

DECLARATION OF COVENANTS CONDITIONS
AND RESTRICTIONS OF ESTRELLA SUBDIVISION, PHASE 1

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as Estrella Subdivision, Phase 1.

RECITALS

Declarant is the owner of certain real property (the "Properties") in St. George, Washington County, Utah, which is more particularly described on Exhibit A attached hereto.

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

It is the desire and intention of Declarant to construct townhomes and sell and convey the same to various purchasers, and to convey common area and limited common area to an association in which the Townhome owners will be members.

DECLARATION

Declarant hereby declares that all of the Properties shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the plat of Estrella Subdivision, Phase 1, recorded concurrently herewith. This is for the purpose of protecting the value and desirability of the Properties. This Declaration and the plat shall be construed as covenants of equitable servitude; shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof or their heirs, successors and assigns; and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Association means the Estrella Owners Association, its successors and assigns.

Section 1.2. Board of Trustees means the governing body of the Association.

Section 1.3. Common Area means all real property (including the improvements thereto) owned or hereafter acquired by the Association for the common use and enjoyment of the Members and includes that portion of Property owned by the Association, shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Trustees. Specifically exempted from Common Area are Lots and dedicated public streets that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.

Section 1.4. Declarant means S & S Construction, Inc., a Utah corporation, and the Declarant's heirs, successors and assigns.

Section 1.5. Declaration means this instrument, and any amendments thereto.

Section 1.6. Entire Membership means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B Members.

Section 1.7. Limited Common Area means that portion of Property owned by the Association, shown on the Plat as Limited Common Area. The Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant has the use and enjoyment of that Limited Common Area to the exclusion of other Owners. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 1.8. Lot means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership, but specifically excludes the Common and Limited Common Areas.

Section 1.9. Member means every person or entity who holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.10. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 1.11. Owner means 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, the group of those parties shall be treated as one "Owner."

Section 1.12. Plat means the subdivision plat recorded herewith entitled "Estrella Subdivision, Phase 1" consisting of one sheet, prepared and certified by Bush & Gudgell, Inc., by Kelly R. Schmutz, a Utah Registered Land Surveyor or any replacements thereof, or additions thereto.

Section 1.13. Property or Properties means that certain real property described on Exhibit A hereto, and such additions and annexations thereto as may hereafter be subjected to this Declaration.

Section 1.14. Townhome means a single family dwelling, with or without walls or roofs in common with other single family dwelling Lots. When the term "Townhome" is used it includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines. This however, is not all the Lot in some instances as there may be Lot boundary outside the Townhome walls.

Section 1.15. Trustees means the members of the governing body of the Association.

ARTICLE 2 - PROPERTY RIGHTS

Section 2.1. Title to the Common Area. Declarant 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, but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association covenants to fulfill all the terms of this Declaration, to maintain the Common Area in good repair and condition at all times and to operate the Common Area at its own expense in accordance with high standards.

Section 2.2. Owners' Easements of Enjoyment. Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service of the Association or provided upon the Common Area or parking facilities situated upon the Common Area. No fees shall be charged for parking specifically designated on the Plat as appurtenant to a 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 the Member's Lot remains unpaid, and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities 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, if there is no Class B membership, with the approval of sixty-seven percent (67%) of the Entire Membership, 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.

(f) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.

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

(h) The terms and conditions of this Declaration.

(i) The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the Common Area.

(j) The right of the Declarant to take such actions as it may deem necessary so long as the expansion of the Project shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

Section 2.3. Limited Common Area and Designated Parking. An Owner is entitled to use of the Limited Common Area adjacent and appurtenant to the Lot, if any, and to use of the parking area, if any, designated with the Owner's Lot number on the Plat, all to the exclusion of other Owners. The Association, through its Trustees, may adopt rules and regulations concerning use of the Limited Common Area. Limited Common Area is subject to the rights of the Association set forth in this Declaration.

Section 2.4. Delegation of Use. An Owner or one having a right of use of facilities, is deemed to delegate any right of enjoyment to the Common Area and facilities to family Members, tenants, or contract purchasers who reside on the Property. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by the Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be an assessment charged to the Lot Owner.

