded Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements, or which may impede ingress and egress. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(e) Temporary Structures. No structure of a temporary nature, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence, either temporarily or permanently. No lumber, material or bulk materials shall be kept, stored or allowed to accumulate on any Lot, except building or other materials to be used in connection with any construction, alteration or improvement approved in accordance with the terms hereof.

(f) Landscaping. Landscaping shall be of desert southwest design and installed by the builder as part of the sale of the Living Unit. All landscaping shall be maintained by the Association at a high standard compatible with other Living Units and Common Areas in the Project.

(g) Sight Distance at Intersections. No fence, wall, or hedge which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(h) Slope and Drainage Control. No Lot Owner shall be permitted to install or maintain any structure or other material or plant any vegetation whatsoever or undertake any other activities which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. Every effort shall be taken to ensure positive drainage away from structures to reduce the potential for water to migrate below foundations. The slope control areas of each Lot and all improvements and landscaping in them shall be maintained continuously by the Association, except for those improvements for which a public authority or utility is responsible.

(i) Golf Course Lots. To the extent permitted by applicable law, all Lot Owners bordering the Southgate Golf Course by acceptance of their deed to their property shall be deemed to have waived conclusively any right to bring any action or proceeding or to assert

a claim in any manner, against Declarant or against the owner or operator of the Southgate Golf Course for compensation for loss, damage or injury to person or property caused by the impact of a golf ball which enters upon any portion of the Lot Owner's property from the Golf Course, whether or not such ball is struck in a negligent manner, but excluding willful or intentional acts. Owners of all Lots bordering the golf course or green belt may construct suitable screening to protect windows, patios and outdoor living areas from errant golf balls and/or a protective screening device that includes a patio cover extension, so long as the protective screening device and accompanying patio cover extension, installed by the Owner is not less six (6) feet from the Southgate Golf Course or green belt, at the base of the structure, and not less than five (5) feet from the Southgate Golf Course or green belt to any overhang portion of the patio cover extension. Approved screening materials include, but are not limited to, diamond mesh expanded metal and clear Lexan. Screening materials shall be consistent with those used by Declarant as to composition, type, detailing and color. Plans and samples for all screening must be approved by the ACC prior to installation. Screen materials shall at all times be kept in good condition and repair and properly painted and otherwise finished by the Owner and at Owner's sole and separate expense. "No Trespassing" signs shall be limited to posting at the rear of homes bordering the golf course and shall be limited to one (1) sign per Lot. Signs will be mounted only on metal posts or attached to existing walls/fencing, at a height not to exceed thirty (30) inches above the finished grade. Posts must be made of anodized or brushed aluminum, fiberglass or steel painted so that it will not rust and must be approved by the ACC prior to installation. The maximum size sign for this purpose shall be 24" x 24". Declarant shall have no responsibility whatsoever for the use, maintenance, repair, continuance or operation of the Golf Course.

(j) Preferred Builder. Declarant shall have the exclusive right to designate a Preferred Builder for any Lot in the Project.

Section 3. Re-Subdivision of Lots. No Lot in this Project shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units. Consolidation of two Lots into one, or three Lots into two, may be done at the option of Declarant. In any event, the side-yard setbacks shall be no less than ten (10) feet between buildings.

Section 4. Damages. Any damage inflicted on existing improvements such as curbs, gutters, streets, or concrete sidewalks by the Owner or their guests, assigns, agents or independent contractors of any particular Lot must be repaired as soon as possible after such damage is discovered, and expense of such repair shall be borne by the Owner. Damages repaired by the Association shall be an assessment to the Lot as provided in Article IV.

ARTICLE VIII

OPERATION AND MAINTENANCE

Section 1. Maintenance by the Association. All areas maintained by the Association shall be maintained so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any Lot. All outside portions, fixtures and exteriors of each living unit shall be maintained by the Association except for the heating/cooling unit and glass windows. The Association shall maintain the exterior landscaping on all lots and Common Areas, including all grass, shrubs, plants, and trees. The Association shall also maintain, repair, set, and regulate all irrigation and sprinkler systems and shall have access to all such systems, including sprinkler timing devices and clocks.

Section 2. Maintenance by Owner. No Lot Owner shall be permitted to allow the accumulation of rubbish or other unsightly items on or around his lot. In the event any Owner shall allow such an accumulation in a manner inconsistent with the terms of this Declaration as determined by the ACC, the Board of Trustees shall have the right to enter upon such Lot to clean up the Lot and exterior of the Living Unit. The cost of such clean up shall be added to and become part of the assessment to which such Lot is subject.

Section 3. Utilities. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots, including water, sewer, garbage, electrical and telephone service as the same may be provided by the City of St. George or other party furnishing such service. The Association shall pay for the general monthly services of Cable Television. The Board of Trustees shall determine what additional utility services, if any, shall be included in the general utility services for which the Association will be responsible for payment as an Association debt.

Section 4. Indemnification by Declarant. Declarant, by this instrument and recording of the same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas and facilities, including personal property owned by the Association, as a result of the construction activities of Declarant, builders, or agents.

Section 5. Repair of Damage Caused by an Owner, His Tenants, Guests, Invitees and Pets. Any damage caused to the Common Areas and facilities, including personal property owned by the Association, by an Owner, his tenant, guest, invitee, minor child or any animal or pet under the control of or owned by any one or a combination of the foregoing shall create an assessable debt owed by such Owner to the Association. If the Owner does not adequately repair the damage, the Association, after approval of a majority vote of the Board of Trustees, shall have the right, through its agents, employees, or through an independent contractor, to repair the damage. The costs incurred by the Association in repairing the damage shall be added to and become an assessment against the Lot as described in Article IV, Section 1 of this Declaration, and the same may be enforced and collected as provided in Section 10 of said Article. Any repair work of damage

undertaken by the Owner or agent of Owner pursuant to this Section must first submit plans to the ACC and obtain approval required as provided at Article VI herein.

Section 6. Management Agreements. The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days written notice thereof. Any such contract, and any other contract with a third person wherein the third person is to furnish goods or services for any Common Areas or the Association, shall be limited to a duration of one (1) year; provided, however, that such contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of the Board of Trustees.

Section 7. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Property and the Common Areas are maintained and used in a manner consistent with the interests of the Owners. The Association also has authority to adopt a schedule of monetary fines that may be imposed on Owners for the willful violation of rules that have been duly adopted and published by the Association, provided that such fines in all cases shall be reasonable and shall be subject to review and hearing by the Board if contested. Any such fine imposed and not contested, or any such fine upheld after review and hearing by the Board shall be payable within thirty (30) days. Unpaid fines may be assessed against a Lot and collected as provided in Article IV. Reasonable rules may include, but shall not be limited to, rules to allocate the fair use of all Common Areas.

ARTICLE IX INSURANCE

Section 1. INSURANCE ON LOTS AND HOMES. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR A LOT OR HOME, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT OR IN A HOME.

Section 2. Assessments. Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed in Article IV.

Section 3. Required Insurances. The Association shall secure and at all times maintain the following insurance coverages:

(a) Multi-Peril Coverage. A multi-peril type policy covering the Common Areas and facilities. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than 100% of the full insurable value (based upon replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent.

(b) Broad-Form Public Liability Coverage. A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Areas. Limits of the liability under such coverage shall not be less than \$1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers 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 others.

(c) Fidelity Coverage. A fidelity policy or policies to protect against dishonest acts on the part of a trustee(s), officer(s), manager, employee(s) of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than 100% of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all first mortgagees of Lots.

Section 4. Additional Provisions. The following additional provisions shall apply with respect to insurance:

(a) Approval of Policies. All policies shall be written by a reputable company approved by the Board of Trustees.

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

(c) Flood Insurance. In the event that some part of the Project is now or may in the future be classified by the Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas shall be maintained in an amount customarily required in projects of this type to ensure against flood damage.

(d) Premiums Maintained in the Name of the Association as Trustee. Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for each of the townhome Owners.

(e) Review of Insurance Policies. The Board of Trustees shall periodically, and whenever demand is made 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 actions of any mortgagee or any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Trustees shall be available for inspection by the Owners.

(f) Rebuilding After Damage or Destruction. In the event of damage or destruction by fire or other casualty to any Properties covered by insurance written in the name of the Association as trustee for the Owners, the Board of Trustees shall, with concurrence of the Mortgagee, if any, and upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Properties to as good a condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board of Trustees. The Board of Trustees shall advertise for sealed bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Trustees shall levy a special assessment against all Owners in such proportions as the Board of Trustees deems fair and equitable in light of the damage sustained.

ARTICLE X EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant, as well as for the installation of necessary

items or appurtenances of the living unit including, but not limited to, patios, heating/cooling units, eaves, etc. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the City of St. George, Questar Gas Company, cable television companies, and telephone companies, their successors and assigns, a blanket easement upon, across, over and under all of the Common Areas, including Limited Common Areas, for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said entity deems appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Areas, including Limited Common Areas.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common Areas, including Limited Common Areas, in the performance of their duties. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as (i) initially planned and approved by the Declarant, or thereafter approved by the Board of Trustees, or (ii) as required by the City of St. George. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 3. Easements for Ingress and Egress and Landscaping Maintenance and Repair. An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Areas, including Limited Common Areas, and any Lot to perform the duties of maintenance and repair of the Unit, yard and landscape area, or Common Areas provided for herein. Specifically, an easement is granted to the Association, its officers, agents, employees, and to any management company selected by the Association over Lots to maintain, repair, set, and regulate irrigation and sprinkling systems, including the right and easement to allow for over spray and irrigation across Lot lines when such irrigation and sprinkler use is an efficient and practical method to allow the Association to adequately maintain the landscaping. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Areas, including Limited Common Areas, by the streets, roads, paths, or walkways established or hereafter established on said property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional planned unit development Lots or townhomes.

Section 4. Easements by Declarant. Declarant reserves the right to enter upon, connect to, access, or otherwise make use of the streets, water lines, sewer lines, drainage lines, power lines

and other utilities on the property in the process of developing new phases and/or adjacent properties.

Section 5. Easement for Sewer Line As more fully described in an Easement Agreement attached hereto as Exhibit B, Kay H. Traveller Development, Inc. has been granted a sewer line easement across Declarant's property, which includes the property that is the subject of these CC&Rs. It is therefore understood that the sewer line servicing the property also services or will yet service other properties, including properties pertaining to The Legacy Homeowners Association, and in fact said line originates and ends in The Legacy subdivision. In keeping with the terms of the easement agreement referred to above whereby each respective property owner shall be responsible for maintenance of that portion of the line that rests on its property, the Association shall be solely responsible to maintain the line underlying The Joshuas at Southgate.

ARTICLE XI ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Declarant. Declarant reserves the right and option to expand the Property and annex all or any part of the Expandable Land. (See Exhibit A hereto for the legal description of the Expandable Land.) The annexation of such land shall become effective upon the recordation in the Office of the County Recorder of Washington County, State of Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated by reference within the description contained in the Expandable Land portion of the Plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, and (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration or any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within the Expandable Land.

Section 2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the Expandable Land described in Exhibit A hereto.

(b) Any additional planned unit developments annexed hereto by Declarant shall be comprised exclusively of residential single family residences, architecturally compatible to the existing Units; substantially similar to the Units already constructed; and constructed out of similar materials. Declarant shall have the sole discretion to develop the Common

Areas in said additions and to include any facilities or amenities thereon that Declarant deems necessary.

(c) Declarant's right to annex land to the Property shall expire ten (10) years after this Declaration is filed of record in the Office of the County Recorder of Washington County, State of Utah.

(d) If additional planned unit developments are created by Declarant pursuant to the terms of this Article, the Owners in said additions shall be Members of the Association and shall have the same rights to the use and enjoyment of the Common Areas of the Association as any other Member. The Common Areas in any such additional planned unit developments as set forth therein shall be deeded by Declarant to the Association, free and clear of all encumbrances and liens prior to the conveyance of the first Lot on said Plat and the Association must accept the deed to said Common Areas.

(e) Any Units to be added by annexation shall be architecturally compatible with THE JOSHUAS AT SOUTHGATE, a Residential Planned Unit Development, as determined by Declarant in its sole discretion, but no assurances can be given as to the precise design, layout, site design, or materials to be used in construction, or the precise Common Areas and related improvements.

(f) Declarant shall not effectuate any annexation of land which would cause the total number of Living Units existing on or planned for the Property to exceed one hundred fifty (150) total Lots.

(g) Declarant reserves unto itself and its assigns the right to create Common Areas and facilities within the annexed land. No assurances can therefore be made with respect to such items.

