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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
SKY RIDGE TOWN HOMES**



DEVELOPED BY:

Gemstone Homes L.L.C.

MARKETED BY:

Gemstone Properties Inc.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SKY RIDGE TOWN HOMES

THIS DECLARATION of Covenants, Conditions and Restrictions is made on the date hereinafter set forth to the Declaration of Covenants, Conditions and Restrictions of Sky Ridge Town Homes.

RECITALS

WHEREAS, Declarant is the owner of certain real property in the City of Hurricane, County of Washington, State of Utah, which is more particularly described below, and

WHEREAS, Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth, and

WHEREAS, It is the desire and intention of Declarant to construct Town Homes on the properties and sell and convey the same to various purchasers.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the properties described below shall be held, sold and conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and the maps previously recorded entitled "Sky Ridge Town Homes" consisting of one sheet of which was prepared and certified by Ferel L. Campbell, a Utah Registered Land Surveyor, which are all for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

BEGINNING at a point South 89(41'05" East 66.00 feet along the Section Line and South 0(12'45" West 2162.69 feet from the North Quarter Corner of Section 32, Township 41 South, Range 13 West, Salt Lake Base and Meridian, said point begin on the Easterly right of way line of 2600 West Street, Hurricane, Utah: thence South 89(41'05" East 566.00 feet; thence South 00(12'45" West 324.49 feet; thence South 77(40'39" West 712.45 feet (along the centerline of an existing overhead power line easement) to the Easterly line of said 2600 West Street at a point of non-tangency with a 433.00 foot radius curve to the left (radius point bears North 44(17'39" West); thence 343.81 feet along the ACC of said curve through a central angle of 45(29'36"; thence North 0(12'45" East, 171.33 feet to the Point of Beginning.

Containing 5.2826 acres.

ARTICLE I
DEFINITIONS

- Section 1. Declaration shall mean and refer to this instrument, and any amendments.
- Section 2. Plat or map shall mean and refer to the subdivision plats previously recorded captioned "Sky Ridge Town Homes" or any replacements thereof, or additions thereto.
- Section 3. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Declaration.
- Section 4. Common area shall mean and refer to that portion of property owned by the Association and/or shown on the plat as dedicated to the common use and enjoyment of the owners.
- Section 5. Limited Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant, subject to rights of the association, as herein set forth.
- Section 6. Lot shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership, and shall exclude the common and limited common areas.
- Section 7. Town Home, Home or Unit shall mean and refer to a single family dwelling, with or without walls or roofs in common with other single family dwelling lots, and shall include fee simple title to the real property lying directly beneath said single family dwelling.
- Section 8. Owner shall mean and refer to the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, those parties shall be treated, as a group, as one "owner."
- Section 9. Association shall mean and refer to Sky Ridge Home Owners Association, its successors and assigns.
- Section 10. Member shall mean and refer to every person or entity who holds membership in the Association.
- Section 11. Trustees or Board shall mean and refer to the governing body of the Association.
- Section 12. Declarant shall mean and refer to Rando Homes L.L.C. d.b.a. Gemstone Homes /Rodney & Donna Arbogast, Managing Members, and its heirs, successors and assigns.

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

ARTICLE II
PROPERTY RIGHTS

Section 1. Title to the common area. The Declarant, its successors and assigns, will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, subject to covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, easements and rights-of-way of record, and a covenant by the Association to maintain the common area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which covenants shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

Section 2. Owner's easements of enjoyment. Every owner shall have a right and easement of use and enjoyment in and to the common area which easements shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational area, storage or parking facility situated upon the common area, but no fees shall be charged for parking appurtenant to each lot.
- (b) The right of the Association to limit the number of guests of members using the common area.
- (c) The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulation.
- (d) With the approval of a first mortgagees on lots and sixty-seven percent (67%) of each class of owners, the right of the Association to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the common area to any private individual, corporate entity, public agency, authority or utility. The granting of easements for utilities or other public purposes consistent with the intended use of such common area by the Association shall not be deemed a transfer within the meaning of the next preceding clause, and the Association may make such grants.
- (e) The right of the Association to take such steps as are reasonable, necessary or desirable to protect the common area against foreclosure.
- (f) The right of each individual lot owner to the exclusive use of the Private and limited common area adjacent and appurtenant to his respective lot, if any, and the right of each owner to exclusive use of the parking area, if any, designated with his lot number on the plat.
- (g) The terms and conditions of this Declaration.

