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**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF
HUNTINGTON AT STONEBRIDGE**

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS CONDITIONS AND RESTRICTIONS FOR
HUNTINGTON AT STONEBRIDGE**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by the Huntington at Stonebridge Homeowners Association, a Utah non-profit corporation (hereafter "Association").

RECITALS

A. This Declaration supersedes and replaces in its entirety the previously recorded Declaration of Covenants, Conditions, and Restrictions of Huntington at Stonebridge ("Original Declaration") that was recorded as Entry No. 00687895 on June 12, 2000, in the Washington County Recorder's Office.

B. The Association is the authorized representative of the Owners of certain real Property known as the Huntington at Stonebridge, located in Washington County, State of Utah and more particularly described and incorporated hereinafter ("Property").

C. These covenants, conditions, restrictions, easements, reservations, and limitations shall run with the said real Property and Lots and shall be binding on all parties having or acquiring any right, title or interest in the described real Property or any part thereof and shall inure to the benefit of each Owner thereof and are imposed upon said real Property and Lots and every part thereof as a servitude in favor of each and every Lot thereof as the dominant tenement or tenements.

D. Pursuant to Article 3, Section 3.2 of the Original Declaration, seven (7) years have passed since the first Lot conveyance to a purchaser, therefore Declarant's Class B membership has ceased and has been converted to Class A membership and all other rights reserved exclusively to the Declarant due to its Class B membership have also ceased and are hereby terminated.

E. Pursuant to Article 9 of the Original Declaration, Declarant has not caused expansion of the project to occur by filing with the Washington County Recorder: (1) an additional subdivision plat or plats creating additional planned unit developments; and, (2) a declaration of annexation within seven (7) years from the date of recording of the Original Declaration; accordingly, Declarant rights have been terminated or otherwise have expired.

F. Pursuant to Article 11, Section 11.4 of the Original Declaration, this Declaration has been voted on and approved by the record Owners of not less than sixty-seven percent (67%) of the Entire Membership.

NOW, THEREFORE, for the benefit of the Property and the Owners thereof, the Association hereby executes this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for the Association, for and on behalf of all Owners.

SUBMISSION AND PURPOSE

Submitted Property. The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration and any Plat Map, as recorded, is located in Washington County, Utah, and is described as: Huntington Phases I, II, III, IV and V as recorded in the Washington County Recorder's office, all of which real property is referred to herein as the "Property."

The Property shall be owned, held, sold, leased, occupied, improved, conveyed, hypothecated or encumbered, used, occupied and improved subject to this Declaration and any Plat Map of record. The easements, covenants, conditions, restrictions and charges, described in this Declaration shall deemed to be real covenants or equitable servitudes, as the case may be, which run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of the Association, and each Owner thereof.

Purpose of Declaration. The purpose of this Declaration is to protect the value and desirability of the Property, and for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Properties; and for the improvement and maintenance of Properties, services, and facilities devoted to this purpose. Additionally, this Declaration is to ensure the use of the Property for attractive residential purposes, to prevent nuisances, to prevent the impairment of the attractiveness of the Property, and to maintain the desired tone of the subdivision, and thereby secure to each Owner the full benefit, enjoyment and value of their residence, with no greater restriction on the free and undisturbed use of their Lot than is necessary to ensure the same advantages to the other Owners.

ARTICLE 1 – DEFINITIONS

The following definitions control in the Declaration (unless the context otherwise requires). These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. **Directors, Board of Directors, or Board** means the body responsible for the administration of the Association, elected as provided in the Bylaws and generally serving the same role as a Board of Directors under the Revised Non-Profit Corporations Act

Section 1.2. **Declaration** means this instrument, and any amendments made thereto.

Section 1.3. **Plat Map or Map** means the official subdivision plat maps recorded in the official records of the Washington County Recorder's office, State of Utah, as Huntington at Stonebridge, including Phases I – V, as the same may be amended from time to time.

Section 1.4. **Property** or **Properties** means that certain real Property hereinbefore described.

Section 1.5. **Common Area** means 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.

Section 1.6. **Common Expenses** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the governing documents.

Section 1.7. **Governing Documents** means, collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements thereto, and includes any Rules and Regulations established pursuant to the Declaration, Articles, or Bylaws.