Section 2.5. Rules. The Board of Trustees shall have the authority to promulgate rules and regulations for the governance of the Properties, and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Members.

Section 2.6. Lot. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries, but outside the Townhome walls, even though part of the Lot and owned in fee simple by the Owner, shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. The purpose of laying out a Lot larger than the Townhome is to allow flexibility in the original Townhome construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to all other provisions of this Declaration. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the Townhome and within the rear area of the surveyed boundaries of the Lot, subject to approval of the Architectural Control Committee, as outlined in Article 6 herein.

ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Membership. Every Owner is a Member of the Association. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

Section 3.2. Voting Rights. The Association has two classes of voting membership:

CLASS A. Class A Members shall be all Owners with the exception of the Declarant, as defined in this Declaration. Class A Members are 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 single 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, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an 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 this Declaration) and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) upon conveyance of seventy-five percent (75%) of Lots to purchasers; or

(b) the expiration of seven (7) years from the first Lot conveyance to a purchaser; or

(c) the surrender of Class B membership status by the express written action of the Declarant. In the case of expansion (as provided under Article 10 hereof) the Declarant's memberships appurtenant to the Lots in the expansion area shall be Class B memberships.

If Declarant exercises its option to add additional Lots by platting additional phases or by other permitted expansion, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, so that Declarant regains 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.

ARTICLE 4 - FINANCES AND OPERATIONS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each subsequent 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, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (c) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration; and (d) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the Lot and shall be a continuing lien upon the Lot 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 Lot at the time when the assessment fell due. Successors-in-title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used: (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and (b) for the improvement and maintenance of Properties, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association Property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common and Limited Common Areas; the payment of the cost of repairing, replacing, and maintaining the exteriors of each Lot; the payment of administrative expenses of the Association; insurance deductible amounts; 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 Board of Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board of Trustees, for the payment of other charges, including, without limitation, maintenance, management, utility, cable television, trash collection, sewer, and water charges.

Section 4.3. Maximum Annual Assessment. Until January 1 following recording of this Declaration, the maximum annual assessment shall be Fifteen Hundred Dollars (\$1,500.00) per Lot. This amount shall be the basis of calculation for future maximum annual assessments. From and after the date referred to above, the maximum annual assessment may be increased each year by five percent (5%) above the maximum assessment for the previous year, without a vote of the membership. The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period. Such change may be made by the Board of Trustees if there is Class B membership. If there is no Class B membership, any such change shall have the assent of sixty-seven percent (67%) of the votes of the Entire Membership, voting in person or by proxy, at a meeting duly called for this purpose. The actual annual assessment need not increase annually however, the ability to increase assessments shall be cumulative with each passing year. The Board shall set the actual annual assessment on an annual basis. Notice shall be given to each owner as provided in Section 11. The Board must set the actual annual assessment to be an amount at or less than the maximum annual assessment.

Section 4.4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common or Limited Common Area structures, fixtures and personal property related thereto. If there is no Class B membership, special assessments must have the assent of sixty-seven percent (67%) of the votes of the Entire Membership authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 4.5. Additional Assessments. In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common Areas from the activities of St. George City ("City") in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 4.6. Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4. Written notice of any meeting of Members called for the purpose of taking any action authorized under Sections 4.3 or 4.4 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 the Entire Membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30) days advance written notice, and the required quorum at any such subsequent meeting shall be one-half (½) 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 4.7. Uniform Rate of Assessment: Periodic Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots; provided, however, that no assessments shall accrue against the Declarant so long as the Declarant has Class B membership. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

Section 4.8. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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. This notice shall not be a prerequisite to the validity of the assessment. In the absence of a determination by the Trustees as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The Board shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it sets 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.

Section 4.9. 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 lesser rate as the Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee for each delinquent installment which shall not exceed ten percent (10%) of the installment. The Trustees may, in the name of the Association: (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment; (b) may foreclose the lien against an Owner's Lot 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; and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Owner. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees, together with an amount for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were a beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of the 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 the Lot.

