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WHEN RECORDED MAIL TO:

Bryan J. Pattison  
DURHAM JONES & PINEGAR  
192 East 200 North, 3rd Floor  
St. George, Utah 84770

DOC # 20070006489

Amended Restrictive Covenants, 1.d.10  
Russell Shirts Washington County Recorder  
02/06/2007 04:42:18 PM Fee \$ 28.00 BY DURHAM JONES & PINEGAR



**THIRD AMENDMENT TO THE  
DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF  
SILVERCREEK TOWNHOMES**

THIS IS AN AMENDMENT to the Declaration of Covenants Conditions and Restrictions of Silvercreek Townhomes (hereafter "*Declaration*"), which was recorded on December 12, 1994, as Entry No. 00486539, in Book 0871, at pages 0480-0499 in the records of the Washington County Recorder, and was amended on October 1, 2003, which amendment was recorded in the records of the Washington County Recorder on October 6, 2003 as Entry No. 00843992, in Book 1587, at pages 0867-0874. The Declaration, and any amendments, supplements, or annexations hereto affect the following described real property in Washington County, Utah:

*See Exhibit "A" attached hereto and incorporated herein by this reference.*

Pursuant to Article XI, Section 4 of the Declaration, Article VIII, Section 14 of the Declaration is hereby amended in its entirety to provide as follows:

**Amendment Recitals**

A. The Silvercreek Townhomes Association ("Association") desires and intends to protect the value, desirability, and character of the Silvercreek Townhomes as a harmonious and attractive residential community and to prevent and avoid any deterioration of the same into a transient-apartment like community.

B. The Association further desires and intends to protect and properly maintain the Common Area and any facilities located thereon from the abuse and misuse which is related to and commonly associated with high numbers of renters living within the community.

C. The Association further desires and intends to protect the interests of Owners who are presently leasing their Lots in compliance with the current provisions of the Declaration under lease agreements with lessees, while at the same time effectuating a plan to eventually phase out the leasing of Lots within Silvercreek.

D. The Association further desires and intends to protect the property rights and interests of Owners who may be required to lease their Lot as a result of hardship.

E. The Association further desires and intends to protect all Owners from the effects of short-term rentals as well as ineffective enforcement mechanisms currently in place to enforce the Declaration, Bylaws, Articles, and rules and regulations against Owners leasing their Lots as well as the lessees of such Owners.

WHEREFORE, Article VIII, Section 14 is hereby amended in its entirety to provide as follows:

**AMENDMENT**

Section 14. Leasing. Notwithstanding anything to the contrary contained in this Declaration, except as expressly authorized in this Section 14, the leasing of any Lot or Townhome (collectively referred to as "Townhome" for purposes of this Section) within the Properties after the Effective Date of this amendment is expressly prohibited. For purposes of this amendment the "Effective Date" shall be the date of recording of this Amendment in the office of the Washington County Recorder, regardless of whether or not actual notice of such recording is provided to the Owners. This prohibition on leasing includes prohibition of offering, selling, or using any Townhome or interest therein under a "timesharing" or "interval ownership" plan, or any similar plan.

(a) **Grandfathered Townhomes.** Any Owner who is leasing his Townhome on the Effective Date may continue to lease his Townhome subject to the following requirements:

(i) *Eligibility; Termination.* Any Owner who, upon the Effective Date, is not in violation of the leasing restrictions contained in this Declaration prior to the Effective Date, and who otherwise complies with the provisions of this amended Section 14, shall have the right to continue to lease his Townhome until the earlier of the following occurs, at which time such right shall automatically terminate: (1) the Townhome becomes **Owner Occupied**; (2) the Townhome is transferred or conveyed to a bona fide purchaser; (3) the Townhome is damaged or destroyed by fire, flood, wind, earthquake or other calamity or act of God, or the public enemy, unless a restoration of such Townhome may be made and occupancy continued within a period of twelve months after such damage or destruction; (4) the Townhome remains vacant or unoccupied for a period of twelve months; and/or (5) the Board terminates the Owner's right to lease under ~~subsection (c)(iii)~~ herein. For purposes of this section "Owner Occupied" shall mean that the Owner or any member of his immediate family occupies the Townhome as his primary year round residence or, in the case of an Owner which is a corporation, partnership, limited liability company, or other entity, where the principal of such entity or any member of his immediate family occupies the Townhome as his primary year round residence.