Section 1.8. **Limited Common Area** means that portion of Common Area that would commonly be defined as front yards, backyards, and driveways. Side yard dividing lines are equidistant between two adjacent Lots. Front yards are the area in front of the lot until the street curbing and extend to the side yard lines. If any dispute arises about the definition of Limited Common Area, the Board has sole discretion to define the 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 all other Owners. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 1.9. **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 1.10. **Townhome or Unit** 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 1.11. **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**." The term "**Owner**" also 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 acquired by foreclosure or similar proceedings

Section 1.12. **Association** means Huntington at Stonebridge Homeowners Association, its successors and assigns.

Section 1.13. **Member** means every person or entity that holds membership in the Association. Every Member is an Owner, and every Owner is a Member.

Section 1.14. **Entire Membership** means all Owners.

Section 1.15 **Declarant** means Richard B. Hafen and Sheron S. Hafen, co-trustees of the Hafen Family Trust, Cottonwood Investments Properties, L.C., a Utah limited liability company, L&LB Investment, L.C., a Utah limited liability company, West Coast Utah Investment Properties, LC, a Utah limited liability company, Dixie Downs Development, L.c., a Utah limited liability company, K and A Investment Co., a Utah limited partnership, Pine Cliff Properties, LC, a Utah limited liability company, LWF Limited Partnership, a Utah limited partnership, Rebel Investment Properties, LC, a Utah limited liability company, Lava Lakes Properties, LC, a Utah limited liability company, Stone Bridge Properties, LC, a Utah limited liability company, and the Declarant's heirs, successors and assigns.

Section 1.16. **Mortgage** means any mortgage or deed of trust encumbering any Lot or any or all of the Common Area, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded in the Washington County Recorder's Office.

Section 1.17. **Articles of Incorporation** or **Articles** means the Articles of Incorporation of the Huntington at Stonebridge Homeowners Association, a Utah Non-Profit Corporation, as the same may be amended from time to time.

Section 1.18. **Bylaws** means the Bylaws of the Association, as they may be amended from time to time.

ARTICLE 2 – PROPERTY RIGHTS

Section 2.1. **Owner's Acknowledgment; Notice to Purchasers.** All Owners are given notice that the use of their Units and Common Area is limited by the covenants, conditions, restrictions, easements, and other provisions in the Governing Documents, as they may be amended, expanded, or modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by said covenants, conditions, restrictions, easements, and other provision in the Governing Documents. All purchasers of Units are on notice that the Association may have adopted changes to the Governing Documents, which might differ from those any purchaser might receive from or have disclosed by the Owner from whom the purchaser is purchasing his or her Unit. Copies of current Governing Documents may be obtained from the Association.

Section 2.2. **Units; Activities within Units.** Each Unit is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions, and easements in this Declaration and other provisions of the Government Documents. No rule shall interfere with the activities carried on the within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any

activities that create monetary costs for the Association or other Owners, that create danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance, all as may be determined by the Board or any committee designated by the Board or this Declaration to make such determinations, in the sole discretion.

Section 2.3. **Title to the Common Area.** The Common Area, including Limited Common Area, is owned by the Association for the benefit of the Owners. 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 2.4. **Board Authority and Common Area.** The Board shall have authority to maintain and insure the Common Area as set forth herein. The Board shall have the right to establish Rules and Regulations to govern use of the Common Area, including, by way of example but not limitation, hours of use and standards of conduct.

Section 2.5. **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 the passes with the title to every Lot, subject to:

- (a) The right of the Association to charge reasonable admission, use, serve and other fees for the use of any service of the Association or provided upon the Common Area, or parking facility 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 third-party for cash consideration, or by 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, 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 rights 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 Board, 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 2.6. **Delegation of Use.** An Owner or one having a right to 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. Subject to any rules and regulations established by the Board, including but not limited to the Board's right to require, as it determines necessary, an Owner to forfeit his or her right of use for so long as the Owner has delegated such right to his or her tenant. 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 2.7. **Rules.** The Board 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 Owners.

Section 2.8. **Lots.** Each Lot is owned in fee simple by the Owner as recorded on the Plat. However, area within the surveyed Lot boundaries but outside the originally constructed Townhome walls shall be treated for maintenance and use purposes:

- (a) As Common Area, if adjacent to and naturally forming a part of Common Area; or,
- (b) As Limited Common Area, if adjacent and naturally forming a part of Limited Common Areas.

Section 2.9. **Reincorporation.** The Board shall have the authority and power to reincorporate and renew the Association's corporate status with the Utah Department of Commerce in the event of voluntary or involuntary dissolution.

ARTICLE 3 – MEMBERSHIP AND VOTING RIGHTS

Section 3.1. **Membership.** Every Owner is a Member of the Association. Membership is appurtenant to and may not be separated from Lot ownership. Membership in the Association automatically transfers upon transfer of the title by the record Owner to another person or entity.

