

DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
THE TOWN HOMES AT SUNBROOK
Planned Unit Developments

This Declaration is made and executed this 4th day of September, 1997, by SUN HILL HOMES, L.C., a Utah limited liability company (hereinafter referred to as "Declarant").

RECITALS:

A. Declarant is the record owner of those certain parcels of real property (the Property) described in Exhibit "A" of this Declaration. Declarant desires to create on the Property and other Properties to be added by amendment later a planned unit development for town homes at Sunbrook for the benefit of the Development and the Owners of Lots therein.

B. Declarant has previously recorded the Master Declaration of Covenants, Conditions & Restrictions of Sunbrook Communities which this Declaration is subject to.

C. Declarant desires to provide for the preservation and enhancement of the property values and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, the Declarant desires to subject the Property described in exhibit "A" of this Declaration to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each owner thereof. Other properties may be added to this Declaration by amendment and shall be subject thereafter to covenants, restrictions, easements, charges and liens hereinafter set forth.

D. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be incorporated under the laws of the State of Utah as a nonprofit corporation, SUNBROOK TOWN HOMES OWNERS ASSOCIATION.

E. Declarant reserves the right to annex Phase II Land whose Owners will become Members of the Association and will be entitled and subject to all rights, powers, privileges, covenants, restrictions, easements, charges, and liens hereinafter set forth.

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

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RUSSELL SHIRTS * WASHINGTON CO RECORDER
1998 JAN 13 11:39 AM FEE \$34.00 BY RS
FOR: DIXIE TITLE CO

Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof

9 Association shall mean and refer to the SUNBROOK TOWN HOMES OWNERS ASSOCIATION created by the Declarant when additional properties become subject to this Declaration by amendment

10 Master Association and Master Declaration shall refer to the Sunbrook Master Association, and Master Declaration of Covenants, Conditions & Restrictions of Sunbrook Communities (recorded prior to this Declaration) to which this Declaration and Association are and will be subordinate and subject to

11 Articles and By-Laws shall mean and refer to the Articles of Incorporation and the By-Laws of the Association

12 Board of Trustees and the Board shall mean and refer to the Board of Trustees of the SUNBROOK TOWN HOMES OWNERS ASSOCIATION

13 Member shall mean and refer to every person who holds membership in the Association

14 Mortgage shall mean any person named as a first mortgagee or beneficiary under or holder of a first deed of trust

15 Development shall mean and refer to the initial "Bridgewater Town Homes at Sunbrook development and any additional town home developments created by this Declaration and by later amendment

16 Declarant shall mean and refer to SUN HILL HOMES, L C , or its successors and assigns, or with any successor or assign to whom all or substantially all of its interest in the development of the Property is conveyed

17 Front Yard Area shall mean and refer to the yard area of each Living Unit, between the unit and the private street

18 Phases shall mean and refer to those portions of Phase II property described in Exhibit "B", attached hereto and made a part hereof, which may in the future be developed as town home projects in the Sunbrook area

19 Supplementary Declaration shall mean and refer to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which extends the provisions of

this Declaration to all or any portion of additional Phases, and may contain such complementary or amended provisions for such additional land as are herein required by the Declaration.

II. DESCRIPTION OF PROPERTY

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

Bridgewater Town Homes at Sunbrook property consisting of 39 lots and living units. The units shall be of such construction as is approved by Declarant, or the Sunbrook Communities Master Architectural Control Committee as the case may be.

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

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

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration):

(i) To construct and complete the improvements as Declarant deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;

(ii) To construct and complete on the Phase II Land or any portion thereof such improvements as Declarant or said assignee or successor shall determine to build in its sole discretion. Declarant specifically reserves the right to have access for itself or its assigns to the

roads for ingress and egress and to all utility systems in order to develop Phase II Property, whether or not the Phase II Property is added to the Association.

(iii) Declarant hereby dedicates and grants to the public a perpetual golf overflight easement over, across and upon all Common Property and all Lots located within Two Hundred (200) feet (at any point) of the Sunbrook Golf Course perimeter legal description. Furthermore, all Lot Owners within Bridgewater, their guests and invitees, agree to indemnify Declarant (its agents or employees), the golf course architect and the City of St. George (its agents and employees) from personal injury or property damage resulting from any person or property being struck by a golf ball within the golf overflight easement herein provided.

(iv) To improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Declarant or as such assignee or successor may reasonably determine to be appropriate.

If, pursuant to the foregoing reservations, the above-described land or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. Such easement shall be in favor of the city of St. George or such utility as is providing the service. All sewer, water and electric lines shall be owned by the City of St. George. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire fifteen (15) years after the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, Utah.