(ii) *Application for Grandfathering; Notice of Intent.* Within forty-five (45) days after the Effective Date, any Owner who is leasing his Townhome and desires to continue leasing his Townhome must complete and deliver to the Board of Trustees

("Board") a form entitled "Notice of Intent to Continue Leasing," which form shall be made available by the Board upon request. An Owner who fails to timely deliver the Notice of Intent to Continue Leasing form shall forfeit the right to lease his Townhome upon the expiration of the current term of any current lease agreement the Owner has with a lessee.

(b) **Hardship Exemption.** If an Owner believes he is suffering or will suffer a hardship and believes it necessary to lease his Townhome as a direct result of that hardship the Owner may apply to the Board for a hardship exemption from the leasing prohibition. An application for a hardship exemption must be submitted in writing to the Board and shall set forth in detail the reasons why the Owner seeking the exemption believes hardship necessitates that he be allowed to lease his Townhome. The application shall also contain such other materials as are necessary to document the hardship.

(i) *Recognized Hardships.* The following categories of hardships shall be recognized by the Board as categories of hardships for which a hardship exemption shall be approved, *provided* that the Owner provides sufficient proof to the Board that he falls within one or more of these categories: (1) religious service; (2) government or military service; or (3) if the Owner is a bona fide lending institution which has secured the Townhome under a first trust deed or mortgage and has acquired title to the Townhome through foreclosure or otherwise. The third category shall be deemed to include the Association, in the event it acquires any Townhome through foreclosure or otherwise. These categories of hardships shall be approved for the maximum period of time that the Owner, with the consent of the Board, certifies and documents is necessary to complete the hardship.

(ii) *Discretionary Hardships.* Approval of any application for a hardship exemption that does not fall within one or more of the categories of recognized hardship shall be determined on a case by case basis and shall be in the Board's sole discretion. On such discretionary hardships, the Board may grant a waiver of the lease prohibition for a maximum initial exemption period of one year with the opportunity to obtain an extension of a maximum of three years. The Board may establish and publish factors and guidelines to assist it and future Boards, as well as Owners, in determining what factors and information the Board might deem relevant or necessary in determining whether to grant an exemption; *however*, in no event shall such guidelines limit the Board's discretion or require approval in any given case. The grant or denial of a hardship by the Board to one Owner, shall not entitle any other Owner to a grant of a hardship nor shall it require the Board to deny any similar hardship request. No Owner shall be entitled to or receive more than three discretionary hardship exemptions. This limitation does not include any authorized extension of a hardship exemption.

(c) **Lease Requirements.** Any lease that is expressly authorized under the terms of this section, and is entered into after the Effective Date, shall be subject to the following requirements:

(i) **Lease Agreement.** 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 any rules or regulations of the Association and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Any lease or rental agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than six (6) months; *provided* however that the Board shall have the power to allow leases for a term of less than six months upon a showing by the Owner that such a lease term is required to avoid undue hardship in accordance with subsection (b) above. Townhomes may be leased only in their entirety. There shall be no subleasing of Townhomes or assignment of leases without the prior written approval of the Board. To further the Association's intent, as set forth in the Recitals above, Owners may only lease their Townhomes to Single Families. For purposes of this Section 14, the term "**Single Family**" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four persons who maintain a single housekeeping unit within the Townhome.

(ii) **Notice of Lease to Board.** An Owner who enters into a lease or rental agreement must notify the Board of the same, in writing, within fifteen (15) days after execution of the lease or rental agreement and along with such notification must provide to the Board a copy of the lease or rental agreement. An Owner must comply with the foregoing notice provision for each tenant with which it enters into a lease or rental agreement and for each renewal of any existing lease or rental agreement.