Section 3.2. **Voting Membership.** Subject to Sections 3.3 and 3.4 below, 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 Member. The vote of 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 one 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.

Section 3.3. **Voting Requirements.** A Member shall be deemed to be in “good standing” and “entitled to vote” at any annual meeting or at any special meeting of the Association if, and only if, such Member shall have fully paid all due installments of Assessments made or levied against them and their Lot by the Board as provided in the Declaration, together with all interest, costs, attorney’s fees, penalties and other expenses, if any, properly chargeable to them and against their Lot, at least prior to commencement of such annual or special meeting. In the event that a Member is not deemed to be in “good standing” and “entitled to vote,” then their Lot shall not be included in the total number of Lots used in any calculation for action under the Declaration or Bylaws. Any reference to a percentage of votes required in this Declaration or the Bylaws shall be based on the percentage of eligible voters.

Section 3.4. **Voting Suspension.** Members will temporarily lose the right to vote if assessments, fines or other collections have not been paid under the plan set forth in this document. Voting rights will be returned one (1) week after the Owner’s accounts are brought current. Any suspended vote will not be included in the count to determine the number of votes within the Association used to determine the percentages required to make changes.

ARTICLE 4 – FINANCES AND OPERATIONS

Section 4.1. **Assessments.** The Association is hereby authorized to levy assessments against the Owners as provided for herein. The following are the types of assessments that may be levied by the Association, which are more particularly described below: (1) annual assessments or charges; (2) special assessments; (3) specific assessments; (4) emergency assessments; (5) any other amounts or assessment levied or charged by the Board pursuant to this Declaration; (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

Section 4.2. **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges authorized in the Governing Documents. All such amounts shall be a

charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment or amount is charged. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

Section 4.3. **Purpose of Assessments.** The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. 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 construction or acquiring additions to the Common and Limited Common Areas; the payment of the cost of repairing, replacing, maintaining and construction or acquiring additions to the Common Area and/ or Limited Common Area; the payment of the cost of repairing, replacing, and maintaining any road ways; 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 shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including (without limitation) maintenance, management, utility, television, trash collection, sewer and water charges.

Section 4.4. **Reserve Account.** The Board may elect to fund a reserve account for long term repair or replacement items in an amount and type as determined by the Board. In the event that a reserve account is created, the Board shall not be liable for claims of inadequate funding or shortfalls based on the Board's reasonable business judgment with respect to the amount of reserve funds maintained at any given time. The Board may prepare or pay for a reserve study in order to better understand that reserve funding needs of the Association but in no way shall the Board be liable for any shortfalls based on such a study.

Section 4.5. **Annual Assessment; Budgeting.**

- (a) At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that year, for the purpose of calculating and establishing the annual assessments for the subsequent fiscal year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area, routine renovations within the

Common Area; common water and utility charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities from a previous assessment period; the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common Area on periodic basis; and Telecommunications Services.

- (b) The Board Shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least sixty (60) days prior to the effective day of the budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 50% of the entire membership. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members. Twenty percent (20%) of the entire membership can petition the Board to call a meeting, for the purpose of considering the budget, within fifteen (15) days after delivery of the budget and notice of any assessment. The meeting to consider the Budget must be held before the effective date of the Budget and is subject to the Bylaws.
- (c) This notice shall not be a pre-requisite to validity of the assessment. Failure of the Board to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments.
- (d) If any proposed budget is disapproved or the Board fails, for any reason to determine a budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied.
- (e) The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in this Section 4.5(b).

Section 4.6. **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. Special assessments must, have the consent of at least fifty-one percent (51%) of the votes authorized to vote, in person or by proxy, once a quorum has been established at a meeting duly called for this purpose. Notwithstanding anything in this Section to the contrary, the Board may levy in any assessment year, a special assessment up to \$100 per lot without Owner approval.

Section 4.7. **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 the City of St. George 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 4.8. **Emergency Assessments.** Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds:

- (a) An expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation;
- (b) An expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered;
- (c) An expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or
- (d) Such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

Section 4.9 **Working Capital Fund.** Upon acquisition of record title to a Lot by the first Owner thereof, other than a builder, a contribution shall be made at closing by or on behalf of the purchaser of the working capital of the Association in an amount equal to three (3) months installments of the annual assessment at the rate in effect at the time of the sale. Payment of this amount shall be in addition to, not in lieu of, the annual actual assessment and shall not be considered an advance payment of any assessment. The Association shall maintain the working capital funds in segregated accounts for repair, maintenance and replacement of those Common Areas which must be replaced on a periodic basis, to meet unforeseen expenditures, unbudgeted maintenance or repairs or to acquire additional equipment or service for the benefit of the Members. Such payments to this fund shall not be refundable.

