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After Recording Return to:
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965 E. 700 S., #305
St. George, UT 84790

DOC # 20170007780

Amended Restrictive Covenants
Russell Shirts Washington County Recorder
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By GALLIAN WELKER & BECKSTROM LC

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**AMENDED & RESTATED DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS OF
THE JOSHUA'S AT SOUTHGATE SUBDIVISION**

Pursuant to the written consent of at least 2/3 of the Class A members of the Association, and the Consent of Declarant A, aka The Joshua's HOA, Inc., a Utah corporation, the following Amended & Restated Declaration shall apply to the property described at Exhibit A hereto. All prior Declarations that have been filed, consisting of The Joshua's HOA, Inc. Supplemental Declaration of Covenants, Conditions & Restrictions recorded as Document No. 20070009805, recorded February 25, 2007, are eliminated.

It is also noted that all prior Covenants, Conditions & Restrictions and Amendments thereto previously recorded have also been completely eliminated. Accordingly, the project shall proceed under the following Amended & Restated Declaration of Covenants, Conditions & Restrictions for The Joshua's at Southgate Subdivision:

ARTICLE I
DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "*Association*" shall mean and refer to The Joshua's HOA, Inc.

1.2 "*Common Area*" shall mean and refer to those areas of land, sometimes designated on the Plat as "Homeowners Association Open Space," intended to be devoted to the common use and enjoyment of the Owners of the Lots, including, but not limited to reserved open spaces, maintenance, areas, tot lots, not-tidal wetlands, recreational areas with any improvements located thereon, steep slopes, private streets, parking areas (including, without limitation, covered parking), storm water detention facilities, and any other real property or other facilities which the Association owns and/or in which the Association acquires a right of use for the benefit of the Association and its members, saving and excepting, however, so much of the land previously conveyed or to be conveyed to a governmental body.

1.3 "*Community*" shall mean and refer to all of the land hereby made subject to the Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office

and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.

1.4 "*Lot*" and/or "*Lots*" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground (exclusive of the Common Area) and designated by numerals on the Plat, on which a dwelling is proposed to be constructed.

1.5 "*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 among the Recorder's Office.

1.6 "*Mortgagee*" means the person secured by a Mortgage.

1.7 "*Plat*" shall mean and refer to the plat entitled, "The Joshua's at Southgate Subdivision" to be recorded among the Recorder's Office of Washington County, Utah, and any plats recorded among the Recorder's Office in substitution therefore or amendment thereof, plus any plats hereafter recorded among the Recorder's Office of any Additional Property that may hereafter expressly be made subject to this Declaration by any instrument in writing, duly executed, and recorded among the Recorder's Office.

1.8 "*Property*" shall mean and refer to all of the real property described in Exhibit A attached hereto, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded among the Recorder's Office.

1.9 "*Owner*" or "*Owners*" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants-in-common, tenants by the entireties, or tenants in co-partnership, if the Lot is held in such real property tenancy or partnership relationship. If more than one (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or otherwise, all of the same, as a unit, shall be deemed a single Owner shall be or become a single member of the Association by virtue of ownership of such Lot. The term "*Owner*," however, shall not mean, refer to or include any contract purchaser nor shall it include a Mortgagee.

1.10 "*Tenant*" shall mean and refer to any person who is lawfully residing in the premises from a rental agreement or lease from the Owner of property. All such individuals and their families and invitees shall be subject to the effects of this Amended & Restated Declaration. Each Owner who chooses to lease his property, which may not be leased for less than thirty (30) days, shall provide the Association with a copy of the outstanding Lease. Each such Lease shall include a provision that any Tenant shall be subject to the requirements of this Amended & Restated

Declaration of Covenants, Conditions & Restrictions, including any Rules & Regulations that are adopted by the Association.

1.11 “*Structure*” means anything or device, the placement of which, upon the Property (or any part thereof), may affect the appearance of the Property (for any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered, patio, clothesline, radio, television or other antenna or “dish,” fence, sign, curbing, paving, wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. “Structure” shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of any waters in any natural or artificial stream, wash, or drainage channel from, upon or across the Property, and (ii) any change in the grade of Property (or any part thereof) of more than six inches (6”) from that existing at the time of first ownership by an Owner.

1.12 “*The City*” or “*The City of St. George*” shall mean the City of St. George, a Utah municipal corporation.