(iii) **Enforcement Against Owner.** The Association may impose a fine, not to exceed fifty percent (50%) of the amount of the maximum annual assessment, on an Owner, which shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment for that Owner's Lot as provided in Article IV, for each violation of the Declaration, the Bylaws of the Association or any rules or regulations, committed by the Owner's lessee or the lessee's occupants or guests. Any such fine shall be imposed after a ten day notice is given to the Owner of such violation. The Association may impose an additional fine on the Owner for each day such violation continues after the ten day notice period provided herein, which additional fines shall constitute a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article IV. The Association need not provide any additional notice prior to fining an Owner for a continuing violation. The Board may terminate an Owner's right to lease his Townhome if the Owner (1) fails to cure any continuing violation within thirty days after first being notified of the violation, (2) fails to pay any fine assessed under the authority of this subsection (c)(iii) or (3) receives three notices of violation with any six month period. The enforcement remedies provided

herein are in addition to any other rights of enforcement provided in this Declaration, the Bylaws, Articles, any rules or regulations, or by applicable law.

(iv) *Enforcement of Lease by Association.* Any lease or rental agreement for any Townhome within the Property shall include the following language, and, if such language is not expressly contained in such lease or rental agreement, the Owner leasing his Townhome hereby agrees that such language shall be deemed incorporated into the lease:

Any violation of the Declaration of Covenants, Conditions, and Restrictions of the Silvercreek Townhomes ("Declaration") and/or any rules and regulations adopted pursuant thereto (collectively, "**Violations**"), by the lessee, any occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease and evict the lessee in accordance with and to the extent authorized by Utah law. The Owner hereby delegates and assigns to the Board of Trustees of the Silvercreek Townhome Association power and authority of enforcement against the lessee for breaches resulting from any Violations, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Board proceeds to evict the lessee, any costs, including reasonable attorney fees, court costs, and any other expenses incurred by the Association associated with the eviction shall be an assessment and lien against the Townhome.

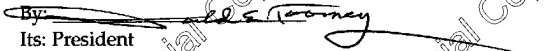
Except as otherwise amended herein, all other terms of the Declaration shall remain in full force and effect.

\*\*\*


IN WITNESS WHEREOF, the undersigned hereby certifies that at least sixty-seven percent (67%) of the Owners approved the foregoing amendment by signing a written instrument acknowledging such approval.

DATED THIS 6<sup>th</sup> day of FEBRUARY, 2007.

Silvercreek Townhomes Association

By:   
Its: President

Attested to:

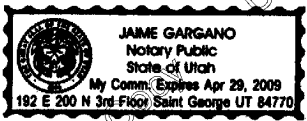
By:  02/05/07  
Its: Secretary

[Notary acknowledgment on following page]

STATE OF UTAH )  
 ) ss:  
COUNTY OF WASHINGTON )

On the 6<sup>th</sup> day of February, 2007 personally appeared before me Donald Z. Toomey, who being by me duly sworn did say that he/she is President of the Silvercreek Townhomes Association, a Utah non profit corporation, and that said instrument was signed on behalf of said institution by authority of its organizational documents or a resolution of its management or directors and acknowledged to me that said institution executed the same.

Jaime Gargano  
NOTARY PUBLIC  
Address: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



6d amend 020607

**Exhibit A**

**Parcel I.D. Nos.:**

- SG-SCTH-1-1
- SG-SCTH-1-2
- SG-SCTH-1-3
- SG-SCTH-1-4
- SG-SCTH-1-5
- SG-SCTH-1-6
- SG-SCTH-1-7
- SG-SCTH-1-8
- SG-SCTH-1-9
- SG-SCTH-1-10
- SG-SCTH-1-11
- SG-SCTH-1-12
- SG-SCTH-1-13
- SG-SCTH-1-14
- SG-SCTH-1-15
- SG-SCTH-1-16
- SG-SCTH-1-17
- SG-SCTH-1-18
- SG-SCTH-1-19
- SG-SCTH-1-20
- SG-SCTH-1-21
- SG-SCTH-1-22
- SG-SCTH-1-23
- SG-SCTH-1-24