(h) Mechanic's Lien Rights. No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Home of any other Owner, or against any part thereof, or against any other property of any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishings of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Home in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Association Common Areas, if authorized by vote of the Association, shall be deemed to be performed or furnished with the express consent of each Home Owner. Any Home Owner may remove his Home from a lien against two or more Homes or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Home.

Section 3. Limited common area. Ownership of each lot shall entitle the owner thereof to the exclusive use of the limited common area adjacent and appurtenant thereto, if any. The limited common area which is adjacent and appurtenant to each lot shall be determined by reference to the walls, driveways & landscaping initially constructed on the properties as outlined on the Plat Map. If no limited common shows on the plat the 10' immediately behind the home shall be deemed Limited Common, if available.

Section 4. Delegation of use. Any owner shall be deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such right of enjoyment.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS**

SECTION 1. Formation. The Association is a nonprofit corporation formed or to be formed under the laws of the State of Utah. Prior to the conveyance of the first Home to an Owner other than Declarant, Declarant shall cause the Articles of Incorporation to be filed with the Department of Commerce, Division of Corporations and Commercial Code of the State of Utah. The Association shall be charged with the duties and invested with the powers set forth in the Articles, Bylaws, and the Declaration. The Association is not authorized to have and shall not issue any capital stock.

Section 2. Membership. Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity. The Association may not cast any vote otherwise allocated to it for any Home it may own.

Section 3. Voting rights. The association shall have two classes of voting membership:

CLASS A: Class A members shall be all members with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than

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

CLASS B: The Class B member shall be the Declarant (as defined in the Declaration) or its successors and assigns, and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) Sixty (60) days after conveyance of seventy-five percent (75%) of Homes to Owners; or

(b) The expiration of five (5) years from the first lot conveyance to an Owner.

(c) Two (2) years after the Declarant has ceased to offer for sale in the ordinary course of business any Home within the Property; or

(d) In the event and at such time as Declarant waives by written instrument the right reserved by Declarant under this subparagraph (Class B), and such written waiver is recorded in the official records of the Washington County Recorder, Declarant shall have the right to designate a person or persons who are entitled to exercise the right reserved to Declarant under this subparagraph (Class B).

Section 4. Appointment and Removal of Members of Board and Officers of Association. Subject to the provisions of Section 4 of this Article III, Declarant reserved the right to appoint and remove all of the members of the board and all of the officers of the Association until the earlier of the following events:

- (a) Sixty days after conveyance of seventy-five percent (75%) of all Homes to Owners other than Declarant; or
- b) Two (2) years after Declarant has ceased to offer for sale in the ordinary course of business any Home within the Property; or
- c) Five years after any right to annex the Annexable Area has last been exercised pursuant to Article IX hereof.

Declarant shall have the right to designate a person or persons who are entitled to exercise the rights reserved to Declarant under this Section 4. The date on which the rights reserved by Declarant under this Section 4 terminate is herein called "Declarant's Control Termination Date". From and after Declarant's Control Termination Date, the Board of Trustees and the officers of the Association shall be elected and appointed as provided in these Articles and the Bylaws.

Section 5. Persons Entitled to Serve on the Board. Except for the members of the Board appointed by Declarant in accordance with the Declaration, the Articles, and the Bylaws, and the members of the first Board named in the Articles, all members of the Board shall be Members of the Association. In all events where the person serving or offering to serve as an officer of the

Association or members of the Board is not the record Owner, such person shall file proof of his or her authority in the record of the Association.