ARTICLE II **COVENANTS, CONDITIONS & RESTRICTIONS**

2.1 ***Administration; Architectural Review Committee.*** The Architectural Review Committee, which shall be appointed by The Association during the Development Period and thereafter by the Board of Directors of the Association (the “*Architectural Review Committee*” shall have all the rights, powers and duties granted to it pursuant to this Declaration. The Architectural Review Committee shall be comprised of at least three (3) Members, or the Board may elect to appoint a professional which may be the HOA’s Management Committee . All questions shall be decided by the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. In the event of a dispute over any findings by the Architectural Review Committee, any Owner may appeal such decision to the Board of Directors of the Association, whose decision shall be final. Each member of the Architectural Review Committee now or hereafter appointed, shall act without compensation for services performed pursuant to this Declaration. However, if professional management is engaged, they shall be compensated. The Architectural Review Committee shall be bound by the Architectural Guidelines established by this Declaration.

2.2 ***Architectural Elements.*** The following elements shall be required for each dwelling constructed on any lot:

a. Maximum Dwelling Height: 20’ from the level of the first floor elevation to the height and peak of the roof.

- b. Dwelling Size:
 - i. Minimum of 1,200 square feet for any dwelling structure
 - ii. Minimum of 400 square feet for all garages (2-car garage is required)
- c. Roof:
 - i. Minimum of 4:12 roof pitch for all homes
- d. Exterior Materials:
 - i. All materials shall consist of rock/brick, stucco or any cementitious material. (All materials and placement are subject to approval by the Architectural Review Committee).
- e. Fascia:
 - i. Minimum of 6" fascia shall be required for the entire home.
- f. Foundation:
 - i. Maximum of 12" of foundations exposure is approved.
- g. Set-Backs:
 - i. Set-backs should be located within the pad area as defined on the Plat; garages must be set back 18' from the front lot line.
- h. Basements:
 - i. No basements are allowed except walk-out basements on Lots 11, 12, 13, 45, 46 and 47.
- i. Fences:
 - i. Fences no taller than 6' are permitted with colored block, with allowable wrought iron accents approved by the Architectural Review Committee

2.3 Architectural Review.

- a. No Structure shall be constructed on any Lot nor shall any addition (including awnings and screens), change, or alteration therein or thereto (including any re-treatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape,

dimensions, material, floor plans, color scheme, location, proposed topographical changes, the proposed construction schedule, and a designation of the party or parties to perform the work have been submitted to and approved in writing by the Architectural Review Committee, its successors and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee of any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all permits and approvals necessary for such Structure or Alterations.

b. The Architectural Review Committee shall consider applications for approval of plans, specifications, etc., upon the basis of conformity with this Declaration, applicable law, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors; changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.

c. The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and locations plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information that will be required by the Architectural Review Committee, shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof, such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

d. A fee shall be charged by the Architectural Review Committee of \$2,000, which shall include a refundable deposit of \$1,500 (\$500 shall be retained for Administrative costs). The Security Deposit of \$1,500 shall be refunded, less damages to the common area, after the project is completed and inspected for compliance with the approved plan. This fee may be changed by resolution of the Board.

e. If the Occupant obtains from the City of St. George a Home Occupation Permit under existing standards of the City's applicable Ordinances, Home Occupation type uses shall be allowed.

f. Construction of Alterations in accordance with plans and specifications approved by

the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required, unless an extension is granted by the Architectural Review Committee. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

g. If any structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefore and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its owner, such Structure shall be removed or restored to its condition prior to such action or as specifically approved by the Architectural Control Committee and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment levied against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefore from the Association, the Association may establish a lien therefore upon such Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien, and/or fine as the case may be.

h. Any member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of this Declaration, and after the Association or the Architectural Review Committee gives written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

i. All improvements constructed within any lot or common area shall conform to the architectural guidelines and standards of this Declaration.

2.4 **Exterior Materials**. All exterior surfaces of any building shall be of materials and of colors approved by the Architectural Review Committee which shall be consistent with the existing color schemes in the Project. Exterior Materials shall mean stone/rock and stucco, or other similar materials, but shall not mean cinderblock or concrete block or aluminum vinyl/siding. Exterior residence materials shall be of a noncombustible material as approved by St. George City. The determination as to if any specific material constitutes an acceptable Exterior Material as its use is proposed in a given structure in The Joshua's shall be made by the Architectural Review Committee.