Section 3. Supplementary Declaration. The annexation authorized under the foregoing Section 2 shall be made by filing of record a Supplementary Declaration of Covenants, Conditions, and Restrictions or similar instrument, with respect to the annexed property which shall extend the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration.

The recordation of such Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this

Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in said real property shall automatically be Members of the Association.

Section 4. Declarant's Right to Amend. Until all portions of the expandable land are included in the Project, or until the right to enlarge the Project through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration or the Plat, or both, as may be reasonable, necessary or desirable (i) to adjust the boundaries of the Lots, including adding or deleting Common Areas (by filing an appropriate amended plat) to accommodate design changes or changes in type of Units or adjustments to Lot configuration; (ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (iii) to better ensure, in light of existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project.

Section 5. Expansion of Definitions. In the event the Property is expanded, the Definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded, e.g., "Property" shall mean the real property described herein, plus any additional real property annexed by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

ARTICLE XII USE RESTRICTIONS

Section 1. Residential Use. No Owner shall occupy or use his Townhome, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's lessees or guests.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the Owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said Townhomes to maintain during the period of construction and sale of said Townhomes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhomes, including, but without limitation, a business office, storage area, construction yard, signs, model Townhomes and sales office.

Section 4. Commercial Activities. Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind without applying for a Conditional Use Permit to the City of St. George.

Section 5. Household Pets Permitted. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Areas, except that dogs, cats or other household pets, not to exceed two (2) dogs and/or two (2) cats with a total not to exceed three (3) animals, may be kept in Townhomes or upon any Lot, provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the Owner's premises or on a leash under the handler's control. Pets shall not be kept if they create noise that, in the opinion of the Association, constitutes a nuisance.

Section 6. Signs. No signs of any kind shall be displayed to the public view on or from any Lot or the Common Areas except that an Owner may display a "For Sale" sign, subject to all restrictions of this provision. Each "For Sale" sign displayed shall be of a dimension, color, and print style as determined by the Association and all such signs shall be made to the exact specifications designated by the Association, including dimension, color, printed information, etc.

The Association shall maintain sign specifications and an example "For Sale" sign in the office of the Association for use by Members. No more than one (1) "For Sale" sign shall be displayed on any one (1) Unit at a time and the location of where the sign shall be placed on the Townhome Unit shall be determined by the Association. This restriction is applicable to all Townhomes offered for sale within the Project, whether by Owner or through a real estate broker. This provision is not applicable to the Declarant for so long as the Declarant is engaged in the development of The Joshuas at Southgate and selling new Townhome Units.

Section 7. Obstruction of the Common Areas. There shall be no obstruction of the Common Areas. Nothing shall be stored in the Common Areas without the prior consent of the Board of Trustees.

Section 8. Prohibited Uses. No noxious or offensive activities shall be carried on in any Lot or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owners.

Section 9. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Areas.

Section 10. Hazardous or Toxic Wastes. No bulk storage of hazardous materials, hazardous wastes, hazardous substances, or toxic substances or any toxin regulated by any federal or state statute or regulation may be stored upon the Property; specifically, but not by way of limitation, including garages of the Units.

Section 11. Alteration of Common Areas. Nothing shall be altered or constructed, or removed from the Common Areas, except with the written consent of the Board of Trustees.

Section 12. Time Sharing Prohibited. Neither Declarant nor an Owner of any Lot shall allow or permit any form of time sharing ownership.

Section 13. Leases. Any lease agreement between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association, and the Bylaws of said Association, and all Rules and Regulations enacted and published by the Board of Trustees, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Furthermore, all leases shall be in writing and a copy of each signed lease shall be left in the office of the Association by the Owner. Any damage caused by the lessee, including guests of lessee, to the Common Areas and exteriors of the buildings shall be an additional assessment upon the Lot as provided by Article VI, Section 5.

Section 14. Recreational Vehicles. No recreational vehicle may be parked within the Common Areas or upon the driveways of each Unit for longer than a twenty-four (24) hour period. In no event shall any recreational vehicle be used for camping or for overnight accommodations by the Lot Owner or by the Lot Owner's guests in and on the Common Areas of the development or on the driveways of the Units, except on that property specially designated by the Board for this purpose. The Board of Trustees is specifically empowered to enforce this provision by having vehicles in violation towed and stored at the Owner's expense.

Section 15. Landscaping. No modification to the Landscaping maintained by the Association shall be allowed or permitted to remain on any Lot, except as specifically allowed and permitted by the ACC.

Section 16. Walls and Fences. No walls, fences, privacy fences, or privacy screens, whether permanent or temporary, other than those originally constructed by Declarant or builder shall be erected, constructed, placed or permitted to remain on any Lot without approval of the ACC.

Section 17. Swimming Pools and Hot Tubs. No above-ground or ground level swimming pools, lap pools, therapy pools, hot tubs, whirlpools, or jacuzzis shall be erected, constructed, placed or permitted to remain on any Lot.

Section 18. Electronic Antennas. No television, radio, or other electronic antenna, satellite dish or devise of any similar type shall be erected, constructed, placed or permitted to remain on a Lot, or on the exterior of any Unit or any other structure located on a Lot, unless approved in writing by the ACC.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or Declarant or its successors in interest, or any Owner shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws, or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto shall be entitled to costs and reasonable attorney fees.

Section 2. Soils. Based on initial soils testing performed by Kleinfelder, Inc. and Applied Geotechnical for the Declarant, it was found that soils at the location of The Joshuas at Southgate consist largely of clay with some expansive properties. As a result of this finding, further geotechnical studies are required prior to construction in order to effectively deal with the properties of the soil. Declarant shall not be responsible for any damages incurred due to failure to perform or follow any such studies.

Section 3. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or restrictions, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or restriction, or any part thereof, shall be thereby affected or impaired; and Declarant and Lot Owners, their successors, heirs or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 4. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years.

Section 5. Gender and Grammar. The singular wherever used in this Declaration shall be construed to mean the plural when applicable and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 6. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

ARTICLE XIV
AMENDMENT

Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the Lot Owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the Members will vote on said amendment.

ARTICLE XV
INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The address of the initial registered office of the Association shall be 297 West Hilton Drive, Suite 4, St. George, Utah 84770. The name of the registered agent at that address is Gerry T. Brown.

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

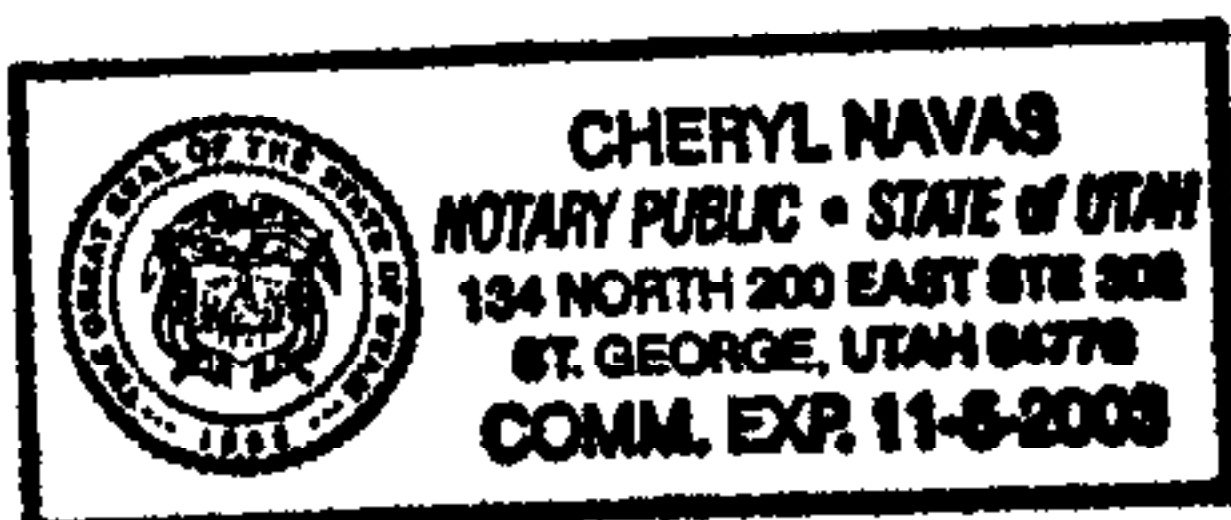
DECLARANT:

UTAH RESOURCES INTERNATIONAL, INC.


By: GERRY T. BROWN
PRESIDENT

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

On this 14th day of January 2000, personally appeared before me GERRY T. BROWN, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the President of Utah Resources International, Inc., a Utah corporation, and that he executed the foregoing DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS on behalf of said corporation being authorized and empowered to do so by the Bylaws of the corporation, and he did duly acknowledge before me that the corporation executed this document for the uses and purposes stated therein.



Cheryl Navas
 Notary Public

EXHIBIT A
EXPANDABLE LAND

Beginning at a point which is S 89°04'49" W 2446.66 feet along the ¼ section line and SOUTH 687.70 feet from the center of Section 1, T43S, R16W, SLB&M said point being on the east right of way line of Tonaquint Drive; thence S 51°29'55" E 623.41 feet to a point on Southgate Partners "Golf Course Extension Parcel No. 2"; thence along said Parcel No. 2 S 47°11'10" W 374.26 feet; thence S 34°24'03" W 417.98 feet to the northeast corner of The Legacy No. 5 Townhome Subdivision Parcel No. 1; thence along said Parcel No. 1 N 62°00'07" W 76.56 feet; thence S 71°31'48" W 51.75 feet; thence S 05°21'38" W 75.53 feet; thence leaving said subdivision Parcel No. 1 S 88°45'47" W 159.50 feet to a point on the easterly right of way line of Tonaquint Drive said point being on a 1731.41 foot radius curve to the right (radius point bears S 79°55'51" E); thence 37.19 feet along the arc of said curve through a central angle of 1°13'51" E; thence N 11°18'00" E 647.33 feet to a point of curvature with a 892.56 foot radius curve to the right; thence 416.55 feet along the arc of said curve through a central angle of 26°44'22" to the point of beginning.

CONTAINS 9.297 acres.

Less and excepting:

BEGINNING AT A POINT N89°25'30"W, 2178.50 FEET ALONG THE 1/4 SECTION LINE AND S01°29'41"W 1283.69 FEET FROM THE CENTER OF SECTION 1, T43S, R16W, SLB&M, SAID POINT BEING ON THE BOUNDARY OF SOUTHGATE PARTNERS "GOLF COURSE EXTENSION PARCEL NO. 2"; THENCE ALONG SAID PARCEL NO. 2 S48°40'51"W, 74.70 FEET; THENCE LEAVING SAID BOUNDARY S33°11'14"W, 423.51 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE N54°06'16"W 20.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL NO. 2; THENCE N35°53'44"E, 5.00 FEET TO THE NORTHEAST CORNER OF THE LEGACY NO. 5 TOWN HOME SUBDIVISION PARCEL NO. 1; THENCE ALONG SAID PARCEL NO. 1 N60°30'26"W, 76.56 FEET; THENCE S73°01'29"W, 51.75 FEET; THENCE S06°51'19"W, 75.53 FEET; THENCE LEAVING SAID SUBDIVISION PARCEL NO. 1 S89°44'32"W, 159.50 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TONAQUINT DRIVE SAID POINT BEING ON A 1731.41 FOOT RADIUS CURVE (RADIUS POINT BEARS S78°26'10"E); THENCE RADIALLY N78°26'10"W, 40.00 FEET TO A POINT ON THE CENTERLINE OF TONAQUINT DRIVE; THENCE EASTERLY, 38.05 FEET ALONG THE ARC OF A 1771.41 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 1°13'51"; THENCE N12°47'41"E, 330.45 FEET; THENCE LEAVING SAID CENTERLINE S77°12'19"E, 114.55 FEET; THENCE S59°04'00"E, 12.78 FEET TO A POINT ON A 114.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS S59°04'00"E); THENCE 9.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A

CENTRAL ANGLE OF 4°57'44"; THENCE N35°53'34"E, 33.69 FEET; THENCE S54°06'16"E, 95.00 FEET; THENCE N35°53'44"E, 180.43 FEET; THENCE N29°09'16"E, 15.84 FEET; THENCE N41°14'09"E, 50.27 FEET; THENCE N48°40'51"E, 73.81 FEET; THENCE S41°19'09"E, 70.00 FEET; THENCE N48°40'51"E, 7.08 FEET; THENCE S41°19'09"E, 99.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.699 ACRES

BASIS OF BEARING IS N89°25'30"W [GRID BEARING] BETWEEN THE CENTER 1/4 CORNER (HCN NO. 265) AND THE WEST 1/4 CORNER (HCN NO. 157) AS SHOWN ON THE CITY OF ST. GEORGE HORIZONTAL CONTROL NETWORK.