ARTICLE IV
POWERS, FINANCES AND OPERATIONS

Section 1. Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of Utah and the powers conferred upon it pursuant to Utah Code Ann. §16-6-18, et seq., subject only to such limitation on the exercise of such powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to the exercise of the express powers of the Association, including, without limitation, the following:

Section 2. Creations of the lien and personal obligation of assessment. The Declarant for each lot owned by him within the properties hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to the Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors-in-title unless expressly assumed by them.

Section 3. Purpose of assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and in particular for the improvements and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common areas and of the homes situated upon the properties. The assessments must provide for but are not limited to, the payment of taxes and insurance; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis, and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges, including, without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges.

Section 4. Basis and maximum annual assessments, Until January 1 following recording of this Declaration, the maximum annual assessment shall be Six Hundred Dollars (\$600.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.

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

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

Section 5. Special assessments for capital improvements. In addition to the annual assessments authorized by Section 4 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

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

Section 7. Notice and quorum for any action authorized under Sections 4, 5, and 6. Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 4, 5, or 6 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Uniform rate of assessment: Periodic assessment. Both annual and special assessments must be fixed at a uniform rate for all lots. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees. Both annual and special assessments may be collected on a monthly basis.

Section 9. Date of commencement of annual assessments: Duties of Trustees: Due dates: Adjustment of assessments in certain cases. The annual assessment provided for herein shall commence to accrue on the date fixed by the Trustees of the Association to be the date of commencement.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year and may commence immediately upon determination by the Trustees or in the absence of such determination, shall commence 60 days after the first lot is conveyed, in an amount equal to 90% of the maximum annual assessment provided in Section 3 above. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a prerequisite to validity of the assessment.

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

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

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

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

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

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

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

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

Section 11. Enforcement of Lien. Notice of Delinquent Assessment and Notice of Default. The Association may foreclose its lien by sale pursuant to Utah Code Ann. § 57-8-20 after:

- (a) The Association has caused to be recorded with the Washington County Recorder of the county in which the Property or any part thereof is situated ("the County Recorder") a notice of delinquent assessment (herein "Notice of Delinquent Assessment"), which state the amount of the Assessment or fines which are due together with all interest and late charges thereon in accordance with the provisions of this Declaration, a description of the lot against which the lien is imposed, and the name of the record Owner of the lot; and
- (b) The Association or other person conducting the sale has executed and caused to be recorded with the County Recorder, a notice of default and election to sell the Home to satisfy the lien ("Notice of Default"), which shall contain the same information as the Notice of Delinquent Assessment, but which shall also describe the deficiency in payment and the name and address of the person authorized by the Association to enforce the lien by sale; and
- (c) The Owner of the Home or his successor in the interest has failed to pay the amount of the lien, including interest and late charges, and costs, fees and expenses incident to its enforcement for a period of sixty (60) days which commences on the first day following the later of:
 - (i) the day on which the Notice of Default is so recorded; and
 - (ii) The day on which a copy of the Notice of Default is mailed by certified or registered mail, return receipt requested, to the Owner of the Home or his successor in interest at his address if known, or otherwise to the address of the Home.
- (d) The Association or other person conducting the sale shall, at any time after the expiration of such sixty (60) day period and before selling the Home, give notice of the time and place of the sale ("Notice of Sale") in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Sale must be mailed, on or before the date of first publication or posting, be certified or registered mail, return receipt requested, to the Owner of the Home or his successor in interest at his address if known, or otherwise to the address of the Home. Such sale shall be conducted in any manner permitted by law. Each Owner who is liable for payment of the Assessment shall be required to pay the cost and expenses of such foreclosure proceeding including, but not limited to, the cost of preparation of all notices (whether or not such notice has been given to the Owner at the time payment is made), reasonable attorney fees, and title insurance cost.
- (e) All such cost and expenses of the foreclosure shall be secured by the lien being foreclosed. Each Owner who is liable for payment of the Assessment shall be required to pay to the Association any and all Assessments against such Owner which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber,

use, and otherwise deal with the Home. The Association shall be entitled to bid on credit up to and including the amount secured by the lien being foreclosed.