Section 4.10. **Notice and Quorum for Any Action Authorized Under Section.** Written notice of any meeting of Members called for the purpose of taking any action authorized

under Section 4.6 shall be sent to all Members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of Members, or of proxies, entitled to cast fifty-one percent (51%) of 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 twenty-five percent (25%) of the votes of the Entire Membership represented at such meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 4.11. **Uniform Rate of Assessment: Periodic Assessment.** Unless otherwise specifically provided for herein, assessments must be fixed at a uniform rate for all Units. The Board may so elect to exempt Owners of vacant lots of telecommunication fees. The Board may so elect to exempt Owners of vacant lots of yard maintenance fees beyond the cost of keeping the Owner's Lot clean, and the appropriate share of the Common Areas maintained. These elections exist provided that the contract with the service provider allows for such exemptions. Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Board determines.

Section 4.12. **Date of Commencement of Annual Assessments: Due Dates.** The assessments provided for herein shall commence to accrue against a Unit upon conveyance of a Unit to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year. The assessment due dates shall be established by the Board. The Board may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Board may require advance payment of assessments at closing of the transfer of title to a Unit.

The Board shall prepare a roster of the Properties and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by a 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 of 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 shown to have been paid.

Section 4.13. **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 therefore 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 Board shall determine appropriate) until paid. In addition, the Board may assess a late fee for each delinquent installment, which shall not exceed ten per cent (10%) of the installment.

The Board 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, or (b) may foreclose the lien against the Property in accordance with the laws of the State of Utah applicable to the exercise of powers to 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 Member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the Lot from time to time of commencement of the foreclosure.

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 beneficiary under a deed of trust. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Unit and appurtenant Limited Common Area, and all improvements thereon for the purpose of securing payment of all assessments (including basis of collection) provided for in this Declaration. For purposes of this Section and Utah Code Ann. §§57-1-19, *et seq.*, as may be amended from time to time. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure, including the attorney for the Association and the Association shall provide notice and disclosure of a Trustee by recording a "Substitution of Trustee" on the records of the Washington County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

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 4.14. **Subordination of the Lien to Mortgages.** The lien of the assessments provided 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 become 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 his takes title or from the lien of such later assessments.

Section 4.15. **Future Lease Payments.** Subject to Section 9.16 below, if an Owner is permitted to rent or lease their Unit or Lot and such Owner fails to pay any assessment levied against such Unit or Lot within sixty (60) days after the Assessment is due, the Board may demand that the tenant of such Residence or Lot pay to the Association all future lease payments due to the Owner, beginning with the next monthly or periodic payment, until the amount due to the Association is paid in full.

Section 4.16. **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.

ARTICLE 5 – INSURANCE

Section 5.1. **Casualty Insurance on Insurable Common Area.** The Board 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 of the Common Area, the Board may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board deem appropriate in an amount equal to the full replacement value, without deduction for the depreciation or coinsurance, of all of the Townhomes including the structure 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.

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 Owner.

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 Board is 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.** A comprehensive policy or public liability insurance covering all of the Common Area and Limited Common Area of the Property, with limits not less than Five Hundred Thousand Dollars (\$500,000.00) per person and One Million Dollars (\$1,000,000.00) per occurrence and property damage liability insurance with a limit of no less than Fifty Thousand Dollars (\$50,000.00) per occurrence insuring the Association and all Members. To the extent possible, 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 Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Board, officers, employees, volunteers, management agents or other responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Board shall seek a policy which shall: (1) name the Association as obligee or beneficiary; (2) be written in an amount not less than the sum of (I) three months' operating expenses and (II) the maximum reserves of the Association which may be on deposit at any time; and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 5.5. **Director's and Officer's Insurance.** The Board may elect to obtain Director's and Officer's insurance for coverage of actual or alleged liability under any oral contract or agreement, including, but not limited to express warranties or guarantees.

Section 5.6. **Owner's Insurance Primary.** Notwithstanding anything in this Article to the contrary, if loss to the Common Area, Limited Common Area, Property, a Lot, or a Unit is caused by the negligence or intentional misconduct of an Owner, their guests, tenants, or invitees, the Owner and their insurance shall be primary in any insurance claims.