Section 4.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender 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 assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

Section 4.11. 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 4.12. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein:

- (a) All property dedicated to and accepted by any local public authority;
- (b) All Common Area and Limited Common Area;
- (c) All Lots owned by Declarant.

ARTICLE 5 - INSURANCE

Section 5.1. Casualty Insurance on Insurable Common Area. The Trustees shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may

deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association. In addition to casualty insurance on the Common Area, the Trustees may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Townhomes, including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the Townhomes shall be written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the Owners. In the event any claim is made against an Association policy which is for the benefit of a specific Lot, the affected Lot Owner shall be responsible to pay any deductible involved with the claim.

Section 5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Lot Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Lot Owners. In the event that the Association is maintaining blanket casualty and fire insurance on the Townhomes, the Association shall repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

Section 5.3. Liability Insurance. The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the Common and Limited Common Property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association 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.

Section 5.4. Fidelity Insurance. The Trustees may elect to obtain 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. In procuring fidelity insurance the Trustees shall seek a policy which shall: (a) name the Association as obligee or beneficiary, plus (b) 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 (c) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5. Annual Review of Policies. 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 replacements of the Property which may be damaged or destroyed.

ARTICLE 6 - ARCHITECTURAL CONTROL COMMITTEE

The Declarant shall not be required to comply with the provisions of this paragraph in the initial construction of the Properties. The Declarant shall fulfill all functions of the Architectural Control Committee under this Declaration until the Declarant expressly surrenders this right by written instrument, or until each Lot in the Properties (including all expansion area) has a home constructed on it. No structure, building, fence, wall or

addition, extension or expansion of any of the foregoing shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration to any Lot or home be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with this article will be deemed to have been made. Without the prior written approval of at least sixty-seven percent (67%) of the Entire Membership, neither the Association nor the Architectural Control Committee shall have the power, by act or omission, to change, waive or abandon any plan, scheme or regulations pertaining to the architectural design or the exterior appearance or maintenance of homes and Lots, and the maintenance of the Common and Limited Common Areas, including walls, fences, driveways, lawns and plantings.

ARTICLE 7 - EXTERIOR MAINTENANCE

Section 7.1. Exterior Maintenance by Owner Each Owner shall be responsible for maintenance to the exterior of the Townhome owned and in the Limited Common Area adjacent and appurtenant to the Lot. Each Owner shall also be responsible for the maintenance, repair and replacement of any walls separating Limited Common Area to which the Owner is entitled to exclusive use, from any other Limited Common Area, Common Area, or private ownership. In the event that the wall divides Limited Common Area or areas under private ownership, such maintenance, repair and replacement obligation shall be divided between or among all Owners with rights in the property adjoining the walls in proportion to the length of wall adjoining the property in which each has an interest. In the event that the wall divides Limited Common Area or areas under private ownership from Common Areas, such maintenance, repair and replacement obligation shall be divided between or among all Owners with rights in the property adjoining the walls and the Association in proportion to the length of wall adjoining the property in which each has an interest. The Trustees shall, however, in the default of the Owner to perform maintenance which is the Owner's responsibility, and after a two-thirds (2/3) vote, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Townhome and Lot, and the Limited Common Area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Lot and/or Townhome.

Section 7.2. Exterior Maintenance by Association Except with regard to the obligations for maintenance, repair and replacement set forth in Section 7.1, the Association shall be responsible for maintenance upon the Common Area, the Limited Common Area which is not adjacent to any Lot, 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 7.3. 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, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

Section 7.4. Alteration 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.

ARTICLE 8 - USE RESTRICTIONS

Section 8.1. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Lots during the period of construction and sale of said Lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices. 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 8.2. General Use Restrictions All of the Properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the Common Property. 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. After the initial construction on a Lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that Lot, unless built of the same components as the original Townhome, and approved in writing by the ACC prior to any construction. 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 8.3. Signs: Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than four (4) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot or any portion of the Properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the Properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or 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 8.4. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

Section 8.5. 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 8.6. Use of Common Area Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of said Common Area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. 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 8.7. Parking No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the vehicle Owner's expense. Any expense incurred by the Association in connection with the removal of any vehicle shall be paid to the Association upon demand by the owner of the vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association shall be secured by the Lot and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments. If parking spaces are designated on the Plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the Lot Owner with the corresponding number. If parking areas are not designated on the Plat with Lot numbers, the Trustees may assign vehicle parking space for each Lot. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the Owner or the Owner's immediate family or guests for personal use and not for commercial use, and for guest parking. Recreational vehicles, boats, travel trailers and similar property may not be parked within the Properties unless permitted by rule of the Association.