- (f) A Further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in Washington County, Utah, upon payment of all sums secured by such lien.
- (g) Any encumbrancer holding a lien on a Home may, but shall not be required to, pay amounts secured by a lien for unpaid assessments, and upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including rights of priority.

Section 12. Subordination of the lien to mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot or owner from liability for assessments thereafter becoming due or from the lien thereof.

Section 13. Exempt properties. The following property subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All common and limited area. However, no land or improvement devoted to dwelling use shall be exempt from said assessment, charge and lien.

Section 14. Insurance. The Trustees of the Association, or their duly authorized agents, shall obtain and continue in effect:

- (a) Property damage insurance, in one of the following alternate forms:
 - (i) a policy of property insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the common area, limited common area, and improvements thereon. The Association shall also require each owner to obtain a similar policy of insurance covering full replacement value (exclusive of land, foundation, excavation and other like items) of his lot and improvements thereon with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with a provision that the policy may not be canceled upon less than thirty days written notice to the Association; or
 - (ii) In the alternative to the obtaining of insurance specified previously in subparagraph (i) the Association may obtain a "master" or "blanket" policy of insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the lots, common area, limited common areas and improvements thereon, with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional provision that the policy may not be canceled upon less than thirty days written notice to the Association.

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

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

(c) Fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the owners or members. Said fidelity insurance shall (1) name the Association as obligee or beneficiary, and (2) be written in an amount not less than the sum of:

- (i) three months operating expenses and
- (ii) the maximum reserves of the Association which may be on deposit at any time, and
- (iii) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee".

Section 15. Insurance policy provisions. Any Insurance obtained by the Association shall provide that:

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

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

(c) Coverage must not be prejudiced by;

(i) any act or neglect of the lot owners when such act or neglect is not within the control of the Association or

(ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

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

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

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

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

Section 16. Insurance related provision. Premiums for insurance obtained by the Trustees pursuant to these sections shall be a common expense of the Association and shall be collectable from members of the Association as part of the annual assessments.

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

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

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

All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 17. Damage or destruction. In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiation, settlements or agreements, the Association being appointed attorney in-fact of each owner for this purpose. The Association shall, with concurrence of the mortgagees, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition. Unless at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees have given their prior written approval the Association shall not be entitled to use insurance proceeds for other than the repair, replacement or reconstruction of the damaged or destroyed property.

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

In the event the insurance proceeds are insufficient to pay all the costs of repairing, restoring or rebuilding the Trustees shall be powered to levy a special assessment against all owners to make up any deficiency for repair of Town homes or limited common area, and the Trustees shall further be empowered to levy a special assessment against all Owners to make up any deficiency for repair or rebuilding of the common area or limited common area.

Section 18. Payments by first mortgagees. First mortgagees of lots may jointly or singly pay taxes or other charges which are in default and which have or may become a charge against any common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such common property. First mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 19. Condemnation. A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive a written notice of condemnation action that effects a material portion of the properties, or a material portion of the unit securing its mortgage. In any proceedings, negotiations, or settlements for condemnation of all or part of the properties, the Association shall be the agent of the owners and is hereby appointed their attorney-in-fact for such purpose. Any proceeds shall be payable to the Association for the benefit of the owners and their mortgagees, as their interests may appear. In the event the Association is required to interplead such funds, it shall be entitled to reasonable attorney's fees and costs incurred in such action.

Section 20. Management. The Association may engage the services of a professional manager to manage the Association, which manager may be an affiliate of Declarant. Any agreement for professional management of the property by the developer, sponsor or builder may not exceed three years duration and must provide for termination by either party without cause and without payment of a termination fee on ninety(90)days or less written notice.