EXHIBIT B
EASEMENT AGREEMENT

Legal Description

Recorded at the request of:
Snow & Jensen, P.C.
PO Box 2747
St. George, UT 84771

00687326 Bk 1370 Pg 2267
RUSSELL SHIRTS * WASHINGTON CO RECORDER
2000 JUN 05 16:40 PM FEE \$22.00 BY BJ
FOR: SNOW & JENSEN

Mail tax notice to:
Southgate Development, LLC
297 West Hilton Drive, Suite 4
St. George, UT 84770

FIRST AMENDMENT TO
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE JOSHUAS AT SOUTHGATE
A RESIDENTIAL PLANNED UNIT DEVELOPMENT

This Amendment to the Declaration of Covenants, Conditions and Restrictions for The Joshuas at Southgate is made and executed in St. George, Washington County, State of Utah, this 21st day of May, 2000, by Declarant SOUTHGATE DEVELOPMENT L.L.C., and property owners SOUTHGATE DEVELOPMENT L.L.C and Richard O. Petty (owner of Lot 3), and amends the Declaration of Covenants, Conditions and Restrictions for The Joshuas at Southgate dated January 14, 2000, and recorded on February 9, 2000 as Entry No. 00675813, in Book 1359, at pages 1393-1432, on the records of the Washington County Recorder's Office. This amendment is made pursuant to Article XIV of the CC&Rs, which allows for an amendment by an instrument signed by not less than 75% of the lot owners, and pursuant to Article XI, sections 2(c) and 4 of the CC&Rs, regarding Declarant's ability to amend the CC&Rs with respect to expandable land.

The following portions of the Declaration of Covenants, Conditions, and Restrictions for The Joshuas at Southgate are hereby amended to read as follows:

Article I, Section 6. "Expandable Land" means and refers to those portions of land set forth in Exhibits A and C attached hereto and made a part hereof, which sets forth property which Declarant may obtain in order to expand the THE JOSHUAS AT SOUTHGATE.

ARTICLE XI
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Declarant. Declarant reserves the right and option to expand the Property and annex all or any part of the Expandable Land. (See Exhibits A and C hereto for the legal description of the Expandable Land.) The annexation of such land shall become effective upon the recordation in the Office of the County Recorder of Washington County, State of Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated by reference within the description contained in the Expandable Land portion of the Plat, (ii) declares that the

annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, and (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration or any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within the Expandable Land.


Section 2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the Expandable Land described in Exhibits A and C hereto.

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

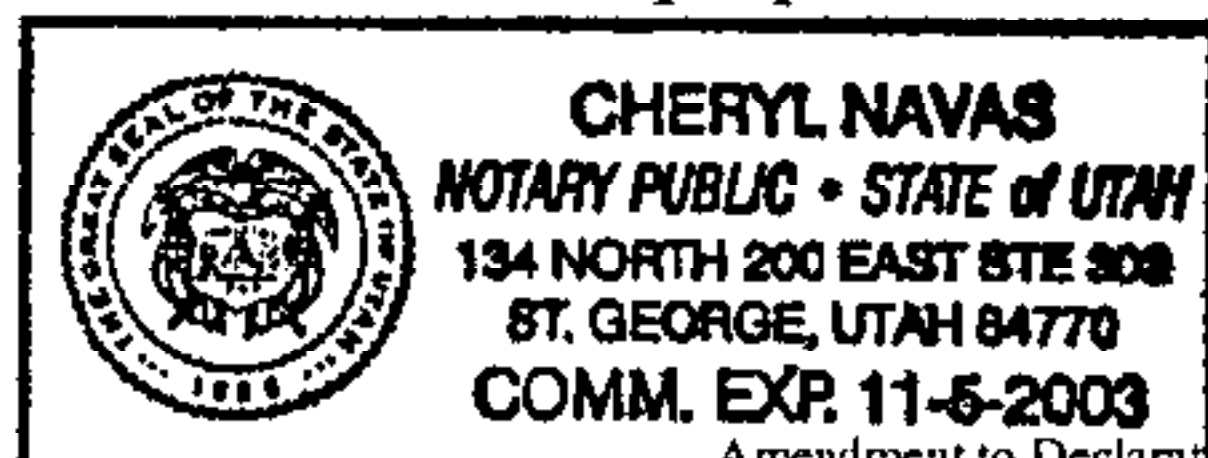
DECLARANT:


SOUTHGATE DEVELOPMENT L.L.C.


By: UTAH RESOURCES INTERNATIONAL, INC.
(GERRY T. BROWN, VICE PRESIDENT)
MANAGER

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


On this 26 day of May, 2000, personally appeared before me GERRY T. BROWN, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the Vice President of Utah Resources International, Inc., the Manager of Southgate Development L.L.C., a Utah limited liability corporation, and that he executed the foregoing AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS on behalf of said corporation being authorized and empowered to do so by the Bylaws of the corporation, and he did duly acknowledge before me that the corporation executed this document for the uses and purposes stated therein.

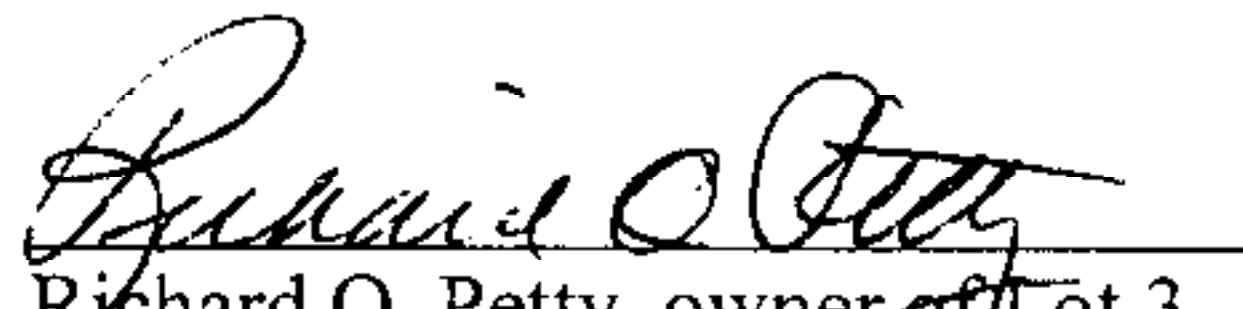



Notary Public

PROPERTY OWNERS:

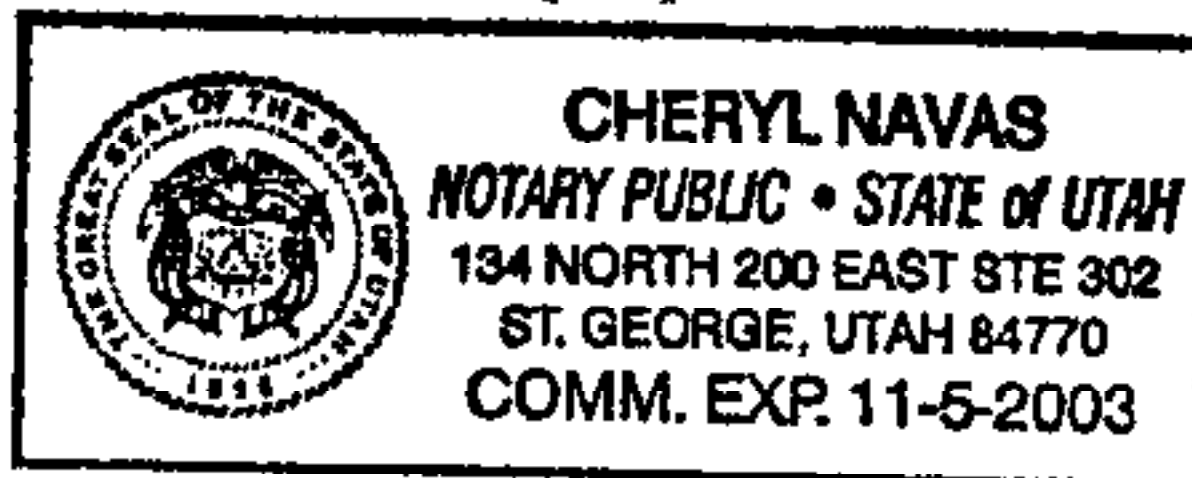
SOUTHGATE DEVELOPMENT L.L.C.


 By: UTAH RESOURCES INTERNATIONAL, INC.
 (GERRY T. BROWN, VICE PRESIDENT)
 MANAGER


 Richard O. Petty, owner of Lot 3

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

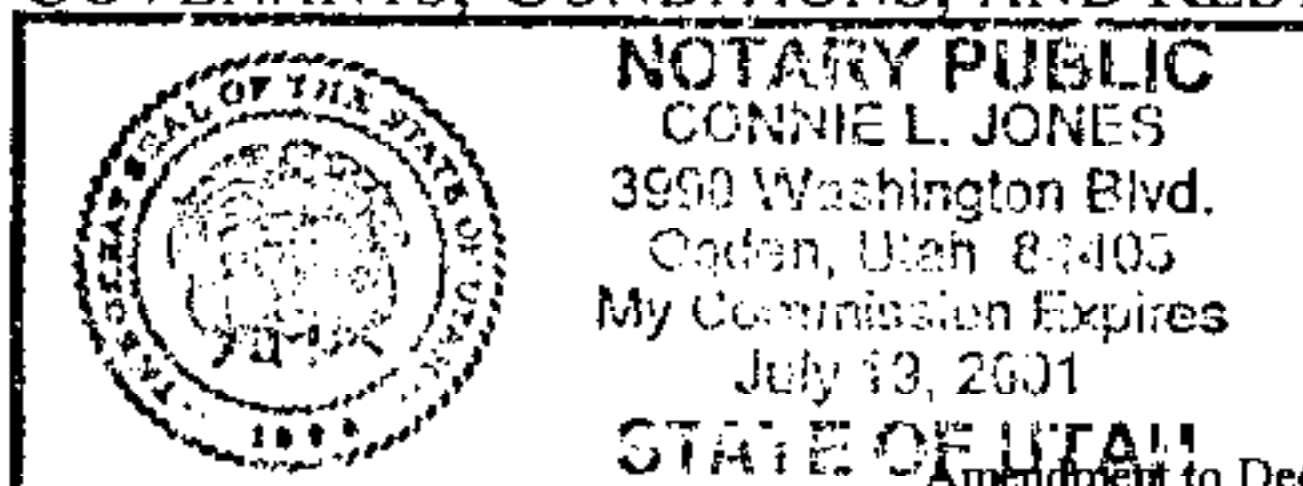
On this 26 day of May, 2000, personally appeared before me GERRY T. BROWN, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the Vice President of Utah Resources International, Inc., the Manager of Southgate Development L.L.C., a Utah limited liability corporation, and that he executed the foregoing AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS on behalf of said corporation being authorized and empowered to do so by the Bylaws of the corporation, and he did duly acknowledge before me that the corporation executed this document for the uses and purposes stated therein.




 Notary Public

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

On this 27 day of May, 2000, personally appeared before me ^{Richard KOP} O. PETTY, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he executed the foregoing AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS for the uses and purposes stated therein.