Section 8.8. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Architectural Control Committee.

Section 8.9. Outside Lighting All outside lighting will be shaded so that light bulbs will not be visible and light shall be deflected to the walls of the structure. No high intensity lighting is allowed.

Section 8.10. 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 Architectural Control Committee.

Section 8.11. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna, to the extent not prohibited by law, which shall not exceed four feet in height, 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 of the Architectural Control Committee.

Section 8.12. Garbage Refuse and Disposal 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. No unsightly materials or other objects are to be stored on any Lot in the view of the general public or neighboring Lot Owners.

Section 8.13. 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. 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.

Section 8.14. Interior Utilities All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners,

Section 8.15. Leases Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease.

Section 8.16. Violation Constitutes a Nuisance Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by Declarant or affected Property Owners and such remedy shall be deemed to be cumulative and not exclusive.

ARTICLE 9 - EASEMENTS

Section 9.1. 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 9.2. Utilities There is hereby created a blanket easement upon, across, over and under all of the Properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public

utilities serving the Properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties in such a way as to unreasonably encroach upon or limit the use of the Common Area or Limited Common Area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common and Limited Common Areas, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Properties. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or owners associations the right to use Common and Limited Common Areas and common facilities, including (without limitation) recreational facilities.

Section 9.3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Area in the performance of their duties.

Section 9.4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common and Limited Common Areas and any Lot to perform the duties of maintenance and repair.

Section 9.5. Trails The Association may grant easements to the public for right of access to trails on the Property.

Section 9.6. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE 10 - EXPANSION

Declarant reserves the right, at its sole election, to expand the Properties to include additional property more particularly described below by unilateral action of Declarant without the consent of Owners, for a period of seven (7) years from the date of recording of this Declaration in the office of the Washington County Recorder, County of Washington, State of Utah. The property, all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

ALL PROPERTY LOCATED IN THE GENERAL VICINITY OF THE PROPERTY PREVIOUSLY DESCRIBED HEREIN, WHICH IS CONTIGUOUS TO ANY PHASE OF THE DEVELOPMENT.

Expansion shall occur by the Declarant filing:

a. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Declaration upon the filing of a Declaration of Annexation: and

b. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Declaration. Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes, similar to the townhomes already constructed, constructed out

of similar materials, with similar lot size. The maximum number of Lots to be added shall be 284. The Declarant shall have the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be owned by the Association. The Common Area and Limited Common Area in such expansion 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 Association Property and facilities. Declarant's Class B ownership status shall extend to all Lots in the expansion area. Otherwise, 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 11 - GENERAL PROVISIONS

Section 11.1. Enforcement The Association, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, 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 or any rule of the Association 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 or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing Owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 11.2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 11.3. Duration The covenants and restrictions of this Declaration shall run with and bind the Properties, 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 11.4. 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 Entire Membership. 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 it shall have Class B membership status, to unilaterally amend the Declaration.

Section 11.5. 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 11.6. Gender and Grammar The singular, wherever used herein, shall be construed to mean the plural when applicable, and (he 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 11.7. 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 11.8. 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 12 - ASSIGNMENT OF POWERS

Any and all rights and powers of Declarant herein contained may be delegated, transferred or assigned in the Declarant's sole discretion.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this ___ day of October, 2004.

Declarant

S & S Construction, Inc.



D. Craig Sullivan, President

STATE OF UTAH)

) ss.