ARTICLE 6 – ARCHITECTURAL CONTROL COMMITTEE

Section 6.1 The Board shall select a committee chair for the Architectural Control Committee and approve any additional committee members. If the Board does not establish or appoint the ACC, the Board itself shall carry out the functions and responsibilities of the ACC.

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 the harmony of external design and location in relation to surrounding structures and topography by the Board or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, 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 prior written approval of at least fifty-one percent (51%) of the votes authorized to vote, in person or by proxy, once a quorum has been established, neither the Association nor the Architectural Control Committee shall have the power, by the 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 Townhomes and Lots.

ARTICLE 7 - PARTY WALLS

Section 7.1. **General Rules of Law to Apply.** Each wall which is built as a part of the original construction upon the Property and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 7.2. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 7.3. **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Directors of the Association shall select an arbitrator for the refusing party.

ARTICLE 8 – EXTERIOR MAINTENANCE

Section 8.1. **Exterior Maintenance by Owner.** Each Owner shall be responsible for maintenance of the exterior of the Townhome owned and in the Limited Common Area adjacent and appurtenant to the Lot. The Board may, however, in the default of the Owner to perform maintenance which is the Owner's responsibility and after at least sixty (60) days written notice (which notice shall not be required in the event of an 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 8.2. **Landscape Maintenance by Association.** The Association shall be responsible for maintenance upon the Common Area and the Limited Common Area 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 8.3. **Landscape Maintenance by Owners.** Owners are responsible for all landscaping irrigation and landscaping replacements.

Section 8.4. **Access at Reasonable Hours.** For the purpose solely of performing the maintenance required by the Article, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the Owner, enter upon any Lot or Limited Common Area at reasonable hours.

ARTICLE 9 – USE RESTRICTIONS

Section 9.1. **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 Area. 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 initial construction of a Lot, no subsequent building or structure dissimilar to the initially constructed shall be build on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

Section 9.2. **Use of Townhomes.** All Townhomes are restricted to use as single-family residential housing; provided, however, that a portion of a Townhome may be used to conduct a business of profession if: (1) such use is approved by all appropriate governmental and quasi-governmental bodies having jurisdiction over such matters; (2) such use is approved by the Board; and (3) such use is of a type traditionally conducted in a single-family residence. No Lot or Townhome shall be used, occupied, or altered in violation of law, so as to detract from the appearance or value of any other Lot, Townhome, or Common Areas, so as to create a nuisance or interfere with the rights of any Owners, or in a way which would result in an increase in the cost of any insurance covering in the Common Areas. No aluminum foil, newspapers, or any other similar materials may be used to cover the windows in any Townhome or other structure. A Lot, or any part thereof, may not be used as a road or thoroughfare to gain access, ingress, or egress to any other property.

Section 9.3. **Signs: Commercial Activity.** All signs must be approved by and are subject to the rules of the Board. 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.

Section 9.4. **Quiet Enjoyment.** No noxious or offensive activity shall be carried on upon part of the Properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or shall in way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

Section 9.5. **Pets and Animals.** The Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept,

the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets; provided however, that unless the Board expressly authorizes the keeping of pets and animals by rule, the same shall be prohibited within the Property. The Board may also establish procedural rules and regulations to implement its rules. In the event the Board authorizes the keeping of any pets and animals, Owners must take due care to ensure that their pets do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Owner or person within the Property, or the safety of any guests, lessees, or invitees, particularly among children. Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make a claim against the Owner. Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, costs, and expenses incurred by the Association. Notwithstanding the above, commercial breeding of pets and animals is prohibited within the Property. All pets must be kept in the Unit or on a leash when in the Common Areas. Owners are responsible for immediately cleaning up after their animals, and will not permit animals on other Owners associated Limited Common Area, without permission. This provision may be made more restrictive by Rule of the Board.

Section 9.6. **Unightly articles.** No unsightly articles shall be permitted to remain on a Lot so as to be visible from any other Lot or the Common Areas. No metals, bulk materials, scrap, refuse, or trash shall be kept, stored, or allowed to accumulate on any Common or Limited Common Area except within an enclosed structure or when appropriately screened from view.

Section 9.7. **Use of Common Area.** The Common Areas shall be used only in a manner consistent with their community-nature and with the use restrictions contained herein and in the Rules and Regulations.