2.4 **Traffic View**. No Structure, landscaping, shrubbery or any other obstruction shall be

placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than thirty feet (30') from either street line that will exceed two and one-half feet (2.5') in height (except shade trees which shall be trimmed so that a clear view may be maintained to the height of seven feet (7')).

2.5 **Front Lawn.** This should be desert southwest design and installed by builder. No lawn allowed due to the existence of blue clay in the project.

2.6 **Rear Lawn.** This should be desert southwest design and installed by builder. No lawn is allowed due to the existence of blue clay in the project.

2.7 **Patios, Awnings and Pergolas.** Patios are permitted and can be enclosed with approval of applicable building materials by the Architectural Design Committee. Awnings and pergolas are permitted if approved by the Architectural Design Committee.

2.8 **Swimming Pools and Hot Tubs.** No above-ground or ground level swimming pools, lap pools, therapy pools, hot tubs, whirlpools, or Jacuzzis shall be erected, constructed, placed or permitted to remain on any Lot.

2.9 **Lighting and Wiring.** The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond the boundaries of any Lot. All wiring on any Lot shall be underground.

2.10 **Antennae.** No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be place or kept on a Lot outside of a dwelling, except on the following terms:

a. An Owner may install, maintain and use on its Lot one (1) (or, if approved, more than one (1) Small Antenna or satellite dish (as hereinafter defined) in the rear yard of a dwelling on the Lot.

b. Cable TV and internet services are not provided by the HOA. Any such services shall be contracted for and paid for by the Owners or their tenants.

2.11 **Trash and Other Materials.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building material during the course of construction of any approved dwelling or other permitted Structure, unless done by a landscaping company in compliance with applicable City Fire regulation (i.e. permit obtained, if needed). No burning of trash shall be permitted on any Lot. All Owners shall place trash or other refuse into refuse containers provided by the Solid Waste District at locations designated for trash deposits. Owners may not place any trash outside of such refuse containers or in any other locations or container, except as designated by the Association (i.e. spring clean-up dumpster). The cost of refuse containers shall be paid for by Owners or their tenants. All outside storage of personal articles and property shall be contained within the privacy wall of each home and no personal articles of any kind shall be visible to the public from any public street. Trash cans/receptacles need to be removed from

the streets by the end of each collection day.

2.12 **Non-Interference with Utilities.** No Structure, planting or other materials shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels. No poles and wires for transmission of electricity, telephone and the like shall be placed or maintained above the surface of the ground on any Lot.

2.13 **Permitted Window Coverings.** Windows that can be seen from street view shall be allowed the following permitted window coverings: curtains, blinds, window screens and shades.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION AND ADDITONS THERETO

3.1 **Property.** The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in the Community, and is described on Exhibit A attached hereto, all of which real property is referred to herein as the "Property."

3.2 **Land Use.** The Lots, except as hereinafter provided, shall be used for private and residential purposes only and no dwelling or any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the Lots shall at any time be used for apartments or other types of multiple housing units, it being the intention that each and every one of the Lots be used solely for one (1) single family dwelling, and no other purposes, except such purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted on any part of the Property, except uses approved under an issued Home Occupation Permit issued by the City of St. George.

3.3 **Temporary Structures and Sheds.** No structure of a temporary character, trailer, basement, tent, shack, garage, or other shed or outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. Restrictions are placed upon the storage items placed in the backyards and along the railings of the backyard decks, as follows: No storage is allowed except as may be approved by the Architectural Control Committee.

3.4 **Real Estate Sale or Construction Office.** Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and/or model home and related signs, may be erected, maintained and operated on any Lot in accordance with the sign ordinance adopted by the City of St. George or in any Structure now or hereafter located hereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales or constructed office, trailer, or sign after initial development, sales,

and/or construction is completed. Except as expressly permitted hereinabove, neither any part of any Lot nor any improvement now or hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.

3.5 *Clothes Line*. No exterior clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.