ALL POR NW1/4 SEC 23 T42S R16W AS FOL: BEG SW COR SD NW1/4; TH N 89°27'28"  
E ALGS LN 363.88 FT TO POB; TH N 0°08'16" E 176.99 FT; TH N 43°34'22" E 80.53 FT;  
THS 89°19'24" E 21.81 FT; TH N 01°41'25" E 65.01 FT; TH S 89°19'24" E 14.73 FT; THN  
01°41'25" E 55.01 FT; TH N 08°39'42" W 5.07 FT; TH S 89°19'24" E 88.27 FT TO CUR LFT  
RAD 84 FT; TH NWLY FM RADIAL LN BEARS S 61°33'05" W ARC OF 15.63 FT  
THRU CTRL ANG 10°39'29"; TH N 51°26'42" E 85.22 FT; TH N 89°26'50" E 345.41 ETC

**Parcel I.D. Nos.:**

SG-SCTH-2-25	SG-SCTH-2-50
SG-SCTH-2-26	SG-SCTH-2-56
SG-SCTH-2-27	SG-SCTH-2-57
SG-SCTH-2-28	SG-SCTH-2-58
SG-SCTH-2-29	SG-SCTH-2-59
SG-SCTH-2-30	SG-SCTH-2-60
SG-SCTH-2-31	SG-SCTH-2-61
SG-SCTH-2-32	SG-SCTH-2-62
SG-SCTH-2-33	SG-SCTH-2-63
SG-SCTH-2-34	SG-SCTH-2-64
SG-SCTH-2-35	SG-SCTH-2-65
SG-SCTH-2-37	SG-SCTH-2-66
SG-SCTH-2-38	SG-SCTH-2-67
SG-SCTH-2-39	SG-SCTH-2-68
SG-SCTH-2-40	SG-SCTH-2-69
SG-SCTH-2-41	SG-SCTH-2-81
SG-SCTH-2-42	SG-SCTH-2-82
SG-SCTH-2-43	SG-SCTH-2-83
SG-SCTH-2-44	SG-SCTH-2-84
SG-SCTH-2-45	SG-SCTH-2-124
SG-SCTH-2-46	SG-SCTH-2-125
SG-SCTH-2-47	SG-SCTH-2-126
SG-SCTH-2-48	SG-SCTH-2-127
SG-SCTH-2-49	

POR NW1/4 SEC 23 T42S R16W AS FOL: BEGN 89°27'28" E ALG 1/4 SEC/L 302.30 FT FMW1/4 COR SEC 23; TH N 0°08'16" E 1169.33 FT; TH N 25°12'26" E 174.96 FT; TH N 89°23'48" E 1025.53 FT; TH S 0°56'37" E 16.77 FT TO 1536.02 FT RAD CUR CNCV SLY (RAD BEARS S 0°10'19" W); TH WLY 210.57 FT ALG ARC SD CUR THRU CTRL ANG 07°51'17" TO PT TNGY; TH S 82°19'02" W 102.93 FT TO 1101.80 FT RAD CUR CNCV NLY; TH WLY 128.32 FT ALG ARC SD CUR THRU CTRL ANG 06°40'23" TO PT TNGY ETC