Section 9.8. **Parking.** No motor vehicle which is inoperable (including expired registration) shall be allowed within the Property. Overnight parking on the street is strictly prohibited and may subject the vehicle to removal by the Association, at the Owner's expense. Vehicles of all owners, residents, and visitors are to be kept in the garages or driveways of Lot owners. Parking on the sidewalks is **NOT** permitted. Street parking for an event at a residence will be limited to the same side of the street on which the home is located, and will be limited for a period of time not to exceed twenty-four (24) hours.

Owners seeking a temporary variance from these parking restrictions must apply to the Board and must obtain written approval from the Board prior to making any parking variance arrangements.

Section 9.9. **Planting and Gardening.** Small planting and gardening areas are allowed provided that gardens and planting areas are continuously maintained and do not become vacant areas that allow for the growth of noxious weeds. If the gardening area is visible from any portion of the Common Area, than prior written consent must be obtained from the Board.

Section 9.10. **Fences**. 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 9.11. **External Apparatus**. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Architectural Control Committee.

Section 9.12. **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 Unit, 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 9.13 **Garbage Removal**. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers. Garbage containers should not be stored in front of a Townhome. On the side of the Townhome is okay. Garbage containers may be left on the street the day before the garbage is picked up and taken back to the Townhome on the day of pick-up.

Section 9.14. **Oil and Mining Operations**. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties of any Lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Properties or any Lot.

Section 9.15. **Interior Utilities**. All utilities, fixtures, and equipment installed within a Lot commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor do any work that will impair any easement or hereditament nor does any act allow any condition to exist which will adversely affect the other Lots or Owners.

Section 9.16. **Leases**. Any lease or rental agreement shall be in writing and shall provide that the terms of the lease or rental agreement shall be subject in all respects to the Governing Documents and that any failure by a lessee/tenant to comply with the terms of such documents shall be a default under the lease.

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. In addition, all Owners permitted to rent their Unit pursuant to this Section shall submit to the Board a copy of their business license issued by the City of St. George. In the event that a business license is not submitted to the Board prior to renting a Unit, the rental or leasing thereof shall be deemed in violation of the Association's rental policies.

The Association may require that Owners use lease forms approved by the Association but shall not impose any fee on the lease of any Unit greater than an amount reasonably based on the costs to the Association of administering that lease. The Association or Board may require, as established by rule, a minimum lease term of not less than six (6) months. The Association is hereby authorized upon the consent of at least fifty-one percent (51%) of the votes authorized to vote, in person or by proxy, once a quorum has been established at a meeting,, to revise the restrictions set forth in this Section to be more restrictive with respect to the leasing of Units, including, but not limited to requiring longer lease periods, minimum lease terms of at least twelve (12) months, or otherwise abolishing the right to lease Units within the Property

The number of permissible rental units in the Association shall be established, from time to time, by the consent of at least fifty-one percent (51%) of the votes authorized to vote, in person or by proxy, once a quorum has been established at a duly called meeting. Those units currently under lease prior to this amendment shall be granted a grandfather status until the Unit is sold. Future rental units shall be approved on a first-come basis. Those wanting to place a unit on the potential rental list will notify the Association management. No dormitory type rentals or nightly rentals are permitted. No Unit shall be rented, leased, or utilized for transient hotel purposes. Further, no Owner shall lease or rent less than his or her entire Unit. The units may not be divided into a smaller rental space than the entire unit space. A renter or lessee may not sublet or allow a third party to occupy the unit.

For the purposes of this section "occupy" shall mean that a townhome shall be owned by the same Owner[s] for a period of at least twelve (12) consecutive months, whether physically occupied by said Owner[s] or not, prior to being made available for the rental or lease.

Section 9.17. **Timeshares and Similar Forms of Ownership/Use.** No Lot or any Unit located thereon shall be used for operation of a timesharing, fraction-sharing, interval ownership, or similar program whereby the right to exclusive use of the Lot or Unit rotates among participants in the program on a fixed or floating time schedule.

Section 9.18. **Clotheslines.** Compactable clotheslines are permitted. They need to be approved by the Architectural Control Committee. Clotheslines will be taken down when not in use and should not be in use more than two (2) days in a consecutive time period.

Section 9.19. **Pest Control.** No Owner or Townhome occupant shall permit any thing or condition to exist within or upon the Townhome which would induce, breed, or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner is responsible to provide such pest control services within and upon the Townhome as may be necessary to prevent insects, rodents, and other pests from being present on his Lot and adjacent Limited Common Area.

Section 9.20. **RV, Boats and Trailers.** No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles, shall be stored upon any Common or Limited Common Area. No such vehicles shall be parked over night on any Common or Limited Common Area located within the property, except that the Board may make rules to govern the

use of the clubhouse parking area. Recreational vehicles may be parked in a home's parking area in preparation for or return from use for a twenty-four (24) hour period in any seven (7) day period, but shall not be parked in the street or any common area.