3.6 *Vehicles*.

a. Other than private passenger vehicles, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or repaired on any portions of the Property except in emergencies. For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires, and is in such good condition and repair as may be necessary for any person to drive the same on public highways.

b. No commercial vehicles over $\frac{3}{4}$ ton rated capacity ("Commercial Vehicles") shall be left parked on any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of Commercial Vehicles upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.

c. Trailers, buses, tractors or any type of recreational vehicle shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets or Common Areas.

d. Notwithstanding the above, during construction of dwellings, any Builder may maintain Commercial Vehicles and trailers on the Property for purposes of construction and for use as a field or sales office. Prior to any commercial vehicles and trailers placed within the community, they must be approved by the Architectural Review Committee.

e. No unsightly article shall be permitted to remain on any Lot or on streets and drives within The Joshua's Project, but must be stored in a garage on the Lot or an offsite storage area in compliance with St. George City Development Code. Without limiting the generality of the foregoing: trailers, mobile homes, recreation vehicles, graders, trucks (other than pickups used solely for the private and non-business use of the residents of a lot), boats tractors, campers, wagons, buses, sleighs, motorcycles, motor scooters, snowmobiles, snow removal equipment, garden and maintenance equipment, and all commercial, farming and business vehicles, except when in actual use, shall be kept at all times in a garage or an off-site storage facility. No repair or maintenance work shall be done on any of the foregoing, or on any automobile, other than minor emergency repairs, except in an enclosed garage. Refuse, garbage and trash shall be kept at all times in a covered noiseless container and any such container shall be kept within an enclosed structure or

appropriately screened from view. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No materials or scrap shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or if appropriately screened from view. Liquid propane gas, oil and other exterior tanks approved by St. George Fire Department may be kept within an enclosed structure or permanently screened from view. Family vehicles, which are kept in good repair and driven regularly, shall be parked in the driveway or the garage. No street parking is allowed by the City of St. George. No more than four (4) vehicles per household shall be parked in the garage and front driveway.

3.7 **Subdivision**. No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose; provided, however, this shall not prohibit transfers of parts of Lots between adjoining Lot owners where the transfer is not for the purpose of creating a new building Lot. The provisions hereof shall not be construed to prohibit the granting of any easement or right-of-way to any person for any purpose.

3.8 **Signage**. Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" or "For Sale" or "For Rent" signs (not larger than two feet by three feet (2' x 3')), and except as provided in this Article III, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Structure. No signs may be posted that do not meet local government permits and approvals, if applicable. No sign of any kind shall be displayed to the public view on any Lot; provided, however, those signs which are allowed above may be used for their period of need (i.e. "For Sale" or "For Rent" signs). Signs used for sale, administration and directional purposes during development of this Neighborhood must meet certain specifications and be approved by the Architectural Review Committee. All signs must be professionally painted, lettered, and constructed and must adhere to any City ordinances.

3.9 **Lease Agreements**. All lease agreements with respect to any Lot or any Structure located thereon shall be in writing. The minimum term of all lease agreements shall be thirty (30) days and shall state that the lease agreement shall be subject to this Declaration and Rules & Regulations of the Association. Owners who do not reside on their Lot must provide current addresses and phone numbers to the Association for themselves and their tenants. In the event that Owners engage a property manager, the name, address and phone number of the property manager shall also be given to the Association.

3.10 **Drainage**. Each property owners shall be responsible to see that a storm water drainage either accumulates and is held wholly within his Lot, or drains to the street water drainage .

3.11 **Animals**. Animals kept on any Lot shall be properly fenced, sheltered and cared for. dog/animal runs are not allowed. Animals may not be tied up outside of the house, unsupervised. Dogs shall be kept on a hand-held leash except when on Owner's own Lot. Each Owner shall maintain and clean the facilities for their pets and prevent objectionable odors, pests, insects, etc. No animal or other pet of any kind, other than common domesticated animals, shall be allowed, including, but not limited to, cats and dogs which, in the opinion of the Association's Board, might

be dangerous or which make an unreasonable amount of noise, odor, or is otherwise a nuisance. Each Owner of pets and animals shall be financially responsible and liable for any damage caused by said Owner's pets and animals and shall be responsible for the pickup and disposal of any excrement deposited by his pets and animals.

3.12 ***Fines***. The Board may assess a fine against any Owner for a violation of the Governing Documents, subject to the following: (a) before assessing a fine, the Board will (i) notify the Owner of the violation as provided herein, and (ii) inform the Owner that a fine will be imposed if the violation is not remedied. Any unpaid fines shall be treated as Special Assessments and subject to any applicable interest and late fees commencing as of the later of (1) the date of the assessment, or (2) if the Owner requests a hearing, the date of the final decision following the hearing. If an Owner disputes the assessment of a fine, the Owner may request an informal hearing to protest or dispute the fine within fourteen (14) days from the date of the notice of the fine. For any of the fines imposed against the offending Owner, the offending Owner shall be barred from challenging the validity of the fine if the Owner does not deliver a written hearing request to the Board within fourteen (14) days of the notice of the fine. At any such informal hearing, the Board shall make a reasonable determination, based on the information provided by the Owner and any other information available to the Board, whether to rescind, reduce, or waive the fine. Without limiting the application of fines to violations of the Governing Documents, fines may be issued for violation of Rules & Regulations established by the Association.