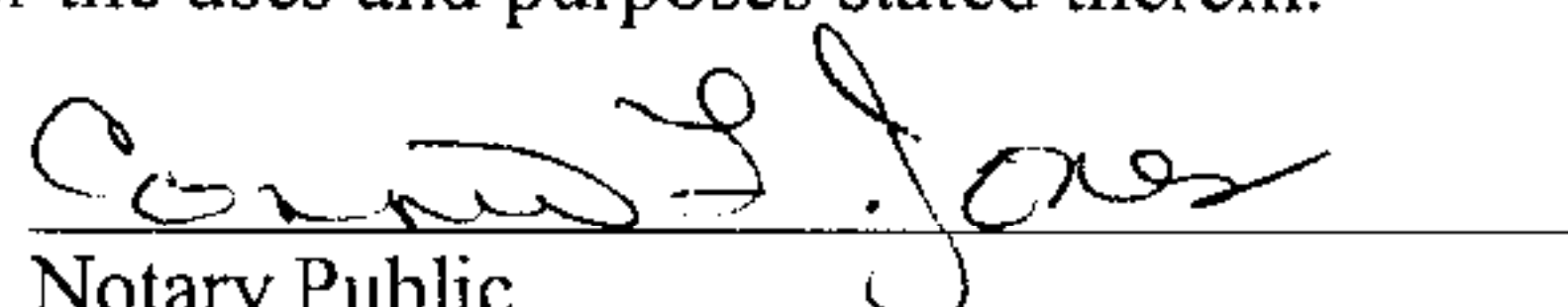

 Notary Public

EXHIBIT A
EXPANDABLE LAND

Beginning at a point which is S 89°04'49" W 2446.66 feet along the ¼ section line and SOUTH 687.70 feet from the center of Section 1, T43S, R16W, SLB&M said point being on the east right of way line of Tonaquint Drive; thence S 51°29'55" E 623.41 feet to a point on Southgate Partners "Golf Course Extension Parcel No. 2"; thence along said Parcel No. 2 S 47°11'10" W 374.26 feet; thence S 34°24'03" W 417.98 feet to the northeast corner of The Legacy No. 5 Townhome Subdivision Parcel No. 1; thence along said Parcel No. 1 N 62°00'07" W 76.56 feet; thence S 71°31'48" W 51.75 feet; thence S 05°21'38" W 75.53 feet; thence leaving said subdivision Parcel No. 1 S 88°45'47" W 159.50 feet to a point on the easterly right of way line of Tonaquint Drive said point being on a 1731.41 foot radius curve to the right (radius point bears S 79°55'51" E); thence 37.19 feet along the arc of said curve through a central angle of 1°13'51" E; thence N 11°18'00" E 647.33 feet to a point of curvature with a 892.56 foot radius curve to the right; thence 416.55 feet along the arc of said curve through a central angle of 26°44'22" to the point of beginning.

CONTAINS 9.297 acres.

Less and excepting:

BEGINNING AT A POINT N89°25'30"W, 2178.50 FEET ALONG THE 1/4 SECTION LINE AND S01°29'41"W 1283.69 FEET FROM THE CENTER OF SECTION 1, T43S, R16W, SLB&M, SAID POINT BEING ON THE BOUNDARY OF SOUTHGATE PARTNERS "GOLF COURSE EXTENSION PARCEL NO. 2"; THENCE ALONG SAID PARCEL NO. 2 S48°40'51"W, 74.70 FEET; THENCE LEAVING SAID BOUNDARY S33°11'14"W, 423.51 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE N54°06'16"W 20.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL NO. 2; THENCE N35°53'44"E, 5.00 FEET TO THE NORTHEAST CORNER OF THE LEGACY NO. 5 TOWN HOME SUBDIVISION PARCEL NO. 1; THENCE ALONG SAID PARCEL NO. 1 N60°30'26"W, 76.56 FEET; THENCE S73°01'29"W, 51.75 FEET; THENCE S06°51'19"W, 75.53 FEET; THENCE LEAVING SAID SUBDIVISION PARCEL NO. 1 S89°44'32"W, 159.50 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TONAQUINT DRIVE SAID POINT BEING ON A 1731.41 FOOT RADIUS CURVE (RADIUS POINT BEARS S78°26'10"E); THENCE RADIALLY N78°26'10"W, 40.00 FEET TO A POINT ON THE CENTERLINE OF TONAQUINT DRIVE; THENCE EASTERLY, 38.05 FEET ALONG THE ARC OF A 1771.41 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 1°13'51"; THENCE N12°47'41"E, 330.45 FEET; THENCE LEAVING SAID CENTERLINE S77°12'19"E, 114.55 FEET; THENCE S59°04'00"E, 12.78 FEET TO A POINT ON A 114.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS S59°04'00"E); THENCE 9.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A

CENTRAL ANGLE OF 4°57'44"; THENCE N35°53'34"E, 33.69 FEET; THENCE S54°06'16"E, 95.00 FEET; THENCE N35°53'44"E, 180.43 FEET; THENCE N29°09'16"E, 15.84 FEET; THENCE N41°14'09"E, 50.27 FEET; THENCE N48°40'51"E, 73.81 FEET; THENCE S41°19'09"E, 70.00 FEET; THENCE N48°40'51"E, 7.08 FEET; THENCE S41°19'09"E, 99.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.699 ACRES

BASIS OF BEARING IS N89°25'30"W [GRID BEARING] BETWEEN THE CENTER 1/4 CORNER (HCN NO. 265) AND THE WEST 1/4 CORNER (HCN NO. 157) AS SHOWN ON THE CITY OF ST. GEORGE HORIZONTAL CONTROL NETWORK.

EXHIBIT C
EXPANDABLE LAND

Beginning at a point which is S 89°17'00" W 1272.06' and South 215.55' from the center of Section 1, Township 43 South, Range 16 West, Salt Lake Base & Meridian said point also being on the South right-of-way line of Tonaquint Drive; thence South 188.00' to a point on South Gate partner's "Golf Course Extension" Parcel no. 2; thence along said parcel no. 2 S 76°28'41" W 274.99'; thence S 29°52'11" W 575.00'; thence S 47°23'21" W 165.74'; thence leaving said parcel no. 2 N 51°17'43" W 623.41' to a point on said Tonaquint Drive said point also being a non-tangent curve to the right; thence along said Tonaquint Drive a distance of 590.43'; a radius of 892.56', a delta of 37°54'05", a bearing to center of S 51°45'28" E to the point of tangency; thence N 76°08'37" E 522.12' to the point of curvature of a 7010.52' radius curve to the left; thence along said curve a distance of 188.88', a delta of 01°32'37" to the point of beginning.

Contains 10.18 acres more or less.

JOSHUAS AT SOUTHGATE SUBDIVISION

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

KNOW ALL MEN BY THESE PRESENT:

This Supplemental Declaration of Covenants, conditions and Restrictions is executed this the 8th day of September 2005 by Salisbury Investments, LLC a Utah Limited Liability Company (hereinafter referred to as "Declarant")

Whereas, Declarant is the owner of certain property (hereinafter referred to the "Annexed Property") in St. George, Washington County, State of Utah, identified as Joshuas At Southgate Phase II, such Annexed Property more particularly described in Addendum A attached hereto and made a part hereof;

Whereas, Declarant desires to subject the Annexed Property to the Joshuas At Southgate Subdivision Declaration of Covenants, Conditions and Restrictions, which was recorded on February 9, 200 in Book 1359, Page 139, of the official records of Washington County, State of Utah (hereinafter referred to as the "Declaration").

NOW THEREFORE, it is declared as follows:

1. All of the Annexed Property is hereby made subject to, and is to be conveyed subject to all the terms, covenants, conditions and provisions set forth in the Declaration and specifically pursuant to the provisions of Article XI of the Declaration as amended in that First Amendment to Declaration of Covenants, Conditions, and Restrictions, which was recorded on June 5, 2000 in Book 1370, Page 2267, of the official records of Washington County, State of Utah, to all intents and purposes as though the Annexed property were a part of the initial property as defined in the Declaration.
2. The recordation of this Supplemental Declaration shall constitute and effectuate the annexation of the Annexed Property, to be held, sold, conveyed, encumbered, leased, occupied and improved subject to the Declaration and subject to the rights and powers of the Declarant.
3. All obligations owing to the Declarant under the Declaration are hereby extended to the Annexed Property as provided in the Declaration.

IN WITNESS WHEREOF, the undersigned, being the Developer/ Declarant has hereunto set
it's hand this 8th day of September, 2005.

Salisbury Investments, LLC, a Limited Liability Company.

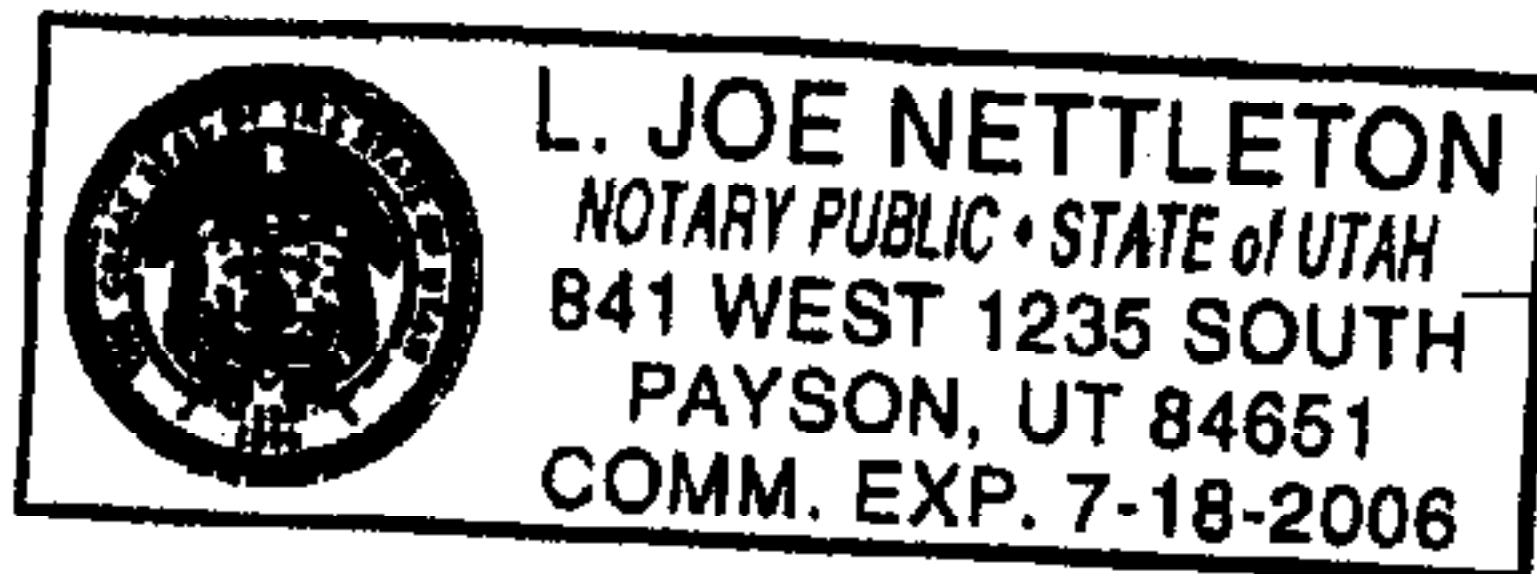
By H. Burt Ringwood
H. Burt Ringwood, Limited Manager

STATE OF UTAH)

: ss.

COUNTY OF UTAH)

On the 8th day of September , 2005, personally appeared before me H. Burt Ringwood,
who being by me duly sworn, did say that she is the Limited Manager of Salisbury
Investments, LLC, and that said instrument was signed in behalf of said Salisbury Investments,
LLC authority of its Operating Agreement and said he acknowledged to me that said limited
liability company executed the same.



A handwritten signature in black ink, appearing to be "LJ", written over a horizontal line.

ADDENDUM A

Beginning at a point which is North $89^{\circ}25'30''$ West 2446.66 feet along the Quarter Section line and South $1^{\circ}29'41''$ West 687.70 feet from the Center of Section 1, Township 43 South, Range 16 West, Salt Lake Base and Meridian, said point being on the East right of way line of Tonaquint Drive; thence South $50^{\circ}00'14''$ East 623.41 feet to a point on Southgate Partners "Golf Course Extension Parcel No. 2" thence along said Parcel No. 2 South $48^{\circ}40'51''$ West 299.56 feet, thence leaving said Parcel No. 2 North $41^{\circ}19'09''$ West 99.00 feet; thence South $48^{\circ}40'51''$ West 7.08 feet; thence North $41^{\circ}19'09''$ West 70.00 feet; thence South $48^{\circ}40'51''$ West 73.81 feet; thence South $41^{\circ}14'09''$ West 50.27 feet; thence South $29^{\circ}09'16''$ West 15.84 feet; thence South $35^{\circ}53'44''$ West 180.43 feet; thence North $54^{\circ}06'16''$ West 95.00 feet; thence South $35^{\circ}53'44''$ West 33.69 feet to the point of curvature with a 114.50 foot radius curve to the left; thence 9.87 feet along the arc of said curve through a central angle of $04^{\circ}56'23''$; thence radially North $59^{\circ}02'39''$ West 12.78 feet; thence North $77^{\circ}12'19''$ West 114.55 feet to a point on the centerline of Tonaquint Drive; thence North $12^{\circ}47'41''$ East 316.88 feet to the point of curvature with a 932.56 foot radius curve to the right; thence along the arc of said curve through a central angle of $26^{\circ}45'34''$; thence South $50^{\circ}00'14''$ East 40.00 feet to the point of beginning.

Basis of Bearing is North $89^{\circ}25'30''$ West between the Center Quarter Corner and the West Quarter Corner of said Section 1 as shown on the St. George City Horizontal Control Network.