Section 9.21. **Neighborhood Lights**. Each Unit will provide a minimum of two exterior lights, either one on each side of the garage door opening or as approved by the Architectural control committee. These lights will be wired so that they turn on when it become dark out-side. Each Owner is responsible for the correct operation of these lights.

Section 9.22. **Other Vehicles**. All, motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only on established streets and parking areas and are specifically prohibited from all other portions of the Common Areas, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational purposes anywhere within the Project. Further, only vehicles that are licensed and registered may be driven within the Property.

Section 9.23. **Weed Control**. Each Owner shall, to the extent reasonably feasible, control the growth and proliferation of weeds, noxious weeds and other flammable material on his Lot or adjoining Limited Common Area so as to minimize fire and other hazards to surrounding property, and shall otherwise comply with any applicable ordinances, laws, rules or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants, which are injurious to crops, livestock, land, or the public health.

Section 9.24. **Stoves and Fireplaces**. No wood or coal burning stoves, but natural gas stoves, shall be allowed in any Townhome. EPA certified wood or natural gas burning fireplaces are acceptable.

Section 9.25. **Damage Caused by Owners, Guests, and Invitees**. Damage caused to the Common Area, including personal property owned by the Association, by an Owner, or by a person who has been delegated the right to use and enjoy such Common Area by a Owner, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area shall be an assessment charged to the Owner.

Section 9.26. **Violation Constitutes a Nuisance/Violation of City Ordinances**. Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violation in whole or in part is declared to be and shall constitute a nuisance, and may be abated by the affected Owners and such remedy shall be deemed to be cumulative and not exclusive. Violations of any local ordinances shall also be deemed a nuisance under this Section and this Declaration.

Section 9.27. **Temporary and Other Structures**. Except for such trailers as may be allowed during construction, structures of a temporary nature are not permitted on the Property at any time. No tents, shacks, or other structures may be erected on any Lot, and shall not be used at any time as a residence, either temporarily or permanently.

ARTICLE 10 – EASEMENTS

Section 10.1. **Encroachments.** In the event the structure contained within a Lot is partially or totally destroyed, and then rebuilt, the Owners of the adjoining 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. Any damage done to an adjoining or neighboring property, including but not limited to a lot, home, landscaping, vehicle, or A/C condenser, during rebuilding is the responsibility of the Owner who is rebuilding, and the damage must be restored to the condition before the damage occurred.

Section 10.2. **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 the 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 installation. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof.

Section 10.3. **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 10.4. **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 10.5. **Other Easements.** The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE 11 - ENFORCEMENT

Section 11.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or *any* rule or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law

or equity. 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.

Section 11.2. **Right to Enter and Cure.** The Association, through the Board, shall have the right, after providing notice and an opportunity to be heard, to enter a Lot which or as to which a violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of any provisions of this Declaration, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished.

Section 11.3. **Legal Action Authorized.** The Association, through the Board or any Owner, shall have the right to enforce, by *any* proceeding at law or in equity, all provisions of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Board shall have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

Section 11.4. **Fines and Penalties.** The Board may levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board of Directors, a copy of which has been or shall be delivered to each Owner, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing to the Association. The fine or penalty may not exceed, for each violation, fifty percent (50%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. The Board shall establish time frames and requirements for written notice, hearings, and cure periods for Owners in violation prior to levying such fine or penalty and shall uniformly apply such policies. Any fine or penalty levied by the Board shall be treated as an assessment recoverable by the Association under and in accordance with Article 4.

Section 11.5. **Attorney Fees and Costs.** A fine or penalty levied against an Owner for any violation shall include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

Section 11.6. **Nonexclusive Remedies.** All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided in the Governing Documents or by law.

Section 11.7. **Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

ARTICLE 12 – GENERAL PROVISIONS

Section 12.1. **Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by the Governing Documents, by statute or law, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

Section 12.2. **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 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 12.3. **Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 12.4. **Amendment.** The covenants, conditions and restrictions of this Declaration may be amended by a vote of not less than fifty-one percent (51%) of the Entire Membership. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 12.5. **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 know address of the person who is entitled to receive it.

Section 12.6. **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12.7. **Topical Headings.** The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of this Declaration.