Section 21. Books, records, and audit. The Association shall maintain current copies of the Declaration, Articles, Bylaws, rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

Section 22. Delegation of Power; Professional Management; Other Services. The Association, acting by and through the Board, can delegate its powers, duties, and responsibilities to committees or Members, employees, agents and independent contractors, including a professional managing agent. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the Association and the enforcement of this Declaration.

Section 22. Personal Property. The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise.

Section 23. Other Services and Properties. The Association shall have the power to obtain or pay for, as the case may be, any other property, services, taxes, or assessments which the Association or the Board is required to secure or pay for pursuant to the terms of this Declaration, the Articles, or Bylaws, including security services for the Community generally, or which, in its opinion, shall be necessary or proper for the operation of the Association, and to incur liabilities and make contracts respecting same.

Section 24. Declarant's Obligation to Deliver Association Property and Records to Board. Within thirty (30) days after Declarant's Control Termination Date, Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including:

- (a) The original or a certified copy of the Declaration, the Articles, the Bylaws, minute books and records of the Association and any Rules and Regulations which may have been adopted;
- (b) An accounting for money of the Association and financial statements from the date the Association received money to Declarant's Control Termination Date. The financial statements shall fairly and accurately report the Association's financial condition prepared in accordance with generally accepted accounting principles;
- (c) The Association's money or control thereof;
- (d) All of the tangible personal property that has been represented by Declarant to be Association Property or all tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Areas, and inventories of those properties; unless Declarant has disclosed in a public offering statement that such personal property will remain the property of Declarant;
- (e) All insurance policies then in force in which the Owners, the Association, or its trustees or officers are named as insured persons;
- (f) Any permits and approvals issued by governmental bodies applicable to the Project which are in force or which were issued within one (1) year before Declarant's Control Termination Date;
- (g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;
- (h) A roster of Owners and mortgagees of Lots, if known, and their addresses and telephone numbers, if known, as shown on Declarant's records;
- (i) Contracts of employment in which the Association is a contracting party; and
- (j) Any contract for service in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the service.

Section 25. Working Capital Fund. Declarant shall establish initially, as to the Project and each subsequent phase thereof, and the Association shall maintain thereafter, a "Working Capital Fund" to meet unforeseen expenditures or to purchase additional equipment or services. The Working Fund shall be funded initially in an amount equal to the number of units in the applicable phase of the Project times the initial monthly common assessment amount for such Units, but in no event less than an amount at least equal to two (2) months of estimated Common Expenses for each Unit. As to each phase of the Project, the Working Fund for each Unit shall be established and paid no later than the closing of the sale of such Unit; provided, however, that not less than six (6) months from and after the sale of the first (1st) Unit in each phase, Declarant shall pay the Working Fund as to all remaining unsold Units in such phase. Declarant may reimburse itself as to each Unit for its contribution to such fund by collecting an amount equal to the contributed amount for such Unit from the initial Owner of a Unit at the close of escrow for the sale of such Unit. The Working Fund shall be transferred into a segregated account of the Association upon the Declarant's Control Termination Date, and are not intended to be advance payments of regular assessments. Declarant may not use any portion of the Working Fund to defray any expenses, reimburse contributions or construction costs or to make up any budget deficits.

Section 26. Replacement Reserve Fund. In addition to the Working Fund, the Association shall establish and maintain an adequate reserve fund for the replacement of improvements to the Common Area and Limited Common Elements that it is obligated to maintain. The replacement fund should be maintained out of regular assessments for common expenses.

Section 27. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayments of reserves, must be paid to the Owners in proportion to their liabilities for Common Expenses or credited to them to reduce their future assessments for Common Expenses.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Architectural Control items, Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee (ACC) composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with article will be deemed to have been made.