ARTICLE IV **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

4.1 ***Membership***. Every Owner of a Lot that is subject to assessment shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. All issues to be voted upon shall be done by one (1) vote per Lot. Voting shall be done with at least one (1) Owner present or by proxy at a meeting held for that purpose. Issues resolved by written consent shall require the signature of all lawful Owners of record.

ARTICLE V **COMMON AREA**

5.1 ***Grant of Common Area***. The Association shall take title to Common Area that is part of the Property free and clear of all encumbrances, except non-monetary title exceptions and this Declaration not later than the date the first Lot is conveyed to an Owner or Builders. The Covenants are hereby imposed upon the Common Area for the benefit of Declarant, the Builder, the Association and the Owners, and their respective personal representatives, successors and assigns, to the end and intent that the Association shall have and hold the said Common Area subject to the reservations set forth in Article V hereof, and to the Covenants herein set forth.

5.2 ***Member's Right of Enjoyment***. Every member of the Association shall have a non-exclusive right and easement for the use, benefit and enjoyment, in common with others, in and to

the Common Area and such non-exclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth. Except as otherwise decided by the Board (i.e. to establish additional parking in the Common Area), the Common Area shall be retained in its natural state, and no Structure or improvement of any kind shall be erected, placed or maintained thereon. Structures or improvements designed exclusively for community use, shelters, benches, chairs or other seating facilities, fences and walls, walkways, playground equipment, game facilities, drainage and utility structures, grading and planting, may be erected, placed and maintained thereon for the use, comfort and enjoyment of the members of the Association, or the establishment, retention or preservation of the natural growth or topography of the area, or for aesthetic reasons. No portion of the Common Area may be used exclusively by any Owner for personal vegetable gardens, storage facilities or other private uses.

5.3 **Nuisance**. No noxious or offensive activity (moral or otherwise) shall be carried on upon the Common Area nor shall anything be done thereon which will become an annoyance or nuisance to the Community.

5.4 **Maintenance Obligations of the Association**. The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore and maintain the Common Area, leaving lawn care and sprinkler systems located thereon, area drainage systems, retaining walls, private courts and street lighting located within private courts, and any area dedicated to a public or governmental entity if such entity fails to properly maintain such area, as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense, and shall levy against each member of the Association a proportionate share of the aggregate cost and expense required for the care, maintenance and improvement of the Common Area, which proportionate share shall be determined based on the ratio which the number of Lots owned by the member bears to the total number of Lots then laid out or established on the Property. If a backyard is fully fenced, it is the homeowner's responsibility to ensure that access is available for landscaping and maintenance. If access is not available, services will not be provided.

5.5 **Restrictions**. The right of each member of the Association to use the Common Area shall be subject to the following:

a. Any rule or regulation now or hereafter set forth in this Declaration an, further, shall be subject to any rule or regulation now or hereafter adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area;

b. The right of the Association, in accordance with its Articles of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Area in a manner designed to promote the enjoyment and welfare of the members, and in aid thereof to mortgage any of the Common Area;

c. The right of the Association to take such steps as is reasonably necessary to protect the property of the Association against mortgage default and foreclosure;

d. The right of the Association to suspend the voting rights and the rights to use of the Common Area after notice and a hearing for any period not to exceed sixty (60) days for any infraction of any of the published rules and regulations of the Association or of this Declaration;

e. The right of the Association to dedicate or transfer all or any part of the Common Area to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the members; provided, however, that no dedication, transfer, mortgage or determination as to the purposes or as the conditions thereof shall be effective unless there is two-thirds (2/3) vote of the Owners (one (1) vote per Lot).

f. The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and easements for access or for the construction, reconstruction, maintenance and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, or any other person; provided, however, that no such license, right-of-way or easement shall be unreasonably and permanently inconsistent with the rights of the members to the use and enjoyment of the Common Area.

g. All of the foregoing shall inure to the benefit of and be enforceable by the Association, its respective successors and assigns, against any member of the Association, or any other person, violating or attempting to violate any of the same, either by action at law for damages or suit in equity to enjoin a breach or violation, to enforce performance of any term, condition, provision, rule or regulation. Further, the Association shall have the right to abate summarily and remove any such breach or violation by any member at the cost and expense of such member.