III. MEMBERSHIP AND VOTING RIGHTS

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

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

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

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required for membership in the Association. The Class B membership shall automatically cease and be converted to Class A membership on the first to occur of the following events.

(a) When the total number of votes held by all Class A members equals the total number of votes held by the Class B Member, provided that Declarant has declared its intent by filing a written instrument stating that Declarant shall add no more town home phases. If this instrument has not been filed, then (b) below shall apply.

(b) The expiration of fifteen (15) years after the first lot is conveyed.

3. Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

IV. PROPERTY RIGHTS IN COMMON AREAS

1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas, except for limited Common Areas as explained in paragraph 6 below.

Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may grant the use and enjoyment described herein to any tenant, lessee, or contract purchaser who resides on such Member's Lot.

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

All of Lot _____ of _____ Townhomes at Sunbrook, according to the official plat thereof, subject to the Declaration of Conditions, Covenants and Restrictions of The Town Homes at Sunbrook, all on file in the office of the Washington County Recorder.

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

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

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

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

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

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

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

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

6. Limited Common Areas. As shown on the Plat, Limited Common Areas are reserved exclusively for the use of adjacent unit owners, their tenants, guests or invitees. The Association reserves the right of entry on such areas for any necessary maintenance upon giving reasonable notice or in an emergency. Such areas are generally described as follows: Concrete and or wooden deck areas which are immediately behind each lot as set forth in the Plat.

7. Driveway areas. Driveways that connect Lots to private or public streets may be considered, along with the private streets, part of the common areas. However, each driveway shall be reserved exclusively for the use of the adjacent Lot owners, their tenants, guests, and or invitees. Furthermore, inasmuch as each lot owner does not have the right to block the private street within the Development, no Lot owner shall have the right to park in, or block, any driveway used as access to another's lot within the Development.

V. ASSESSMENTS

1. **Personal Obligation and Lien.** Declarant, for each Lot owned by it (subject to the express reservation contained in paragraph 3 below of this section V) and each Owner shall, by acquiring or in any way becoming vested with an interest in a Lot be deemed to covenant and agree to pay to the Association the monthly and the special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. Any such liens, however, shall be subordinate to the lien or equivalent security interest of any first Mortgage on the unit recorded prior to the date any such common expense assessments become due.

2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of: Master Association dues and/or assessments, taxes and insurance on the Common Areas; maintenance, repair, replacement, and improvement of the Common Areas; management and supervision of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

3. **Base for Assessment.** Each Living Unit which is certified for occupancy and has been conveyed to an Owner shall be assessed the same rate as all other owners as determined by the Declarant/Board of Trustees. For the purpose of assessment, the term "Owner" shall exclude the Declarant, Successor Declarant, provided that the Declarant or its assigns shall have the obligation to subsidize the association until control of the association passes to unit owners. Subsidization shall be defined as the payment of the reasonable cash needs of the association for ordinary and necessary maintenance expenses (not including reserves or capital replacement). The determination of the reasonable cash needs for ordinary and necessary maintenance expenses shall be within the sole discretion of the Board of Trustees of the Association and Declarant shall have no liability to the Association if subsequent Boards of Trustees shall disagree with the determination of the Board which it is under the control of Declarant. In no event, however, shall the subsidy exceed the monthly assessments.

4. **Special Assessments.** In addition to the monthly assessments authorized above, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable for being fully paid with funds generated by monthly assessments; (b) the cost of any construction, reconstruction, or unexpectedly required repair or replacement in connection with the Common Areas; or (c) any expenses related

specifically to one or more town home phases. Any such expenses related specifically to the Common Areas of one or more town home phases may, at the discretion of the Board of Trustees, be assessed to the Owners of the town home phase(s) in which the expenses arise; if the Trustees find that the expenses are necessary to one or more, but not all of the town home phases. Any such special assessment in excess of \$1,000 per lot must be assented to by more than fifty percent (50%) of all votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) days but not more than thirty (30) days prior to the meeting date.

5. Special City Assessment. 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 St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

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

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

8. Monthly Assessment Due Dates. The monthly assessments provided for herein shall commence as to all Lots on the date a deed is delivered to the first purchaser of a Lot (or contract of sale) on the date of occupancy under an occupancy agreement whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy, as the case may be. At least 15 days prior to the effective date of any change in amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

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

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

11. Tax Collection From Lot Owners by Washington County Authorized. It is recognized that under the Declaration the Association may own the Common Areas in the future and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of his monthly assessment will be required to pay to the Association his prorata share of such taxes. Notwithstanding anything to the contrary contained in this Declaration, or otherwise, Washington County shall be, and is, authorized to collect such prorata share (on equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed so to do. In the event that the assessor shall separately assess any future Common Areas to the Association, the Board of Trustees may require, in its discretion a special assessment to pay such taxes, or they may be included in the regular assessment budget.