Section 2. ACC Limitations. Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees, neither the Association nor the Architectural Control Committee shall, by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the Architectural design or the exterior appearance or maintenance of Homes, the

maintenance of the common and limited common areas, including walls, fences, driveways, lawns, and plantings.

Section 3. Interpretation. All questions of interpretation or construction of any of the terms or conditions of this Article shall be resolved by the ACC, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 4. Reimbursements. The members of the ACC shall receive no compensation for services rendered, other than reimbursements by the Association for expenses incurred by them in the performance of their duties hereunder.

Section 5. Liability. Neither Declarant nor the ACC, nor any member thereof, nor their duly authorized ACC representatives shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ACC's duties hereunder, unless due to the willful misconduct or bad faith of the ACC. The ACC shall review and approve or disapprove all plans submitted to it for any proposed improvements, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The ACC shall take into consideration the aesthetic aspects of the Architectural designs, placement of buildings, topography, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 6. Declarant Exemption. The ACC shall have no authority or power of jurisdiction over Lots/Homes owned by Declarant, and the provisions of this Article shall not apply to Lots/Homes owned by Declarant until such time as Declarant conveys title to the Lot/Home to a purchaser thereof. This Article shall not be amended without Declarant's written consent as set forth on the amendment.

Section 7. Windows. All Homes must have permanent window coverings installed within ninety(90) days after close of escrow. Window treatments other than draperies, curtains, or blinds (horizontal or vertical) are subject to the prior written approval of the Board. Aluminum foil and similar material shall not be permitted in any exterior windows. Window tinting shall require the prior written approval of the Board, and shall be properly installed and maintained so as not to become damaged, scratched, discolored or otherwise unsightly. Exterior holiday decorations, including decorations on the inside of a window, may be put up thirty (30) days prior to the holiday and must be removed within twenty(20) days after the holiday.

ARTICLE VI EXTERIOR MAINTENANCE

Section 1. Exterior maintenance by owner. Each unit owner shall be responsible for maintenance to the exterior of the Townhome owned. The Association shall, however, in the default of the owner to perform maintenance, which is the owner's responsibility, and after ten days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), to provide exterior maintenance upon each Town Home. The cost of such maintenance shall be assessed against the lot or Town Home.

Section 2. Exterior maintenance by association. The Association shall be responsible for maintenance upon the common area, the limited common area which is not occupied by the home, and the area of any lot outside the walls of the Townhome which is of the same character as surrounding common or limited common area. The cost of such maintenance shall be a common expense.

Section 3. Access at reasonable hours. For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right to enter upon any lot or limited common area at reasonable hours.

Section 4. Alteration on of certain maintenance duties by rule. The duty of maintenance for the area of a lot outside the walls of the Townhome, and the limited common areas adjacent and appurtenant to the Townhomes may be altered by Rule of the Association.

Section 5. Party Wall. Each wall, which is built as a part of the original construction by Declarant and placed on the property lines between Lots, shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If party wall is destroyed or damaged by fire or other casualty, any Owner whose Lot has use of the wall may restore it, and any other Owner whose Lot makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use. The foregoing shall not prejudice the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any provisions of this Section, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements. In the event of any dispute arising concerning a party wall under the provisions of this Section, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

Section 6. Perimeter/Side Yard Walls. Perimeter/side yard walls will be maintained and insured by the Association.

ARTICLE VII USE RESTRICTIONS

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

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

Section 3. Signs; Commercial activity. Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties and then only subject to Section 17 subsection F. No commercial activities of any kind whatsoever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

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

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

Section 6. Disease and Insects. No Owner shall permit any thing or condition to exist upon his Lot/Home that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects, rodents, birds, or other animals, i.e., rabbits, etc. The Owner of each Lot is responsible for pest control at their sole and separate expense.