137
21
After Recorded Mail To:

St. George City
178 North 200 East
St. George, UT 84770

The Joshua's HOA, Inc.
Attn: Bobby Colson
1305 Commerce Dr. S-210
Saratoga Springs, UT 84043

DOC # 20070009805

Supplemental Declaration 1 of 37
Russell Shirts Washington County Recorder
02/26/2007 02:05:39 PM Fee \$ 84.00 By PROVO LAND TITLE CO



**THE JOSHUA'S HOA, INC.
SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS
& RESTRICTIONS.**

**THIS SUPPLEMENTAL DECLARATION OF COVENANTS,
CONDITIONS AND RESTIRCTIONS (the "Declaration") made this
21 day of Feb., 200~~6~~⁷, by The Joshua's HOA, Inc. a Utah Corporation
(Declarant "A").**

RECITALS

- A. Declarant "A" is the owner of certain land in St. George City, Washington County, Utah, shown on the plat entitled, "The Joshua's" to be recorded among the Recorder's Office of Washington County, Utah, Recorder's Office (the "Recorder's Office"), in Plat Book _____ No. _____, Folios _____ and _____. The property is a portion of the larger project area known as The Joshua's.
- B. It is the intention of Declarant "A" to develop the land as a residential community, and to insure therefore a uniform plan and scheme of development, and unto that end Declarant "A" has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges and liens (collectively, the "Covenants"), as set forth herein for the following purposes:
- i. To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined)
 - ii. To facilitate the sale by Declarant "A", its successors and assigns, of the land in the Community by reason of its ability to assure such purchasers of uniformity.
 - iii. To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of Declarant "A", the Owners and any Mortgagee (as such capitalized terms are defined herein) and

to all those who may in the future claim title through any of the above.

- iv. To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces and common areas, including but not limited to easements, charges and liens, herein below set forth, and for the creation of an association to be delegated and assigned the powers of maintaining and administering the Common Area (as hereinafter defined), and enforcing all applicable covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created; which association shall be incorporated under the laws of the State of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.
- C. The Sub-Association shall constitute a Delegate District and agrees to all of the conditions that apply to Delegate Districts in the Community Declaration for The Ranches.
- D. St. George City is included as a Declarant and a party for the purpose of enforcing the architectural guidelines and standards of the City only.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT Declarant "A" does hereby establish and impose upon the Property (as hereinafter defined), the Covenants, for the benefit of and to be observed and enforced by Declarant "A", its successors and assigns, as well as by all purchasers of Lots.

ARTICLE I **DEFINITIONS**

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

- 1.1. "Association" shall mean and refer to the The Joshua's HOA, Inc..
- 1.2. "Builder" shall mean any person or entity other than Declarant "A", which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.
- 1.3. "Common Area" shall mean and refer to those areas of land, sometimes designated on the Plat as "Homeowners Association Open Space," intended to be devoted to the common use and enjoyment of the Owners of the Lots, including but not limited to reserved open spaces, maintenance areas, tot lots, not-tidal wetlands, recreational areas with any improvements located thereon, steep slopes, private streets, parking areas (including, without limitation,

covered parking), storm water detention facilities, and any other real property or other facilities which the Association owns and/or in which the Association acquires a right of use for the benefit of the Association and its members, saving and excepting, however, so much of the land previously conveyed or to be conveyed to a governmental body.

- 1.4 "Community" shall mean and refer to all of the land hereby made subject to the Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.
- 1.5 "Community Association" shall mean The Joshua's Master Homeowners Association, its successors and assigns.
- 1.6 "Community Declaration" shall mean the Community Declaration for The Joshua's Master Home Owners Association, Inc.
- 1.7 "Declarant" shall mean The Joshua's HOA, Inc., its successors and assigns. A Person shall be deemed a "successor and assign" of The Joshua's HOA, Inc. as Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant or merger shall automatically be deemed a successor or assign of The Joshua's HOA, Inc. as Declarant under the Community Declaration.
- 1.8 "Declarant "A"" shall mean and refer to The Joshua's HOA, Inc., and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.
- 1.9 "Delegate" shall mean the natural person selected by Members within a Delegate District.
- 1.10 "Delegate District" shall mean a geographical area which may constitute any portion or portions of the Community Association Area and from which all Members in that Delegate District shall elect a single Delegate to represent their collective voting power.
- 1.11 "Development Period" shall mean the time between the dates of recordation of this Declaration at the Recorder's Office and the date on which the Class B membership in the Association converts to Class A membership as described in Article IV.

- 1.12 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground (exclusive of the Common Area) and designated by numerals on the Plat, on which a dwelling is proposed to be constructed.
- 1.13 "Mortgage" means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.
- 1.14 "Mortgagee" means the person secured by a Mortgage.
- 1.15 "Plat" shall mean and refer to the plat entitled, "The Joshua's" to be recorded among the Recorder's Office of Washington County, Utah, and any plats recorded among the Recorder's Office in substitution therefore or amendment thereof, plus any plats hereafter recorded among the Recorder's office of any Additional Property that may hereafter expressly be made subject to this Declaration by any instrument in writing, duly executed, and recorded among the Recorder's Office.
- 1.16 "Project Area" shall mean the aggregate of the Community Association Area, which is subject to these Covenant Codes and Restrictions at any point in time, and the Annexable Area, which may at any time thereafter to be annexed to the Community Association Area and thereby be made subject to these Covenant Codes and Restrictions.
- 1.17 "Property" shall mean and refer to all of the real property described in Exhibit A attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.
- 1.18 "Owner" or "Owners" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants in common, tenants by the entireties, or tenants in copartnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or

otherwise, all of the same, as a unit, shall be deemed a single Owner shall be or become a single member of the Association by virtue of ownership of such Lot. The term "Owner," however, shall not mean, refer to or include any contract purchaser nor shall it include a Mortgagee.

- 1.19 "Structure" means any thing or device, the placement of which, upon the Property (or any part thereof), may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered, patio, clothesline, radio, television or other antenna or "dish", fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of Property (or any part thereof) of more than six inches (6") from that existing at the time of first ownership by an Owner hereunder other than Declarant "A".
- 1.20 "Sub-Association" shall mean any Utah corporation, or un-incorporated association, and its successors and assigns, organized and established or authorized pursuant to, or in connection with, one or more Supplemental Declarations and of which the membership is composed of Owners or Privately Owned Sites within all or part of the area covered by the Supplemental Declarations.
- 1.21 "Supplemental Declarations" shall mean a written instrument containing covenants, conditions, restrictions, reservations, easements or equitable servitudes, or any combination thereof, which may be Recorded on any portion of the Annexable Area.
- 1.22 "The City" or "The City of St. George" shall mean the City of St. George, a Utah municipal corporation.

ARTICLE II COVENANTS, CONDITIONS AND RESTRICTIONS

- 2.1 ADMINISTRATION; ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee, which shall be appointed by Declarant "A" during the Development Period and thereafter by the Board of Directors of the Association (the "Architectural Review Committee") shall have all the rights,

powers and duties granted to it pursuant to this Declaration. The initial members of the Architectural Review Committee are Chris Salisbury, Doug Page and Bobby Colson, the Architectural Review Committee shall at all times be comprised of at least three (3) members. At any time, or from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation) with other individuals selected by Declarant "A" in its sole discretion. All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural Review Committee now or hereafter appointed, shall act without compensation for services performed pursuant to this Declaration. Declarant "A" hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the community, (the "Design Guidelines") which shall be made available to all members and to waive such portion or portions of the Covenants numbered 2.3 through 2.25 of this Article. II as the Architectural Review Committee, in its sole discretion, may deem advisable and in the best interest of the Community. The Architectural Review Committee shall be bound by the Architectural Guidelines established by this Declaration.

2.2 ARCHITECTUREAL ELEMENTS.

The following elements shall be required for each dwelling constructed on any lot:

- a. Dwelling Size:
 - i. Minimum of 1200 square feet for any dwelling structure
 - ii. Minimum of 400 square feet for all garages
- b. Roof:
 - i. Minimum of 4:12 roof pitch for all homes
- c. Exterior Materials
 - i. All materials shall consist of rock / brick, stucco or any cementitious material. (All materials and placement are subject to approval by the Architectural Review Committee)
- d. Fascia
 - i. Minimum of 6 inch fascia shall be required for the entire home
- e. Foundation
 - i. Maximum of 12 inches of foundations exposure is required
- f. Set Backs
 - i. Set backs should be located within the pad area as defined on the plat, garages must be set back 18 feet from the "TBC."

2.3 ARCHITECTURAL REVIEW.

- a. No Structure shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any re-treatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work have been submitted to and approved in writing by the Architectural Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all permits and approvals necessary for such Structure or Alterations.
- b. The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors; the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.
- c. The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and locations plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval,

accompanied by the foregoing described plans and specifications or other specifications and information will be required by the Architectural Review Committee shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a processing fee, which shall be retained by the Association and not the Architectural Review Committee to pay for review of plans.

- d. Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.
- e. If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefore and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action or as specifically approved by the Architectural Control Committee, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days

after such Owner's receipt of written demand therefore from the Association, the Association may establish a lien therefore upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

- f. Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.
- g. All improvements constructed within any lot or common area shall conform to the architectural guidelines and standards of this Declaration.
- h. A fee to be determined by the Architectural Review Committee shall be charged for the review of any purposed Structure (1.19) within the project.

2.4 **LAND USE.** The Lots, except as hereinafter provided, shall be used for private and residential purposes only and no dwelling of any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the Lots shall at any time be used for apartments or other types of multiple housing units; it being the intention of Declarant "A" that each and every one of the Lots be used solely for one (1) single family dwelling, and no other purposes, except such purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted on any part of the Property, except that any part of any Structure now or hereafter erected on any Lot may be used as an office or studio, provided that (i) the person using such office or studio actually resides in the Structure in which such office or studio is located, (ii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iii) the operation of such office or studio does not involve the employment of any more than one (1) non-resident employee, (iv) the person owning such Lot has obtained the prior written approval of the Architectural Review Committee, and (v) such office or studio does not occupy more than thirty three and one-third percent (33.3%) of the total floor area of such Structure.

2.5 **EXTERIOR MATERIALS.** All exterior surfaces of any building shall be of materials and of colors approved by the Design Review Committee. Exterior Materials shall mean stone/rock, & stucco, or other similar materials but shall not mean cinder block or

concrete block or aluminum vinyl/siding. Exterior residence materials shall be of a noncombustible material as approved by St. George City. The determination as to if any specific material constitutes an acceptable Exterior Material as its use is proposed in a given structure in The Joshua's shall be made by the Architectural Review Committee.

- 2.6 **TEMPORARY STRUCTURES.** No structure of a temporary character, trailer, basement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Restrictions are placed upon the storage items to be placed in the backyards and along the railings of the backyard decks.
- 2.7 **REAL ESTATE SALE OR CONSTRUCTION OFFICE.** Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and/or model home and related signs, may be erected, maintained and operated on any Lot in accordance with the sign ordinance adopted by the City of St. George or in any Structure now or hereafter located thereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales or constructed office, trailer, or sign after initial development, sales, and/or construction is completed. Except as expressly permitted herein above, neither any part of any Lot, nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.
- 2.8 **CLOTHES LINE.** No exterior clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.
- 2.9 **TRAFFIC VIEW.** No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than thirty feet (30') from either street line that will exceed two and one-half feet (2.5') in height (except shade trees which shall be trimmed so that a clear view may be maintained to the height of seven feet (7')).
- 2.10 **FRONT LAWN.** This should be desert southwest design and installed by builder.
- 2.11 **REAR LAWN.** This should be desert southwest design and installed by builder.

2.12 **FENCES.** Fences may not be installed on any lot.