**Parcel I.D. Nos.:**

SG-SCTH-3-36	SG-SCTH-3-93
SG-SCTH-3-51	SG-SCTH-3-94
SG-SCTH-3-52	SG-SCTH-3-95
SG-SCTH-3-53	SG-SCTH-3-96
SG-SCTH-3-54	SG-SCTH-3-97
SG-SCTH-3-55	SG-SCTH-3-98
SG-SCTH-3-70	SG-SCTH-3-99
SG-SCTH-3-71	SG-SCTH-3-100
SG-SCTH-3-72	SG-SCTH-3-101
SG-SCTH-3-73	SG-SCTH-3-102
SG-SCTH-3-74	SG-SCTH-3-103
SG-SCTH-3-75	SG-SCTH-3-128
SG-SCTH-3-76	SG-SCTH-3-129
SG-SCTH-3-77	SG-SCTH-3-130
SG-SCTH-3-78	SG-SCTH-3-131
SG-SCTH-3-79	SG-SCTH-3-132
SG-SCTH-3-80	SG-SCTH-3-133
SG-SCTH-3-85	SG-SCTH-3-134
SG-SCTH-3-86	SG-SCTH-3-135
SG-SCTH-3-87	SG-SCTH-3-136
SG-SCTH-3-88	SG-SCTH-3-137
SG-SCTH-3-89	SG-SCTH-3-138
SG-SCTH-3-90	SG-SCTH-3-139
SG-SCTH-3-91	SG-SCTH-3-140
SG-SCTH-3-92	

POR NW1/4 SEC 23 T42S R16W DESC AS FOL:BEG W1/4 COR SEC 23; TH N 0°56'37"  
W 1020.39 FT ALG W SEC/L; TH E 611.33 FT TO POB; TH N 0°33'10" W 136.41 FT; TH  
N 41°42'54" E 168.83 FT; TH N 88°59'25" E 260 FT TO 1164.56 FT RAD NON-INGT CUR  
CNCV TO NW RAD LN BEARS N 01°11'32" W; TH NELY 132.85 FT ALG ARC SD CUR  
THRU CTRL ANG 06°32'10"; TH N 82°19'02" E 94.65 FT; TH S 0°33'10" E 99.59 FT; TH S  
35°45'45" E 39.17 FT; TH S 0°33'10" E 1009.17 FT; TH S 89°28'13" W 192 FT; ETC

**Parcel I.D. Nos.:**

SG-SCTH-4-104	SG-SCTH-4-141
SG-SCTH-4-105	SG-SCTH-4-142
SG-SCTH-4-106	SG-SCTH-4-143
SG-SCTH-4-107	SG-SCTH-4-144
SG-SCTH-4-108	SG-SCTH-4-145
SG-SCTH-4-109	SG-SCTH-4-146
SG-SCTH-4-110	SG-SCTH-4-147
SG-SCTH-4-111	SG-SCTH-4-148
SG-SCTH-4-112	SG-SCTH-4-149
SG-SCTH-4-113	SG-SCTH-4-150
SG-SCTH-4-114	SG-SCTH-4-151
SG-SCTH-4-115	SG-SCTH-4-152
SG-SCTH-4-116	SG-SCTH-4-153
SG-SCTH-4-117	SG-SCTH-4-154
SG-SCTH-4-118	SG-SCTH-4-155
SG-SCTH-4-119	SG-SCTH-4-156
SG-SCTH-4-120	SG-SCTH-4-157
SG-SCTH-4-121	SG-SCTH-4-158
SG-SCTH-4-122	SG-SCTH-4-159
SG-SCTH-4-123	SG-SCTH-4-160
	SG-SCTH-4-161
	SG-SCTH-4-162

POR NW1/4 SEC 23 T42S R16W DESC AS FOL:BEG W1/4 COR SEC 23 T42S R16W, TH N89°27'28E ALG C/S/L 1019.86 FT; TH N0°33'10W 30 FT TO POB BEING ON N LN 540 NORTH ST BEING SE COR SILVER CREEK TOWN HOMES PH1; TH N0°33'10W ALG E LN PH 1 96.11 RADPT BEING S03°01'22E 84 FT; TH ELY ALG ARC CUR PH 1 THRU CTRL ANG 02°29'52 3.66 FT; TH N89°28'13E ALG PH 1 11.34 FT; TH N0°33'10W ALG PH 1 32 FT; TH N89°28'13E 192 FT; TH N0°33'10W 1009.17 FT; TH N35°45'45W 39.17 FT; TH N0°33'10W ETC