Section 7. Use of common area. Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this Declaration of covenants or as may be allowed by the Trustees of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

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

Section 8. Parking. Parking spaces within the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle, which is inoperable, shall be placed in parking areas, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. On Street parking is only allowed on one side of the street as marked by signs, overnight parking of cars in driveways are prohibited, violators shall be subject to removal by the Association, at the owner's expense and fined as authorized in these CC&R's. Such expense of removal and fines shall be secured by the lien for assessment obligations previously provided. Parking located in the common areas is designed for Guests.

Section 9. Recreational Vehicle Parking. Recreational vehicles, boats, travel trailers and similar property may not be parked on common parking areas on any streets unless permitted by rule of the Association. Recreational vehicles, boats, travel trailers and similar property are to be parked in the area designated for such parking available in the community. The RV Parking area is for Owners own RV's unless specifically authorized by the Board, however, Owners RV's shall always have priority parking right over Non-Owners. The Board is authorized to charge for such parking and may charge higher fees for Non-Owner use if authorized. No Owner may have more than one (1) RV parked unless there is available space, and then only as long as such space is not requested by an Owner for their 1st RV.

Section 10. Planting and gardening. It can be done in backyard areas only which is designated on the plat as Private area, and only with permission from the Board and subject to board restrictions.

Section 11. External apparatus. No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 12. Exterior television or other antennas. No exterior radio or other antennas, except one small satellite dish i.e. RCA 18" type, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval and the authorization of the Trustees.

Section 13. Garbage removal. All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers. Garbage containers shall only be allowed to sit outside in view or on the curb, from the night before trash removal until 6:00 P.M. the day of removal.

Section 14. Oil and mining operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 15. Interior utilities. All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act or any work that will

impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

Section 16. Leases. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions or this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

Section 17. Special Declarant's Rights. Declarant hereby reserves unto itself the right to:

- (a) **Complete Improvements.** Complete all Improvements within the Project, including, but not limited to, those indicated on Plats or Plans or described in this Declaration;
- (b) **Sales Office,** Maintain at least one (1) sales office, management office, and as many model homes as Declarant feel necessary within the Property which may be relocated from time to time.
- (c) **Signs and Advertising.** Maintain signs and flags advertising the Project, which signs may be maintained anywhere on the Project, excluding Lots owned by Owners other than Declarant;
- (d) **Easements.** Use easements through the Common Areas for the purpose of making improvements within the Project, construct roads to connect future Phases into first Phase.
- (e) **Appointment or Removal of Officers.** Appoint or remove any officer of the Association or any member of the Board at any time and from time to time prior to Declarant's Control Termination Date.
- (f) **Resales.** Declarant shall have the right in its sole discretion to designate a licensed real estate broker to transact all re-sales within the Project. The posting or installation of all signage with respect to resale activity within the Project requires the prior written consent of Declarant at its sole discretion. Commissions charged shall not exceed the prevailing rate in Washington County. This right shall remain in force until the Control Termination Date.
- (g) **Preferred Builder.** Declarant shall be the exclusive Builder in the Project and/or shall have the exclusive right to approve or assign this right to another Builder.

ARTICLE VIII
EASEMENTS

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

Section 2 Utilities. There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress limited to water, sewers, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all utilities, serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained by the Association.

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

Section 4. Maintenance by Association. An easement is hereby granted to the Association, it's officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas, and private area outside the boundaries of the home on any lot to perform the duties of maintenance and repair.

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

Section 6. Clocks for Sprinkler Systems. An easement is hereby granted for the Association to install and maintain a Sprinkler System Timer on the wall of the end units where they were initially installed by the Declarant. Such Sprinkler System Timer shall be authorized to use the power from the Unit whose wall it is installed on, usually the End Unit. Such Units shall be compensated for such power consumption of the Timer, by the Association paying or crediting the Unit for the estimated use of power by the Timer. The exact amount of such payment or credit shall be determined by the Board, but shall not be less than \$10 a year.