2.13 **VEHICLES.**

- a. Other than private passenger vehicles, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or repaired on any portions of the Property except in emergencies. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires, and is in such good condition and repair as may be necessary for any person to drive the same on a public highways.
- b. No commercial vehicles over $\frac{3}{4}$ ton rated capacity ("Commercial Vehicles") shall be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of Commercial Vehicles upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.
- c. Trailers, buses, tractors, or any type of recreational vehicle shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets or Common Areas.
- d. Notwithstanding the above, during construction of dwellings, Declarant "A" and any Builder may maintain Commercial Vehicles and trailers on the Property for purposes of construction and for use as a field or sales office. Prior to any commercial vehicles and trailers placed within the community must be approved by the Architectural Review Committee.
- e. Unsightly Articles. No unsightly article shall be permitted to remain on any Lot or on streets and drives within the The Joshua's Neighborhood, but must be stored in a garage on the Lot or an off-site storage area in compliance with St. George City Development Code. Without limiting the generality of the foregoing: trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups used solely for the private and non-business use of the residents of a lot), boats, tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal

equipment, garden and maintenance equipment, and all commercial, farming and business vehicles, except when in actual use, shall be kept at all times in a garage, an off-site storage facility, or appropriately screened by a 6' high architecturally approved fence on all four sides. No repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage or other structure, or appropriately screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No materials or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or if appropriately screened from view. Liquid propane gas, oil and other exterior tanks approved by St. George Fire Department shall be kept within an enclosed structure or permanently screened from view. Family vehicles, which are kept in good repair and driven regularly, may be parked in the driveway.

- 2.14 **LIGHTING AND WIRING.** The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground.
- 2.15 **ANTENNAE.** No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a dwelling, except on the following terms:
- a. An Owner may install, maintain and use on its Lot one (1) (or, if approved, more than one (1)) Small Antenna (as hereinafter defined) in the rear yard of a dwelling on the Lot, at such location, and screened from view from adjacent dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Review Committee, in accordance with Article II. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a dwelling would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such

Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antennae as are need to prevent such impairment (but such installation shall otherwise be made in accordance with this subdivision).

- b. In determining whether to grant any approval pursuant to this Section, neither Declarant "A", the Architectural Review Committee nor the Board of Directors shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided however, that any Small Antenna shall be placed in the rear of each dwelling, notwithstanding any other provision in this Section 2.18.
- c. As used herein, (i) "impair" has the meaning given it in 47 Code of Federal Regulations Part 1, Section 1, 4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment of the installation, maintenance or use of which is the subject of such regulation. Such antenna are currently defined thereunder as, generally, being one (1) meter or less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

2.16 **SUBDIVISION**. No Lot shall be divided or subdivide and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose; provided, however, this shall not prohibit transfers of parts of Lots between adjoining Lot owners where the transfer is not for the purpose of creating a new building Lot. The provisions of this subsection shall not apply to Declarant "A" and, further, the provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any person for any purpose.

2.17 **SIGNAGE**. Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" or "For Sale" signs (not larger than two feet by three feet (2' x 3')), and except as provided in this Article II, no signs or advertising devises of any character shall be erected, posted or displayed upon, in or about any Lot or Structure. The provisions and limitations of this subsection shall not apply to any institutional first Mortgagee of any Lot who comes into possession of the Lot by reason of any proceeding, arrangement, assignment or deed in lieu of foreclosure. No signs may be posted that do no meet local government permits and approvals, if applicable. No sign of any kind shall be displayed to the public view on any Lot provided however, those signs which

have received the prior approval of the Architectural Review Committee may be displayed on or from a residence advertising the residence for sale or lease. Signs used for sale, administration and directional purposes during development of this Neighborhood must meet certain specifications and be approved by the Architectural Review Committee. All signs must be professionally painted, lettered, constructed and must adhere to any city ordinances.

- 2.18 **LEASE AGREEMENTS.** All lease agreements with respect to any Lot or any Structure located thereon shall be in writing. The minimum term of all lease agreements shall be one (1) year, and shall state that the lease agreements shall be subject to this Declaration. Owners who do not reside on their Lot must provide current addresses and phone numbers to the Association.
- 2.19 **TRASH AND OTHER MATERIALS.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except (a) building material during the course of construction of any approved dwelling or other permitted Structure, and (b) firewood, which shall be cut and neatly stored at least six inches (6") off the ground and twelve inches (12") away from any wooden structure. No burning of trash shall be permitted on any Lot. All Owners shall place trash or other refuse into refuse containers provided by the Association at locations designated for trash deposits. Owners may not place any trash outside of such refuse containers or in any other locations or container, except as designated by the Association. The cost of refuse containers shall be included as an expense item in Annual Assessments. All outside storage of personal articles and property shall be contained within the privacy wall of each home and no personal articles of any kind shall be visible to the public from any public street.
- 2.20 **NON-INTERFERENCE WITH UTILITIES.** No Structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. No poles and wires for transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.
- 2.21 **ANIMALS.** Animals kept on any Lot shall be properly fenced, sheltered and cared for. All dogs shall be kept on a hand-held leash except when on Owner's own Lot. Each Owner shall maintain and clean the facilities for their pets and prevent objectionable odors, pests, insects, etc. No animal or other pet of any kind other than common domesticated animals shall be allowed, including, but not limited to, cats and dogs which, in the opinion of the Association's Board, might be dangerous or which make an unreasonable amount of noise, odor, or is

otherwise a nuisance. Each Owner of pets and animals shall be financially responsible and liable for any damage caused by said Owner's pets and animals and shall be responsible for the pickup and disposal of any excrement deposited by his pets and animals.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

- 3.1 **PROPERTY.** The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Community, and is described on Exhibit A attached hereto, all of which real property is referred to herein as the "Property."
- 3.2 **ADDITIONS TO PROPERTY.**
- a. Declarant "A", its successors and assigns, shall have the right for seven (7) years from the date of this Declaration to bring within the scheme of this Declaration Additional Property within the Community (the "Additional Property") without the consent of the Class A members of the Association provided that the annexation is in accordance with the general plan heretofore approved. The general plan of development is shown on the Plat, but the plan shall not bind Declarant "A", its successors or assigns, to make the proposed additions, or to adhere to the plan in any subsequent development of the land shown thereon. The Additional Property that may be annexed to the Community is described on Exhibit B attached hereto.
 - b. The additions authorized under this subsection shall be made by filing a supplemental declaration of record with respect to the Additional Property which shall extend the scheme of the Declaration to such Additional Property, and which Additional Property shall thereupon become part of the Property. Upon the filing of any supplemental declaration, Owners of Additional Property shall be subject to the same obligations and entitled to the same privileges as apply to the Owners of the Property. Such supplemental declaration may contain such complementary additions and modifications to the Declaration as may be necessary to reflect the different character, if any, of the Additional Property not inconsistent with the scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the Covenants established by this Declaration for the Property as of the date hereof.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.1 **MEMBERSHIP.** Every Owner of a Lot that is subject to assessment shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

4.2 **CLASSES OF MEMBERSHIP.**

a. The Association shall have two (2) classes of voting membership;

(i) Class A. Except for Declarant "A" and any Builder, which shall initially be the Class B members, the Class A members shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who holds such interest solely as security for performance of any obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

(ii) Class B. The Class B members shall be Declarant "A" and any Builder. The Class B members shall be entitled to five (5) votes per Lot for each Lot owned by them, in all proceedings in which actions shall be taken by members of the Association. Notwithstanding anything contained herein to the contrary, during the Development Period each Builder shall be conclusively deemed:

- a. To have given Declarant "A" an irrevocable and exclusive proxy entitling Declarant "A", at each meeting of the Membership held while such Builder holds such title, to cast the votes in the Association's affairs which such Builder holds under the foregoing provisions of this Section on each question which comes before such meeting;
- b. To have agreed with Declarant "A" that such proxy is given to and relied upon by

Declarant "A" in connection with Declarant "A"s development, construction, marketing, sale and leasing of any or all of the Property and is couple with an interest; and

- c. To understand that such proxy shall cease with respect to the votes appurtenant to a Lot when a dwelling has been constructed on such Lot and legal title to such Lot is conveyed to a person who intends to occupy such dwelling as a residence.
- b. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, holds the record title to any Lot, all of the same, as a unit, and not otherwise, shall be deemed a single member of the Association. The vote of any member comprised of two (2) or more persons, firms, corporation, trustees, or other legal entities, or any other combination, thereof, shall be cast in the manner provided for in the Articles of Organization and/or Operating Agreement of the Association, or as the several constituents may determine, but in no event shall all such constituents cast more than one (1) vote per Lot for each Lot owned by them.

- 4.3 **CONVERSION.** The Class B membership in the Association shall cease and be converted to Class A membership in the Association subject to being revived upon Additional Property being annexed to the Property pursuant to this Declaration, upon the earlier to occur of (i) January, 2009; provided, however, that the Developer shall transfer control of the Association after 100% of the Units in the Association have been conveyed to Class A members; or (ii) at such time as the total number of votes entitled to be cast by Class A members of the Association equals or exceeds the total number of votes entitled to be cast by the Class B members of the Association.

ARTICLE V
DECLARANT "A"'S RESERVED RIGHTS AND OBLIGATIONS

- 5.1 **RESERVED RIGHTS OF DECLARANT "A"**. The Association shall hold the Common Area conveyed to it pursuant to Article IV hereof and each Owner shall own its Lot subject to the following:
- a. The reservation to Declarant "A", its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Drainage and Utility Easement," "Sewer Easement," "Drainage and Sewage Easement," and "Open Space," or otherwise designated as an easement area over any road or Common Area on the Property, and over those strips of land running along the front, rear, side, and other Lot lines of each Lot shown on the Plat, except for the common side lines on the Lots, for the purposes of proper surface water drainage, for ingress and egress, for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant "A" necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located, together with the right and privilege of entering upon the Common Area for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to effect such purposes. Within the aforesaid easement areas, no Structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or change the direction of the flow of drainage channels or obstruct or retard the flow of water through drainage channels. The reserved easement areas of each Lot and all improvements therein, except improvements for which a public authority or utility company is responsible, shall be maintained continuously by the Owner for the Lot.
 - b. The reservation to Declarant "A" and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over

and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services, and related services and facilities.

- c. The designation of streets, avenues, roads, courts and places upon the Plat is for the purpose of description only and not dedication, and the rights of Declarant "A" in and to the same are specifically reserved, and Declarant "A" hereby reserves unto itself, and its successors and assigns, the right to grade, regrade and improve the streets, avenues, roads, courts and places as the same may be located on the Plat, including the creation or extension of slopes, banks, or excavation in connection therewith and in the construction of and installation of drainage structures therein.
- d. Declarant "A" further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other license or permits as Declarant "A" may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, alleys, and open space and in, over, through, upon and across each and every Lot in any easement area set forth in the Declaration or as shown on the Plat.
- e. Declarant "A" further serves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way easements, including easements in the areas designated as "open space" and stormwater management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Community except as set forth in this Declaration, or as laid down and shown on the Plat.
- f. Declarant "A" further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of the Structure built on such Lot, but Declarant "A" shall not be under any obligation or duty to do

such grading or to maintain any slope. Similarly, Declarant "A" reserves the right unto itself, and its successors and assigns, and, without limitation, the Association, to enter on any Lot during normal business hours for the purpose of performing the maintenance obligations of the Association, as more particularly described in Section 6.4; provided, however, that Declarant "A" shall have no obligation to perform such maintenance. No right shall be conferred upon any Owner by the recording of any plat relating to the development of the Property in accordance with such plat, Declarant "A" expressly reserving unto itself the right to make such amendments to any such plat or plats as shall be advisable in its best judgment and as shall be acceptable to public authorities having the right to approval thereof.

- g. Declarant "A" further reserves unto itself and their successors and assigns, the right, notwithstanding any other provision of the Declaration, to use any and all portions of the Property other than those Lots conveyed to Owners, including any Common Area which may have previously been conveyed to the Association for all purposes necessary or appropriate to the full and final completion of construction of the Community. Specifically, none of the provisions of Article II concerning architectural control or use restrictions shall in any way apply to any aspect of Declarant "A"'s activities or construction, and notwithstanding any provisions of this Declaration, none of Declarant "A"'s construction activities or any other activities associated with the development, marketing, construction, sales management or administration of the Community shall be deemed noxious, offensive or a nuisance. Declarant "A" reserves the right for itself, and their successors and assigns, to store materials, construction debris and trash during the construction period on the Property, keeping same in containers. Declarant "A" will take reasonable steps, and will ensure that any Builder takes reasonable steps, to avoid unduly interfering with the beneficial use of the Lots by Owners.
- h. All of the utility rights-of-way and easements necessary for water, sewer, power, natural gas, and telephone services installed, reconstructed, used, or otherwise designated on the plat, shall be and are hereby assigned to the City of St. George for the provision of municipal utilities to the lots and common areas.

5.2 **INCORPORATION BY REFERENCE; FUTHER ASSURANCES.** Any and all grants made to the Association with respect to any of the Common Area and all

grants made with respect to any Lots shall be conclusively deemed to incorporate the foregoing reservations, whether or not specifically set forth in such instruments. At the request in writing of any party hereto, any other party shall from time to time execute, acknowledge and deliver such further assurances of such reservations as may be necessary.