5.6 **Delegation of Right of Use.** Any member of the Association may delegate its rights to the use and enjoyment of the Common Area to family members who reside permanently with such member and to its tenants, contract purchasers, invitees and guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

5.7 **Rules and Regulations.** Each Owner shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area. Further, each Owner shall comply with the Covenants imposed by this Declaration on the use and enjoyment of the Common Area.

ARTICLE VI **ENCROACHMENTS**

If any Structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot, or any Structure encroaches upon any Common Area, whether such encroachment is attributable to construction, settlement or shifting of the Structure of any other reason whatsoever beyond the control of the Board of Directors or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives

and assigns, to provide for the encroachment and non-disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

ARTICLE VII
COVENANT FOR ASSESSMENT

7.1 **Covenant for Assessment.** Each Owner for each Lot owned by it within the Property, hereby covenants, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in such deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, the monthly or annual assessment (the "Monthly Assessment) equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for annual assessments or charges; and (b) special assessments or charges for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided. Unimproved Lots shall be assessed at 61.5% of improved Lots (currently \$35 per month for unimproved and \$65 for improved Lots). Improved Lots shall be assessed from the point of issuance of a Certificate of Occupancy issued by the City of St. George. A transfer fee will be assessed to the Owner/Builder at the time of closing or when title changes from one person to another. The annual and special assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VII and shall be construed as a real covenant running with the land. Such assessments or charges, together with interest at a rate of eighteen percent (18%) per annum, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof, shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment fell due or was payable. The personal obligation for any delinquent assessment or charge, together with interest, costs and reasonable attorneys' fees, however, shall not pass to the Owner's successor or successor in the title unless expressly assumed by such successor or successors.

7.2 **Use of Assessments.** The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community, and in particular for (a) the improvement and maintenance, operation, care, services and facilities related to the use and enjoyment of the Common Area as well as fees paid to any management agent; (b) the payment of taxes on Common Area may be levied against all Lots laid out on the Property by the tax collecting authority so that the same is payable directly by the Owners thereof, in the same manner as real property taxes are assessed or assessable against the Lots; (c) the payment of insurance premiums on the Common Area; (d) the costs of repair, replacement and additions to the Common Area and improvements thereon; (e) the cost of obtaining, planting, and thereafter maintaining street trees throughout the Community if required by Washington County, whether or not such street trees are located in the Common Area; (f) the costs of utilities and other services which may be provided by the Association for the Community as may be

approved from time to time by majority of the members of the Association; (g) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (h) the cost of refuse containers; (i) the cost of semi-annual maintenance for blowouts on the ends of the water lines serving the Community; (j) the cost of maintenance, insurance and replacement of covered parking; and (k) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements.

7.3 Annual Assessment. Annually the Board shall set regular monthly assessments based upon the budget of actual anticipated operating expenses and appropriate reserves for the repair and replacement of the Common Areas, all in the discretion of the Board of Directors by majority vote.

7.4 Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment, applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association.

7.5 Commencement Date of Annual Assessments.

a. The Annual Assessments as to any Lot shall commence on the earlier of (i) the date the Lot is conveyed to any person or entity; or (ii) the date a Use and Occupancy Permit is issued by the property authorities of St. George City to Each Owner or a Builder. Unimproved Lots and Improved Lots shall be assessed as provided in paragraph 7.1 above. The annual assessments shall be due and payable on a monthly basis on the 1st calendar day of each month, and shall be a lien for any month after the 15th day of that month.

b. The due date of any special assessment under Section 7.4 shall be fixed in the resolution authorizing such special assessment.

7.6 Duties of the Board of Directors.

a. The Board of Directors shall determine the amount of the maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of annual assessments may be levied and collected on a monthly basis. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.

b. The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the management, operation and maintenance of the Common Area. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot (as set forth in paragraph 7.5 above for each assessment period at least thirty (30) days in advance of the beginning of such period and shall, at that time, prepare a roster of the Lots and the annual

maintenance assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner upon reasonable notice to the Board of Directors. Written notice of the annual maintenance assessments shall thereupon be sent to all members of the Association. The omission by the Board of Directors, before the expiration of any assessment period, to fix the amount of the annual maintenance assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of the Articles or a release of any member from the obligation to pay the annual maintenance assessment, or any installment thereof, for that or any subsequent assessment period; but the annual maintenance assessment fixed for the preceding period shall continue until a new maintenance assessment is fixed. No member may exempt itself from liability for maintenance assessments by abandonment of any Lot owned by such member or by the abandonment of such member's right to use and enjoyment of the Common Area.

c. The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A charge not to exceed an amount set by the Board may be levied in advance by the Association for each certificate issued.