ARTICLE IX
EXPANSION

Declarant reserves the right at its sole election to expand the Properties to include additional property including but not limited to the more particularly described properties below by unilateral action of Declarant without the consent of owners for a period of ten (10) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

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

Beginning at a point S 00°12'45" W, 3396.91 feet from the North Quarter Corner of Section 32, Township 41 South, Range 13 West, Salt Lake Base and Meridian and running thence N 00°12'45" E along the Quarter Section Line, 269.06 feet; thence N 89°47'15" W, 245.82 feet to a point on the easterly boundary of 2600 West Street; Thence northerly along said Right-of-Way N 00°12'45"E, 159.93 feet to a point on a 367.00 foot radius curve to the right; Thence northeasterly along ACC of said curve 335.60 feet through a central angel of 52°23'39" to a point on a 433.00 radius reverse curve to the left; Thence northeasterly along ACCh of said curve 52.15 feet through a central angle of 6°54'03"; Thence N 77°40'39" E, 712.45 feet; Thence S 00°12'34" W, 661.80 feet to a point on the North Right-of-Way line of State Highway SR-9, said point also being on a 2994.79 foot radius curve (radius point bears S 12°23'08" E), the next three courses follow said Right-of-Way; Thence southwesterly along ACCh of said curve 395.13 feet through a central angle of 7°33'35"; Thence S 59°59'53" W, 207.61 feet; Thence S 67°26'00" W, 80.00 feet to the point of beginning.

Containing 12.422 acres more or less.

Expansion shall occur by the Declarant filing:

1. An additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Amended Declaration upon the filing of a Declaration of Annexation; and
2. A Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential dwellings, Architecturally compatible to the existing Townhomes, substantially identical to the Townhomes already constructed, constructed out of similar materials, with substantially similar lot size. The maximum number of units to be added shall be two hundred(200). The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and the Association shall own such common areas. Additional common and limited common area shall be added in any expansion area to maintain a ratio of common and limited common area to total lot area similar to the ratio, which now exists.

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

ARTICLE X
GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant or any owner, shall have the right to enforce, by the proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. In addition, the Trustees may levy a fine or penalty, of not to exceed 10% of the amount of the maximum annual assessment per week of non compliance (i.e. \$600 x 10% x weeks of non compliance), against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice. No fine may be assessed without proof of such written notice has been served to the violating Owner by either Postal Service Return Receipt requested or personal delivery with two or more witnesses.

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

Section 3. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

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

Any amendment of the Declaration affecting the following shall not be effective without consent of at least fifty-one percent (51%) of the first mortgagees: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance,; reallocation of interests in the common or limited common areas, or rights to their use; boundaries of any lot; imposition

of any restrictions on an owner's right to sell or transfer his or her unit; restoration or repair of the properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration; any action to terminate the legal status of the properties after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. When owners are considering termination of title legal status of the project for reasons other than substantial destruction or condemnation of the property. The consent of at least sixty-seven percent (67%) of first mortgagees must be obtained.

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

Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Declaration to comply with City, State, or other laws, or regulations or requirements of holders, insurers, or guarantors of first mortgages.

Section 5 Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. Gender and grammar. The singular, wherever used herein, 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 7. Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. Topical headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

ARTICLE XI
ASSIGNMENT OF POWERS

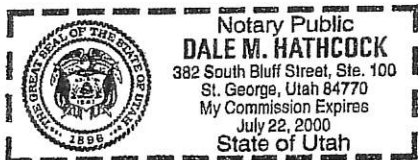
Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned.

IN WITNESS WHEREOF, the undersigned being the Declarant herein has hereunto set its hand and seal this 28th day of January 2000

by: R Arbogast
Rando Homes L.L.C. d.b.a. Gemstone Homes
Rodney Arbogast, Managing Member

STATE OF UTAH)
) SS.
COUNTY OF WASHINGTON)

On this 28th day of January 2000 before me personally appeared Rodney Arbogast, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is signed on the preceding document, and acknowledged before me that he signed it voluntarily for its stated purpose.



Dale Hathcock
Notary Public