ARTICLE VI
COMMON AREA

- 6.1 **GRANT OF COMMON AREA.** The Association shall take title to the Common Area that is part of the Property free and clear of all encumbrances, except non-monetary title exceptions and this Declaration not later than the date the first Lot is conveyed to an Owner (other than Declarant "A" or a Builder). The Covenants are hereby imposed upon the Common Area for the benefit of Declarant "A, the Builder, the Association and the Owners, and their respective personal representatives, successors and assigns, to the end and intent that the Association shall have and hold the said Common Area subject to the reservations set forth in Article V hereof, and to the Covenants herein set forth.
- 6.2 **MEMBER'S RIGHT OF ENJOYMENT.** Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to the Common Area and such non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth. Except as otherwise permitted by the provisions of this Declaration, the Common Area shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or topography of the area, or for aesthetic reasons. No portion of the Common Area may be used exclusively by any Owner for personal vegetable gardens, storage facilities or other private uses.
- 6.3 **NUISANCE.** No noxious or offensive activity (moral or otherwise) shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Community.
- 6.4 **MAINTENANCE OBLIGATIONS OF THE ASSOCIATION.** The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area (including,

without limitation, covered parking, if applicable), for purposes of lawn care and sprinkler systems located thereon (subject, however, to the provisions of Section 2.13), area drainage systems, retaining walls, private courts and street lighting located within private courts, and any area dedicated to a public or governmental entity if such entity fails to properly maintain such area, as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense, and shall levy against each member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Common Area, which proportionate share shall be determined based on the ratio which the number of Lots owned by the member bears to the total number of Lots then laid out or established on the Property.

6.5 **RESTRICTIONS.** The right of each member of the Association to use the Common Area shall be subject to the following:

- a. Any rule or regulation now or hereafter set forth in this Declaration and, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;
- b. The right of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Area;
- c. The right of the Association to take such steps as is reasonably necessary to protect the property of the Association against mortgage default and foreclosure;
- d. The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration;
- e. The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; and further subject to the written consent of Utah County; provided, however, that no dedication, transfer, mortgage or determination as to the purposes or as the conditions thereof, shall be effective unless two-thirds (2/3) of the Class A members (excluding Declarant "A" if Declarant "A" is a Class A member) of

- the Association consent to such dedication, transfer, purpose and conditions; and
- f. The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, Declarant "A" or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.
 - g. All of the foregoing shall inure to the benefit of and be enforceable by the Association and Declarant "A", or either of them, their respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, to enforce performance of any term, condition, provision, rule or regulation. Further, the Association and Declarant "A" shall have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.
- 6.6 **DELEGATION OF RIGHT OF USE.** Any member of the Association may delegate its rights to the use and enjoyment of the Common Area to family members who reside permanently with such member and to its tenants, contract-purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.
- 6.7 **RULES AND REGULATIONS.** Each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area. Further, each Owner shall comply with the Covenants imposed by this Declaration on the use and enjoyment of the Common Area.

ARTICLE VII **ENCROACHMENTS**

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot or any Structure encroaches upon any Common Area, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act

or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

ARTICLE VIII
COVENANT FOR ASSESSMENT

7.1 **COVENANT FOR ASSESSMENT.** Declarant "A" for each Lot owned by it within the Property, hereby covenants, and each Owner, by acceptance of a deed hereafter conveying any such Lot do it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for annual assessments or charges, and (b) special assessments or charges, for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided. A transfer fee will be assessed to the Owner/Builder at the time of closing or when title changes from one person to another. The annual and special assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VIII and shall be construed as a real covenant running with the land. Such assessments or charges, together with interest at a rate of twelve percent (12%) per annum, and costs and reasonable attorneys fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successor in the title unless expressly assumed by such successor or successors.

7.2 **USE OF ASSESSMENTS.** The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and in particular for (a) the improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area as well as fees paid to any management agent; (b) the payment of taxes on Common Area may be levied against all Lots Laid out on the Property by the tax collecting

authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots; (c) the payment of insurance premiums on the Common Area; (d) the costs of repair, replacement and additions to the Common Area and improvements thereon; (e) the cost of obtaining planting and thereafter maintaining street trees throughout the Community if required by Utah County, whether or not such street trees are located in the Common Area; (f) the costs of utilities and other services which may be provided by the Association for the Community as may be approved from time to time by a majority of the members of the Association; (g) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (h) the cost of refuse containers, as described in Section 2.22; (i) the cost of semi-annual maintenance for blowouts on the ends of the water lines serving the Community, as referenced in Section 6.4; (j) the cost of maintenance, insurance and replacement of covered parking; and (k) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements.

7.3 MAXIMUM ANNUAL ASSESSMENT

- a. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant "A" or a Builder, the maximum annual assessment shall be the aggregate of \$_____ for each Lot, payable at the rate of \$_____ per month.
- b. From and after such date, the maximum annual assessment may be increase each year by not more than ten percent (10%) of the maximum annual assessment for the previous year without a vote of the membership of the Association.
- c. From and after such date the maximum annual assessment may be increased above the ten percent (10%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purpose.
- d. Neither Declarant "A", nor a Builder, nor any Lot to which Declarant "A" or Builder holds record title, shall be exempt from any assessment hereunder, however, notwithstanding anything elsewhere set forth herein, the following allowance shall be made by the Association to Declarant "A" and Builder in each instance; annual assessments or charges made or levied against any Lot to which Declarant "A" or Builder hold record title shall equal twenty-five percent (25%) of the annual assessment or charge made or levied against any other Lot laid out on the Property, to the end and intent that Declarant "A" or Builder shall not pay more, or less,

than twenty-five percent (25%) of the per Lot annual assessment established by the Association under this Section.

- e. The Board of Directors of the Association may fix the annual assessment or charges against each Lot at any amount not in excess of the maximum. Subject to the limitations set forth in this Section 8.3, and for the periods therein specified, the Association may change the maximum and the basis of the assessments fixed by Section 8.3 hereof prospectively for any period provided that any such change shall have the assent of two-thirds (2/3) of each class of members of the Association, voting in person or by proxy, at a meeting duly called for such purposes.

7.4 SPECIAL ASSESSMENTS. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association; provided that such assessment shall first be approved by two-thirds (2/3) of the votes of each class of members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

7.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 7.3 AND 7.4. Written notice of any meetings of members of the Association called for the purpose of taking any action authorized under Section 8.3 and 8.4 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of all of the votes of each class of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.6 COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.

- a. The Annual Assessments as to any Lot shall commence on the earlier of (i) the date the Lot is conveyed to any person or entity other than Declarant "A" or a Builder or (ii) the date a Use and Occupancy Permit is issued by the proper authorities of Utah County to Declarant "A" or a Builder. The annual assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, and shall be a lien for any month after the fifteenth (15th) day of that month.
- b. The due date of any special assessment under Section 8.4 shall be fixed in the resolution authorizing such special assessment.

7.7 DUTIES OF THE BOARD OF DIRECTORS.

- a. The Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis herein above provided for. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.
- b. The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the management, operation and maintenance of the Common Area. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the annual maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner upon reasonable notice to the Board of Directors. Written notice of the annual maintenance assessments shall thereupon be sent to all members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of the Article or a release of any member from the obligation to pay the annual maintenance assessment, or any

installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No member may exempt itself from liability for maintenance assessments by abandonment of any Lot owned by such member or by the abandonment of such member's right to use and enjoyment of the Common Area

- c. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed ten dollars (\$10.00) may be levied in advance by the Association for each certificate issued.

7.8 **ADDITIONAL ASSESSMENTS.** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

7.9 **PAYMENT OF ASSESSMENT.** Any assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or without waiving any other right, and at equity to foreclosure the lien against the Lot in the same manner and subject to the same requirements as are specified by the law of Utah for the foreclosure of mortgages or deeds of trust containing a power of sale or an assent to a decree, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the complaint of such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees and reasonable attorneys' fees to be fixed by the court together with the cost of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

7.10 **SUBORDINATION OF LIEN TO MORTGAGE.** The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or

deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such or transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessments.

7.11 FORCEMENT OF LIEN. The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damage, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

7.12 EXEMPT PROPERTY. The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Utah shall be exempt from the assessment created herein.

7.13 RESERVES FOR REPLACEMENTS.

- a. The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.
- b. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE IX
INSURANCE AND CASUALTY LOSSES

8.1 TYPES OF INSURANCE MAINTAINED BY ASSOCIATION. During the Development Period, the Association may obtain the following types of insurance;

- a. insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement of such improvements in the event of damage or destruction;
- b. a public liability insurance policy covering the Association, its officers, directors and managing agents, having at least a Million Dollar (\$1,000,000) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;
- c. workers' compensation insurance, if and to the extent required by law; and
- d. fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

After the conclusion of the Development Period, the Board of Directors shall have the authority to and shall obtain the insurance described above.

8.2 PREMIUMS FOR INSURANCE MAINTAINED BY ASSOCIATION.

Premiums for all insurance and bonds required to be carried under Section 9.1 hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the annual assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

8.3 DAMAGE AND DESTRUCTION OF COMMON AREA.

- a. Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or

reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

- b. Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstruction unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.
- c. If, in accordance with subsection (b), the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

8.4 REPAIR AND RECONSTRUCTION OF COMMON AREA. If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against all Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

8.5 HAZARD INSURANCE ON IMPROVED LOTS. Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

8.6 OBLIGATION OF LOT OWNER TO REPAIR AND RESTORE.

- a. In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement shall be done in accordance with the plans and specifications for such

improvements originally approved by Declarant "A" or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

- b. If any Owner of any improved Lot fails to maintain the insurance required by Section 9.5 of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance, to the same extent as such costs within ten (10) days after such Owner's receipt of a written demand therefore from the Association, the Association may establish in a lien therefore upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

ARTICLE X

RIGHTS OF MORTGAGEES

9.1 GENERAL

- a. Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, and any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner thereof.
- b. Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the time.

9.2 **INSPECTION; STATEMENT AND NOTICE.** A Mortgagee shall, upon delivery of a written request to the Association, be entitled to:

- a. Inspect the Association's books and records during normal business hour;
- b. receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;
- c. be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;
- d. be given timely written notice of the occurrence of any substantial damage to or destruction of the Common Area, or if the Common Area is made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and
- e. be given timely written notice by the Association of the failure to pay an assessment by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

9.3 **APPROVAL BY FEDERAL HOUSING ADMINISTRATION AND VETERANS ADMINISTRATION.** Until the Class B membership terminates pursuant to the provisions of Article IV, Section 4.3, the consent or approval of the Federal Housing Administration, the Veterans Administration and/or the Department of Housing and Urban Development shall be obtained with respect to any of the following actions taken while a Mortgage is in effect which is insured by such entity:

- a. A dedication of any portion of the Common Area to public use;
- b. An amendment of this Declaration; and
- c. Annexation of additional properties.

**ARTICLE XI
MISCELLANEOUS**

10.1 **TERM.** This Declaration shall run with the land and shall be binding for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 10.9.

10.2 **ENFORCEMENT.**

- a. Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses incurred as a result of the said violation or attempted violation, including, but not limited to, court costs and attorneys' fees.
 - b. These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.
- 10.3 **NO WAIVER.** The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 10.4 **INCORPORATION BY REFERENCE ON RESALE.** In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.
- 10.5 **NOTICES.** Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.
- 10.6 **NO DEDICATION TO PUBLIC USE.** Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Area by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area.
- 10.7 **SEVERABILITY.** Invalidity of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.
- 10.8 **CAPTIONS AND GENDERS.** The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in

any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

10.9 AMENDMENT.

- a. For long as there is a Class B membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by Declarant "A" and by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of (i) at least two-thirds (2/3) of the Class A members of the Association, if any, and (ii) Declarant "A" shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of the Association at a meeting of the Association duly called for such purposes.
- b. An amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office of Washington County. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording which instrument, each Owner, other than Declarant "A", hereby grants to the President or Vice President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything to the contrary contained herein, in no event may any of Declarant "A"s rights or privileges under the Articles of Incorporation or By-Laws of the Association or this Declaration be terminated, altered or amended without Declarant "A"s prior written consent.
- c. The provisions of this Declaration requiring compliance with the architectural guidelines and standards of the City of St. George and assigning all rights-of-way for provision of municipal utilities to

the City of St. George shall not be amended without the express
written consent of the City of St. George.

10.10 ASSOCIATION'S GOVERNING DOCUMENTS. Members of the Association
are bound in all respects by the provisions, terms and conditions set forth in the
Association's Articles of Organization and Operating Agreement.