7.7 **Additional Assessments.** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors in making any such assessment.

7.8 **Payment of Assessment.** Any assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and shall be subject to a late charge of Ten Dollars (\$10.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same, and/or without waiving any other right, and at equity to foreclose the lien against the Lot in the same manner and subject to the same requirements as are specified by the laws of Utah for the foreclosure of mortgages or deeds of trust containing a power of sale or an assessment to a decree, and there shall be added to the amount of such assessment the reasonable costs of preparing and filing the complaint of such action, and in the event that judgment is obtained, such judgment shall include interest on the assessment as above provided, late fees and reasonable attorneys' fees to be fixed by the court, together with the cost of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

7.9 **Subordination of Lien to Mortgage.** The Lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such or transfer. Such sale or transfer

shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessments.

7.10 **Enforcement of Lien.** The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damage, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

7.11 **Reserves for Replacements.**

a. The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Area by the allocation and payment monthly to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

b. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

ARTICLE VIII
INSURANCE AND CASUALTY LOSSES

8.1 **Types of Insurance Maintained by Association.** The Association may obtain the following types of insurance:

a. Insurance on all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief in an amount sufficient to cover the full replacement of such improvements in the event of damage or destruction;

b. A public liability insurance policy covering the Association, its officers, directors, and managing agents, having at least a Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

c. Workers' compensation insurance, if and to the extent required by law; and

d. Fidelity bond or bonds covering all Directors, officers, employees or other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

e. Directors and Officers liability coverage.

8.2 **Premiums for Insurance Maintained by Association.** Premiums for all insurance and bonds required to be carried under Section 8.1 hereof or otherwise obtained by the Association on the Common Area shall be an expense of the Association, and shall be included in the annual assessments. Premiums on any fidelity bond maintained by a third-party manager shall not be an expense of the Association.

8.3 **Damage and Destruction of Common Area.**

a. Immediately after any damage or destruction by fire or other casualty to all or any part of insurable improvements on the Common Area, the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

b. Any damage or destruction to insurable improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

c. If, in accordance with subsection (b), the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then, and in that event, the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

8.4 **Repair and Reconstruction of Common Area.** If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall levy a special assessment against all Owners in order to cover the deficiency in the manner provided in this Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

8.5 **Hazard Insurance on Improved Lots.** Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot.

8.6 **Obligation of Lot Owner to Repair and Restore.**

a. In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement, which shall be done in accordance with the plans and specifications for such improvements originally approved by the Architectural Review Committee, unless the Owner desires to construct improvements differing from those so approved, in which event the owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

b. If any Owner of any improved Lot fails to maintain the insurance required by Section 8.5 of this Article, the Association may, but shall not be obligated, to obtain such insurance and pay any premiums required in connection with obtaining such insurance, to the same extent as such costs within ten (10) days after such Owner's receipt of a written demand therefore from the Association, the Association may establish in a lien therefore upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

ARTICLE IX
RIGHTS OF MORTGAGEES

9.1 **General.**

a. Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the Bylaws, and applicable law, which would otherwise be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, and any matter arising under the provisions of this Declaration and involving the exercise of such right, to deal with such Mortgagee in possession as if it were the Owner thereof.

b. Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the Bylaws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner; provided that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the time.

9.2 **Inspection, Statement and Notice.** A Mortgagee shall, upon delivery of a written request to the Association, be entitled to:

- a. Inspect the Association's books and records during normal business hours;
- b. Receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association.
- c. Be given timely written notice of all meetings of the Membership, and designate a representative to attend all such meetings;
- d. Be given timely written notice of the occurrence of any substantial damage to or destruction of the Common Area, or if the Common Area is made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and
- e. Be given timely written notice by the Association of the failure to pay an assessment by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the validity of the lien for any assessments levied pursuant to this Declaration.