COUNTY OF WASHINGTON)

On this 19 day of October, 2004, before me personally appeared D. Craig Sullivan whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the president of S & S Construction, Inc. a corporation, and that the foregoing document was signed by him on behalf of that corporation by authority of its bylaws or of a resolution of its board of directors, and he acknowledged before me that the corporation executed the document and the document was the act of the corporation for its stated purpose.



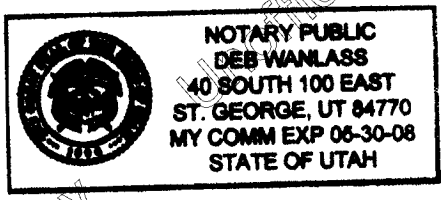
Notary Public

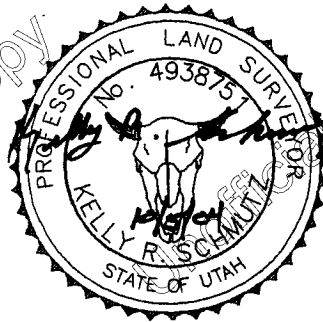
EXHIBIT A

00978798 Bk 1803 Pg 0277

BOUNDARY DESCRIPTION

Beginning at a point on the Easterly boundary of Emerald Ridge, said point being located S 89°13'22" E along the section line 273.39 feet and North 97.89 feet from the Northwest corner of Section 14, Township 42 South, Range 16 West, Salt Lake Base and Meridian and running thence N 52°31'33" E along said Emerald Ridge boundary 215.92 feet; thence S 26°27'23" E 168.69 feet to the point of a 264.26 foot radius curve to the right; thence along the arc of said curve through a central angle of 10°43'11" a distance of 49.44 feet; thence S 87°50'03" E 63.09 feet to a point on a 30.00 foot radius non-tangent curve to the left, the center of which bears N 88°34'08" E; thence along the arc of said curve through a central angle of 55°24'29" a distance of 29.01 feet; thence S 56°50'21" E 15.60 feet to the point of a 50.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 56°59'19" a distance of 49.73 feet to the point of a 171.99 foot radius compound curve to the left; thence along the arc of said curve through a central angle of 2°46'11" a distance of 8.31 feet; thence N 63°24'10" E 54.00 feet to the point of a 95.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 6°50'34" a distance of 11.35 feet; thence N 56°33'36" E 38.40 feet to the point of a 105.00 foot radius curve to the right; thence along the arc of said curve through a central angle of 6°50'34" a distance of 12.54 feet; thence N 63°24'10" E 33.84 feet to the point of a 20.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 89°49'25" a distance of 31.35 feet; thence N 63°34'45" E 11.00 feet to a point on the Southwesterly right of way line of Tuacahn Parkway, according to the road dedication plat thereof, records of Washington County; thence along said Tuacahn Parkway the following two courses: S 26°25'15" E 707.52 feet to the point of a 1540.00 foot radius curve to the left; thence along the arc of said curve through a central angle of 2°28'31" a distance of 66.53 feet; thence S 60°55'06" W 101.18 feet to a point on a 1632.50 foot radius non-tangent curve to the left, the center of which bears N 60°55'06" E; thence along the arc of said curve through a central angle of 1°00'40" a distance of 28.81 feet; thence S 61°31'26" W 128.43 feet; thence N 29°31'09" W 74.01 feet; thence N 26°25'15" W 33.10 feet; thence S 63°34'45" W 88.09 feet; thence N 88°35'46" W 86.00 feet; thence N 86°29'49" W 45.03 feet; thence N 88°44'54" W 451.35 feet to and along said boundary of Emerald Ridge; thence continuing along said boundary of Emerald Ridge the following six courses, N 1°10'06" E 265.29 feet; thence S 88°32'29" E 26.97 feet; thence N 1°27'31" E 249.55 feet; thence N 88°35'46" W 27.53 feet; thence N 1°24'14" E 205.24 feet; thence N 31°14'22" W 41.86 feet to the point of beginning. Contains 12.55 acres.

10/5/04
 DATE:
 BUSH AND GUDGELL INC.



Kelly R. Schmutz
 KELLY R. SCHMUTZ
 REGISTERED LAND SURVEYOR
 UTAH LICENSE NUMBER 4938751