WITNESS the hand and seal of Declarant "A" hereto on the day herein above first
written.

WITNESS/ ATTEST;

DECLARANT "A"

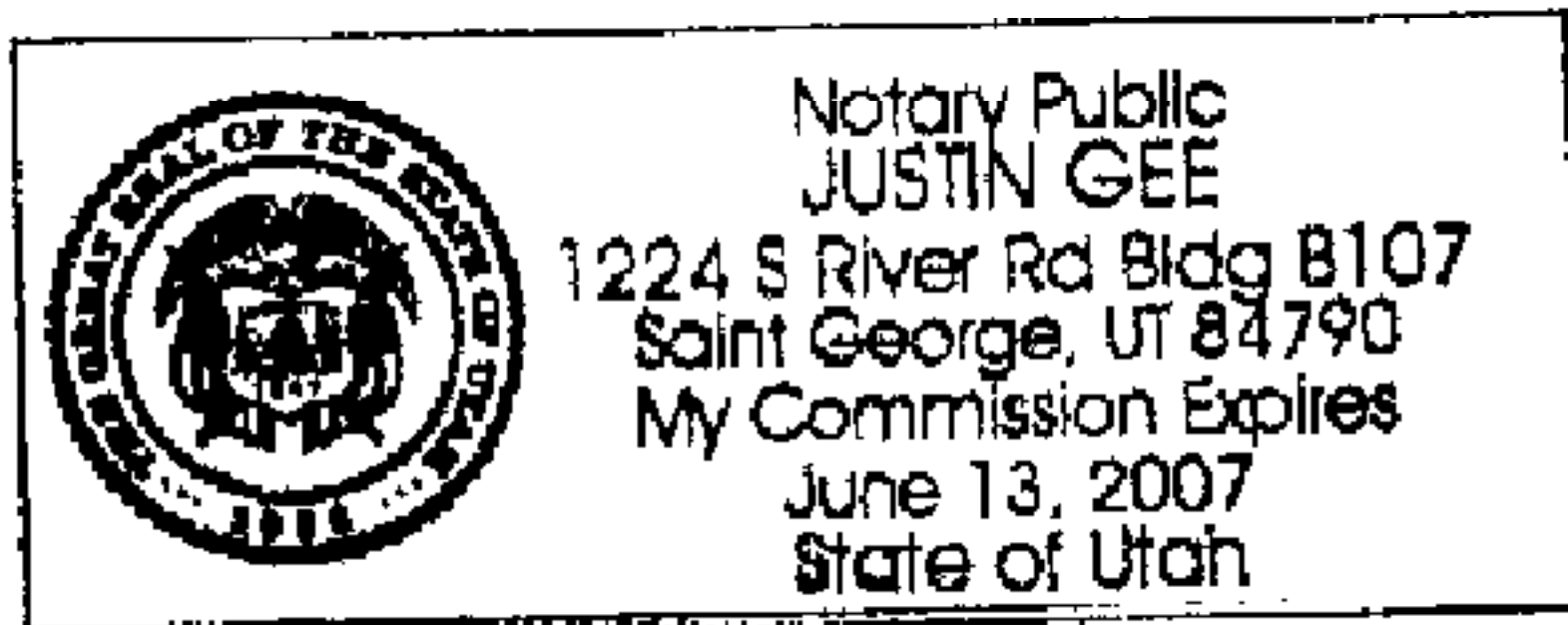
By: The Joshua's HOA, Inc.
Its Managing Member

By: *[Signature]*

ATTEST:

STATE OF UTAH)
COUNTY OF Washington) ss.
~~UTAH~~

The foregoing instrument was subscribed and sworn to before me this 21 day of February
2007 ~~2006~~, by Rick Salisbury, Manager of The Joshua's HOA, Inc..



[Signature]
Notary Public

My commission expires: _____

EXHIBIT A

**THE JOSHUA'S
PROPERTY DESCRIPTION**

Exhibit "A"

All of lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, The Joshuas at Southgate – Phase 1, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Tax I.D. SG-JSG-1-1, SG-JSG-1-2, SG-JSG-1-3, SG-JSG-1-4, SG-JSG-1-5,
SG-JSG-1-6, SG-JSG-1-7, SG-JSG-1-8, SG-JSG-1-9, SG-JSG-1-10,
SG-JSG-1-11, SG-JSG-1-12, SG-JSG-1-13, SG-JSG-1-14,
SG-JSG-1-15, SG-JSG-1-16, SG-JSG-1-17, SG-JSG-1-18,
SG-JSG-1-19, SG-JSG-1-20

All of lots 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, The Joshuas at Southgate – Phase 2, according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Tax I.D. SG-JSG-2-21, SG-JSG-2-22, SG-JSG-2-23, SG-JSG-2-24, SG-JSG-2-25,
SG-JSG-2-26, SG-JSG-2-27, SG-JSG-2-28, SG-JSG-2-29, SG-JSG-2-30,
SG-JSG-2-31, SG-JSG-2-32, SG-JSG-2-33, SG-JSG-2-34, SG-JSG-2-35,
SG-JSG-2-36, SG-JSG-2-37, SG-JSG-2-38, SG-JSG-2-39, SG-JSG-2-40,
SG-JSG-2-41, SG-JSG-2-42, SG-JSG-2-43, SG-JSG-2-44, SG-JSG-2-45,
SG-JSG-2-46, SG-JSG-2-47, SG-JSG-2-48, SG-JSG-2-49, SG-JSG-2-50,
SG-JSG-2-51, SG-JSG-2-52, SG-JSG-2-53, SG-JSG-2-54, SG-JSG-2-55,
SG-JSG-2-56, SG-JSG-2-57, SG-JSG-2-58, SG-JSG-2-59, SG-JSG-2-60,
SG-JSG-2-61, SG-JSG-2-62, SG-JSG-2-63, SG-JSG-2-64, SG-JSG-2-65,
SG-JSG-2-66, SG-JSG-2-67

Beginning at a point on the centerline of Tonaquint Drive and on the West line of Legacy Townhomes Phase 10, said point being South 89°25'30" East 1,391.68 feet along the Center Section line and South 174.04 feet from the West Quarter Corner of Section 1, Township 43 South, Range 16 West, Salt Lake Base & Meridian, and running; thence South 14°36'22" West 250.08 feet along the West line of Legacy Townhomes Subdivision Phase 10; thence South 77°46'11" West 215.77 feet; thence South 31°09'41" West 575.00 feet; thence South 48°40'51" West 185.73 feet to the East line of the Joshuas Subdivision Phase 2; thence North 50°00'14" West 663.40 feet along the East line of said Subdivision to a point on the centerline of Tonaquint Drive; thence Northeasterly 616.57 feet along an arc of a 932.56 foot radius curve to the right (center bears South 50°26'56" East along chord bears North 58°29'31" East 605.40 feet with a central angle of 37°52'54") along said centerline; thence North 77°26'07" East 522.11 feet along said centerline; thence Easterly 198.84 feet along an arc of a 6,970.52 foot radius curve to the left (center bears North 12°34'02" West long chord bears North 76°36'56" East 198.84 feet with a central angle of 01°38'04") along said centerline to the point of beginning.

(Proposed Phase 3, The Joshuas)

Tax I.D. SG-6-3-1-3013

8-2
2-66
78

WHEN RECORDED, RETURN TO:

Paul Properties, Inc.
1224 S. River Rd. # 205
St. George, Utah 84790
(435) 674-3444

DOC # 20100020396

Notice Page 1 of 2
Russell Shirts Washington County Recorder
06/22/2010 10:10:49 AM Fee \$ 78.00
By PAUL PROPERTIES INC



AMENDMENT TO DECLARATION & NOTICE OF REINVESTMENT FEE COVENANT

(Pursuant to Utah Code Ann. § 57-1-46)

Be it known to all Sellers, Buyers and Title Companies either owning, purchasing or assisting with the closing of a property conveyance within The Joshua's Homeowner's Association (the "Association"), that a certain Amendment to the Declaration of Covenants, Conditions and Restrictions was recorded on _____, in the Washington County Recorder's Office (the "Declaration") and that the Declaration establishes certain obligations that all sellers and buyers should be aware of. This notice requires the payment of a Reinvestment Fee or any Capital Contribution by the Association's CC&R's, Rules or Policies payable to The Joshua's Homeowner's Association, upon the transfer of real property. Please contact the Property Manager for the exact amount of the Reinvestment Fee and/or any Capital Contribution due and owing at closing.

This reinvestment fee is intended to run with the land and to bind the successors in interest and assigns for each and every lot and lot owner within the Association. Please refer to Exhibit A. This fee is imposed at closing for each unit or lot sold or conveyed in amount determined by the Homeowner's Association Board of Directors. This fee shall be paid for the purpose of administrative costs associated with the transfer of title or other expenses benefiting the Association as the Board may reasonably determine.

The Joshua's Homeowner's Association has contracted with Paul Properties, Inc. as the Property Manager and Agent for the Association. Paul Properties, Inc. contact information is as below:

1224 South River Road, Suite A-205
St. George, Utah 84790
435-674-3444 (phone)

Mailing Address:
P.O. Box 910298
St. George, Utah 84791

DATE FILED: 6/18, 2010

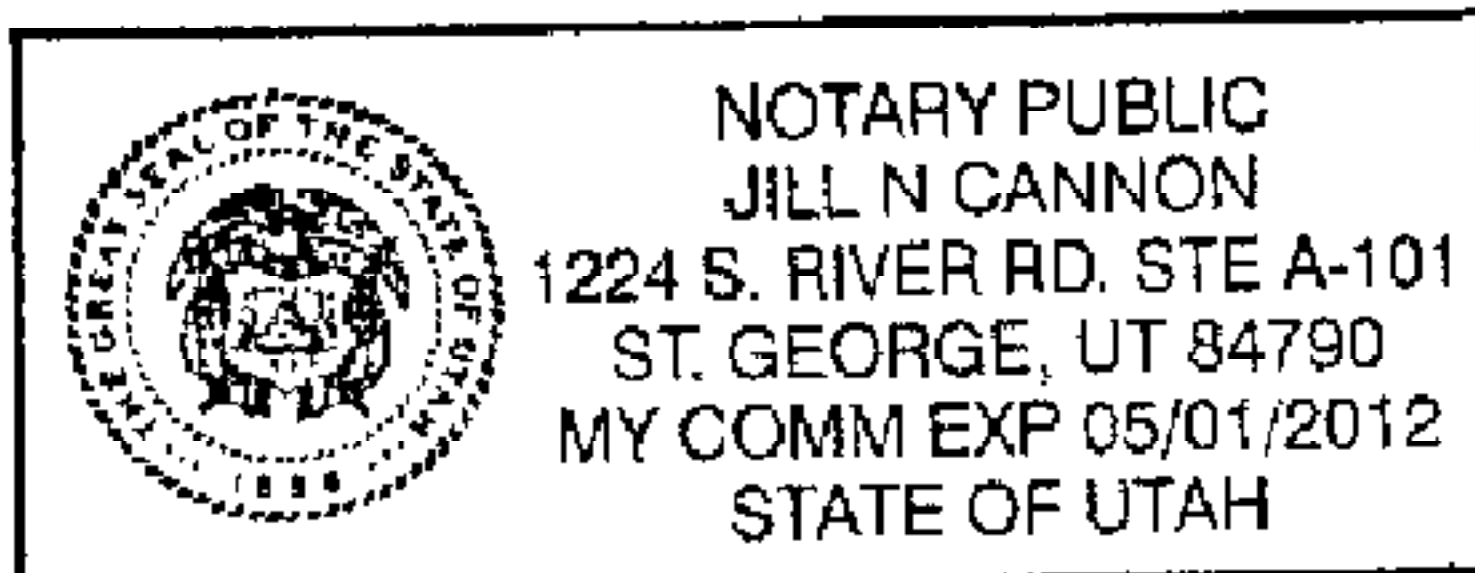
The Joshua's Homeowner's Association

By: [Signature]

David J. Paul, Property Manager and agent for the Association

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On the 18th day of June, 2010, personally appeared before me, David Paul, the signer of the foregoing document, who acknowledged to me that he executed the same.



[Signature]
Notary Public for Utah

LEGAL DESCRIPTION
EXHIBIT A

JSG-1-JOSHUAS AT SOUTHGATE 1 (SG) 1 TO 20

Tax Parcel No. SG-JSG-1-1 TO 20

JSG-2-JOSHUAS AT SOUTHGATE 2 AMD (SG) 21 TO 67

Tax Parcel No. SG-JSG-2-21 TO 67