Section 12.8. **Enforcement of Declaration.** The Association or any Owner of a Lot within the Property shall have the right to enforce, by proceeding at law or in equity, all restrictions, covenants, conditions and reservations now or hereafter imposed by the provisions of this Declaration or any amendments thereto, including the right to prevent the violation of any

such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation.

(a) **Enforcement of Assessments.** The Association shall have the exclusive right to the enforcement of all assessments prescribed by this Declaration.

(b) **Failure to Enforce.** The failure of any person or entity entitled to enforce the provisions of this Declaration pursuant to this Article in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any future breach of the same covenant, condition or restriction.

Section 12.9. **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a Planned Unit Development upon all property. This Declaration shall be construed and governed in accordance with Utah law.

Section 12.10. **Successors and Assigns.** This Declaration shall inure to the benefit of and be binding upon the successors and assigns of Declaration, and to the heirs, persons, representatives, grantees, lessees, successors and assigns of the Owners.

Section 12.11. **Remedies Cumulative.** Each remedy provided for by this Declaration for the breach of any of the covenants, conditions, restrictions, reservations, easements, liens or charges contained herein shall be in addition to any other available remedy whether provided for by law or in equity, and all of such remedies whether provided for by this Declaration or otherwise shall be cumulative and not exclusive.

Section 12.12. **Delivery of Notices and Documents.** Any written notice or other document relating to or required by this Declaration to be delivered to an Owner, may be delivered personally or by mail. If authorized in writing by the Owner (which may include an electronic statement from the Owner authorizing electronic mail for notice and the delivery of documents), the Association may also provide such notice and/or document(s) electronically, provided however, that such authorization for electronic notification contains the exact method and necessary contact information to provide the electronic notice in the first instance. If by mail, such notice, unless expressly provided herein or in the Bylaws to the contrary with regard to the type of notice to be given, shall be deemed to have been delivered and received forty-eight (48) hours after a copy thereof is deposited in the United States mail, postage and fees prepaid, addressed as follows:

(a) If to an Owner, to the address of any Lot in the Property owned by him, in whole or in part, or to the address last furnished by such Owner to the Secretary of the Association for the purpose of giving notice and delivering documents. Each Owner shall file in writing with the Board promptly upon becoming an Owner, his address for the purpose of giving notice and delivering documents, and shall promptly notify the Board in writing of any subsequent change of address.

(b) If to the Architectural Control Committee, to the Secretary of the Association.

(c) If to the Board, to the Secretary of the Association, at the mailing address provided by the Board.

Section 12.13. **Duty to Update Information.** Each Owner has an obligation to provide their current Lot address, mailing address, telephone number, and any other information required by the Association for purposes of contacting or providing notice to such Owner, to the Association. Furthermore, Owners shall update and keep such information current in the event that such required information changes.

Section 12.14. **Notification of Sale of a Lot.** Concurrently with the consummation of the sale of any Lot under circumstances whereby the transferee becomes an Owner thereof, the transferee shall notify the Board in writing of such sale. Such notification shall set forth:

- (a) The name of the transferee and the respective transferor;
- (b) The street address or unit number of the Lot purchased by the transferee;
- (c) The transferee's mailing address; and,
- (d) The date of sale.

Prior to receipt of such notification, any and all communication required or permitted to be given by the Board, the Association, or the Architectural Control Committee shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

Section 12.15. **Joint and Several Liability.** In the event of joint ownership of a Lot, the liability of each of the Owners thereof in connection with the liability and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

Section 12.16. **Singular and Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall each include the masculine or feminine or neuter, as the context requires.

Section 12.17. **Liability and Indemnification.** No officer of the Association or member of the Board shall be personally liable for any act, error, omission, and the Association shall and hereby does indemnify, defend and hold harmless said person, provided the action or inaction has been in good faith and within the scope and performance of his duties as an officer or Board member.

Section 12.18. **Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which

may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter.

IN WITNESS WHEREOF, Huntington at Stonebridge Homeowners Association has executed this Declaration this 30 day of March, 2011.

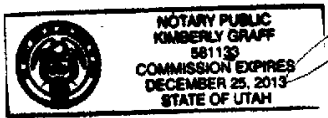
HUNTINGTON AT STONEBRIDGE HOMEOWNERS ASSOCIATION

BY: [Signature]
ITS: President

BY: [Signature]
ITS: Secretary

STATE OF UTAH)
)ss:
County of Washington)

The foregoing instrument was acknowledged before me on this 30 day of March, 2011 by Mike Olson and Julia Bauchwitz, President and Secretary, respectively, of Huntington at Stonebridge Homeowners Association.



[Signature]
Notary Public for Utah