VI. OPERATION AND MAINTENANCE

1. Maintenance of Lots and Living Units. Each Lot and Living Unit and related Limited Common Area (if any shall be added to future phases) shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Lot or Living Unit. The Association shall have no obligation regarding maintenance or care of Lots or Living Units except as provided in Paragraph 2 of this Article VI.

2. Operation and Maintenance by Association. The Association, by its duly delegated representatives, shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive and generally in good condition and repair. Notwithstanding the provisions regarding Lot and Living Unit and Limited Common Area maintenance by Owners, the Association shall maintain the front yard, side yard and back yard areas (landscaping and sprinkler systems) of each unit (whether or not designated as Limited Common Area). In addition, the Association or Declarant shall maintain the driveways and private streets, as part of the common areas. Damage to units not caused by ordinary wear

and tear and the elements shall be paid by insurance proceeds (if available) or if uninsured, by unit owners. Damage shall be promptly repaired. In the event an Owner of any Lot in the Property shall fail to maintain his Lot or repair damage in a manner satisfactory to the Master Association Architectural Control Committee ("MAACC") or the Board, the MAACC and/or the Association, after approval by 2/3 vote of the Board and/or the MAACC, shall have the right, through its agent, employees, or through an independent contractor to enter upon such Lot and repair, maintain and restore the portion of the Lot maintainable by the Owner and any other improvements erected thereon (but not the interior of his Living Unit). The costs incurred by the Association in maintaining, repairing or restoring those portions of a lot maintainable by the Owner shall then be added to and become an assessment and lien against the lot as described in Section V. 1. and subject to collection as described in Section V. 9. of this Declaration.

3. Utilities. The owners shall pay for the monthly electrical, sewer, and garbage pickup for each Lot, unless other billing arrangements with the utility are approved by the Board. Each Lot Owner shall pay for all other utility services which are separately billed or metered to individual Lots by the utility or other party furnishing such service. Any utilities not chargeable to a unit shall be paid by the Association.

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

(a) A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. This shall not be required as long as there are no Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Sunbrook Communities Lot Owners Association, for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear."

(b) A comprehensive policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to any operations of the Association, to the ownership, use or operation of the Common Areas (if any) which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the Development because of negligent acts of the Association or other Owners.

(c) A fidelity policy or policies to protect against dishonest acts on the part of Trustees, Officers, Manager, Employees of the Association and all others (including volunteers)

who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one-hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all first mortgagees of Lots.

The following additional provisions shall apply with respect to insurance:

(i) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(ii) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

(iii) The Association shall have the authority to adjust losses.

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

(v) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

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

(7) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must

provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(8) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

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

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

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

Act of 1968, as amended, whichever is less. The name of the insured under each required policy must be in form and substance as that required by the Federal Home Loan Mortgage Corporation at any given time.

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

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

VII. USE RESTRICTIONS

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

2. **Use of Lots and Living Units.** Each Lot has been or shall be improved with a Living unit, each to be used only as a single-family residence. Home Occupations may be allowed upon: 1) approval of the Master Association Architectural Control Committee; and 2) obtaining appropriate City licensing. The Master Association Architectural Control Committee shall be empowered to issue guidelines for the type of Home Occupations that shall be allowed. In general, Home Occupations which generate significant traffic, or have significant tangible inventory for sale, shall not be allowed. The Master Association Architectural Control Committee shall be accorded broad discretion in establishing such guidelines under the premise that the residential character of the Development shall be preserved. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to create a nuisance or interfere with the rights of any Owner or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

3. **Non-residential Use.** Except for approved Home Occupations, no part of the Property shall be used for any commercial, manufacturing, mercantile, commercial storing, vending, (except as may be installed as a convenience by the Declarant or Association) or other such non-residential purposes, provided that minor storage of items incident to a valid Home Occupation

may be allowed if approved by the MAACC, and stored entirely inside the living unit, out of sight. Declarant, its successors or assigns, may use the Property for a model home site display, and as a sales and construction office during the construction and sales period.

4. Quiet Enjoyment. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the owners of his respective Living Unit or which shall in any way increase the rate of insurance.

5. Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, for the fifteen-year period following the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah, Declarant shall have the right to use any Lot or Living Unit owned or leased by it and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by Declarant. Declarant may also conduct collateral business activity on the Project.