ARTICLE X
MISCELLANEOUS

10.1 ***Term.*** This Declaration shall run with the land and shall be binding for a period of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 10.9

10.2 ***Enforcement.***

a. Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses incurred as a result of the said violation or attempted violation, including, but not limited to, court costs and attorneys' fees.

b. These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

10.3 ***No Waiver.*** The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.4 **Incorporation by Reference on Resale.** In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

10.5 **Notices.** Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postage paid, to the last-known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

10.6 **No Dedication to Public Use.** Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any Common Area by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area.

10.7 **Severability.** Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

10.8. **Captions and Genders.** The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the mail shall include all genders and the singular shall include the plural.

10.9 **Amendment.**

a. An amendment or modification shall be effective when executed by the President or Vice President and Secretary or Assistant Secretary of the Association who shall certify that the amendment or modification has been approved as hereinabove provided. The amendment shall be recorded in the Recorder's Office of Washington County. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording which instrument, each Owner hereby grants to the President or Vice President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument.

b. The provisions of this Declaration requiring compliance with the architectural guidelines and standards of the City of St. George and assigning all rights-of-way for provision of municipal utilities to the City of St. George shall not be amended without the express written consent of the City of St. George.

10.10. Association's Governing Documents. Members of the Association are bound in all respects by the provisions, terms and conditions set forth in the Association's Articles of Organization and Operating Agreement.

THE JOSHUA'S HOA, INC.

By: [Signature]
Its: President
Denise Shwalter

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On the 22nd day of February, 2016, personally appeared before me Denise Shwalter, who being by me duly sworn, did say that he is the President of The Joshua's HOA, Inc., and that this Amended and Restated Declaration of Covenants, Conditions & Restrictions of The Joshua's at Southgate Subdivision, consisting of 23 pages, including Exhibits, was signed on behalf of said corporation and said person acknowledged to me that said Corporation duly executed the same, pursuant to the written Consent of over 2/3 of the Class "A" Owners of record.

Carma L. Werner
Notary Public

My Commission Expires:
1-11-2018

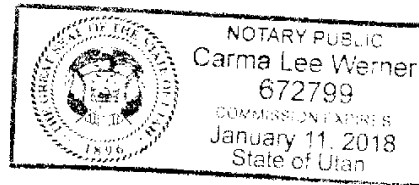


EXHIBIT A

**THE JOSHUA'S
PROPERTY DESCRIPTION**

Tax ID Nos: *SG-JSG-1-1; SG-JSG-1-2; SG-JSG-1-3; SG-JSG-1-4; SG-JSG-1-5; SG-JSG-1-6; SG-JSG-1-7;
SG-JSG-1-8; SG-JSG-1-9; SG-JSG-1-10; SG-JSG-1-11; SG-JSG-1-12; SG-JSG-1-13; SG-JSG-1-14;
SG-JSG-1-15; SG-JSG-1-16; SG-JSG-1-17; SG-JSG-1-18; SG-JSG-1-19; and SG-JSG-1-20;*

All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, and all Common Areas defined and described in the Subdivision known as "The Joshua's at Southgate – Phase 1," according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Tax ID Nos: *SG-JSG-2-21; SG-JSG-2-22; SG-JSG-2-23; SG-JSG-2-24; SG-JSG-2-25; SG-JSG-2-26; SG-JSG-2-27;
SG-JSG-2-28; SG-JSG-2-29; SG-JSG-2-30; SG-JSG-2-31; SG-JSG-2-32; SG-JSG-2-33; SG-JSG-2-34;
SG-JSG-2-35; SG-JSG-2-36; SG-JSG-2-37; SG-JSG-2-38; SG-JSG-2-39; SG-JSG-2-40; SG-JSG-2-41;
SG-JSG-2-42; SG-JSG-2-43; SG-JSG-2-44; SG-JSG-2-45; SG-JSG-2-46; SG-JSG-2-47; SG-JSG-2-48
SG-JSG-2-49; SG-JSG-2-50; SG-JSG-2-51; SG-JSG-2-52; SG-JSG-2-53; SG-JSG-2-54; SG-JSG-2-55;
SG-JSG-2-56; SG-JSG-2-57; SG-JSG-2-58; SG-JSG-2-59; SG-JSG-2-60; SG-JSG-2-61; SG-JSG-2-62;
SG-JSG-2-63; SG-JSG-2-64; SG-JSG-2-65; SG-JSG-2-66; and SG-JSG-2-67;*

All of Lots 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67, and all Common Areas defined and described in the subdivision known as "The Joshua's at Southgate – Phase 2," according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.