6. Sunbrook Communities Occupancy and Use Restrictions. Each Lot shall also be subject to the use and occupancy restrictions set forth in the Master Declaration of Covenants, Conditions, and Restrictions of Sunbrook Communities.

VIII. ARCHITECTURAL CONTROL

1. Master Association Architectural Control Committee. The Development and any additions thereto shall be subject to the Sunbrook Communities Master Declaration, and the Master Association Architectural Control Committee (sometimes referred to herein as the "MAACC"), as provided in the Master Declaration. Declarant may prepare Site Data Sheets for each Development, which Site Data Sheets will be added to the Master Architectural Design Guidelines for the Sunbrook Communities.

IX. CONDEMNATION

If at any time or times the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the lot owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Areas shall be disposed of in such manner as the Association shall reasonably determine; provided, however, that in the event of a taking in which any Lot(s) or portion(s) thereof is eliminated, the Association shall disburse the portion of the

proceeds of the condemnation award allocable to the interest of the Owner(s) of such Lot(s) or portion(s) thereof to such Owner(s) and any first Mortgagee(s) of such Lot(s), as their interests shall appear, after deducting the proportionate share of said Lot in the cost of debris removal.

X. RIGHTS OF FIRST MORTGAGEES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) material amendment of the Declaration or the Articles or Bylaws of the Association (a "material amendment," for this purpose, shall mean an amendment which may reasonably be construed to adversely affect the rights of a first mortgagee; or

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

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

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

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

7. Exemption from any First Right of Refusal. Any first Mortgagee and any purchaser therefrom who obtains title to the Lot pursuant to the remedies provided in the first Mortgage, or

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

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

9. Restrictions Without Approval of Mortgagees. Except as to the Association's right to grant easements for utilities and similar or related purposes, the Development's Common Areas (if any) may not be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of 75% of first Mortgage liens on the Lots.

10. Mortgagees Rights Concerning Amendments. Except as concerns the right of Declarant to amend the Declaration and related documents as contained in Article XI of the Declaration, no material amendment to the Declaration, By-Laws of the Articles of Incorporation of the Association shall be accomplished or effective unless at least 75% of the Mortgagees (based on one vote for each Mortgagee) of the individual Lots have given their prior written approval to such amendment. (See Article X, paragraph 3(d)(ii) for the definition of "material amendment" for this purpose.)

XI. ANNEXATION OF ADDITIONAL LAND

1. Annexation by Declarant. Declarant may expand the Property subject to this Declaration by the annexation of all Phase II Land. (See Exhibit "B" hereto for description of Phase II land.) The annexation of such land shall become effective and extend the plan of this Declaration to such property upon the recordation in the office of the County Recorder of Washington County, Utah, of a Supplementary Declaration or similar instrument which:

(i) describes the land to be annexed or incorporated by reference within the description contained in Phase II portion of the Plat;

(ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration; and

(iii) sets forth such additional limitations, restrictions, covenants, conditions complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property and as are not inconsistent with the plan of this Declaration.

When such annexation becomes effective, said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the owners of Lots in said real property shall automatically be members of the Association.

Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within Phase II property.

2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations, conditions and rights granted to the Declarant:

(a) The annexed land must be part of the land which is Phase II Land as of the date of this Declaration, as described at Exhibit "B" hereto. However, Declarant reserves the right to expand the borders of Phase II land to contiguous land within 1,000 feet of exterior borders, but with no obligation to do so and no claim as to right, title or interest to said land, if it does not currently own the same.

(b) Declarant shall not effectuate any annexation of land which would cause the total number of living units existing on, or planned for the Property to exceed 800 total Lots.

(c) Declarant's right to annex land to the Property shall expire fifteen (15) years after this Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

(d) All Lots added shall be for residential purposes as provided for in this Declaration.

(e) Additional Living Units when constructed shall be consistent with the initial improvements in terms of quality of construction and compatible with existing structures in the phase the Living Unit is located in (with respect to Living Units or common area improvements built by Declarant or their assigns), (or as approved by the Master Association Architectural Control Committee if not built by Declarant or its assigns.)

(f) The configuration of annexed land as to lot size, common areas and the nature, quantity or quality of improvements shall be in discretion of the Declarant or its assigns. Declarant may restrict use of Common Areas to the Owners of any particular designated Phase. Declarant may designate a separate Budget and Assessment level for any additional Phase, if the allocated costs of the new Phase will be materially different from existing Phases. (For example if a Common Area amenity is added for the exclusive use of one or more Phases, Declarant reserves unto itself the right to set a different Budget and Assessment for such Phases.) Additional amenities may (in the discretion of Declarant) be added to future common areas of the Project. No assurances can therefore be given.

(g) Declarant reserves unto itself and its assigns the right to create limited common areas and facilities within any portion of the annexed land. No assurances can therefore be made with respect to such items.

3. **Declarant's Right to Amend.** Until all portions of the Phase II Land are included in the Development, or until the right to enlarge the Development through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration and or the Plat as may be reasonably necessary or desirable:

(i) to adjust the boundaries of the Lots, including adding or deleting common areas (by filing an appropriate amended Plat) to accommodate design changes or changes in type of units or adjustment to lot configuration;

(ii) to more accurately express the intent of any provisions of the Declaration in the light of then-existing circumstances or information;

(iii) to better insure, in light of the existing circumstances or information, workability of the arrangement which is contemplated by the Declaration;

(iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Development; or

(v) to conform to the underwriting guidelines of major secondary market investors in order to facilitate the availability of financing.

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

XII. MISCELLANEOUS

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

2. **Rules and Regulations.** The Association shall have authority to promulgate and enforce such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Property is maintained and used in a manner consistent with the interests of the Owners. Any rules inconsistent with rules or regulations of the Master Association shall not be allowed.

3. **Amendment.** Subject to Declarant's right to unilaterally amend as set forth in ARTICLE XI, any amendment to this Declaration shall require:

(a) the affirmative vote of at least two-thirds (2/3) of all Class A membership votes which Members present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose; and,

(b) so long as the Class B membership exists, the written consent of Declarant.

Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Class A membership shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3) at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the Association (and by the Declarant if the Class B membership then exists). In such instrument an officer or director of the Association shall certify that the vote required by this Section for amendment has occurred.

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

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

(b) The total number of votes required for authorization or approval under this Section 4 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owners thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

(d) Unless the consent of all Members whose memberships are appurtenant to the same Lot are secured the consent of none of such Members shall be effective.

5. Reserve Fund. The Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas (if and when added) and exterior maintenance and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Lot Owners rather than by special assessments.

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

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

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

(c) The lease of any Unit shall be limited to a 30-day minimum.

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

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

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

10. Covenants to Run With Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to, the terms of this Declaration and the

EXHIBIT "A"
LEGAL DESCRIPTION OF

BRIDGEWATER TOWNHOMES AT SUNBROOK

Beginning at a point North 89°10'34" East 470.85 feet from the Southwest Corner of Section 22, Township 42 South, Range 16 West, Salt Lake Base and Meridian; and running thence South 45°47'45" West 133.83 feet; thence South 29°26'46" West 94.24 feet; thence South 51°06'51" West 95.26 feet; thence South 84°03'48" West 99.85 feet; thence North 62°04'54" West 51.37 feet; thence North 11°17'41" East 69.80 feet; thence North 42°50'59" West 109.52 feet; thence North 80°43'41" West 60.79 feet; thence, North 39°00'51" West 189.35 feet; thence North 64°36'09" East 585.00 feet; thence South 55°39'21" East 80.57 feet; thence North 51°41'47" East 112.21 feet; thence North 03°01'35" East 13.23 feet; thence North 74°04'10" East 144.47 feet; thence North 51°41'47" East 436.59 feet; to a point on the West Right-of-Way Line of Emerald Drive, a 60 foot wide public street; said point also being a point on a 730.00 foot radius curve concave to the Northeast, the radius point which bears North 64°09'54" East; thence running along said Right-of-Way Line the following seven (7) courses: Southeasterly 95.45 feet along the arc of said curve through a central angle of 7°29'29" to the point of reverse curvature of a 15 foot radius curve concave to the Southwest; thence Southwesterly 23.91 feet along the arc of said curve through a central angle of 91°19'54" to a point of tangency; thence South 46°32'38" East 26.79 feet along a radial line; thence North 43°21'22" East 2.05 feet; thence South 46°32'38" East 23.51 feet to a point of curvature of a 15.00 foot radius curve concave to the Southeast; thence Northeasterly 21.74 feet along the arc of said curve through a central angle of 83°03'20" to a point of reverse curvature of a 730.00 foot radius curve concave to the Northeast; thence Southeasterly 53.68 feet along the arc of said curve through a central angle of 4°12'47" to a point from which the radius point bears North 36°16'59" East; thence leaving said Right-of-Way Line and running South 36°16'59" West 101.85 feet; thence South 52°59'09" West 230.21 feet; thence North 29°18'49" West 6.94 feet; thence South 73°44'42" West 265.97 feet; thence South 28°26'08" East 62.27 feet; thence South 45°47'45" West 353.47 feet to the Point of Beginning.

Contains 8.94 acres