

DECLARATION
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
ELMWOOD SUBDIVISION
A RESIDENTIAL SUBDIVISION LOCATED IN
ST. GEORGE, UTAH

RECITALS

DECLARANT, LLC, a Utah limited liability company, hereinafter referred to as the "Declarant," is the owner of the following described tract of land, to be known as Elmwood Subdivision, Phase 1 (hereinafter referred to as "Property", "Project," or "Subdivision"), located in St. George, Washington County, State of Utah, as described hereafter:

SEE EXHIBIT "A" THAT IS ATTACHED HERETO AND INCORPORATED
HEREIN BY THIS REFERENCE.

Declarant hereby includes all of the Property in the Phase 1 Plat, recorded herewith of the Elmwood Subdivision, and divides the Property into Lots as shown on said Plat. The easements indicated on said Plat are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements.

This Subdivision is not a cooperative, as referred to in U.C.A. 57-8a-212.

Declarant further declares that all of the Property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and every Lot, part or portion thereof. The acceptance of any deed to or conveyance of any Lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Declarant and with each other to accept, hold, improve, use and convey the Property described and conveyed in or by such deed or conveyance subject to said covenants, conditions, and restrictions. These covenants, conditions, and restrictions shall run with the land.

During the Development Phase, as defined below, Declarant or its BULK LOT PURCHASER, if any, shall be exempt from the provisions, restrictions, and requirements of these Covenants, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Covenants.

The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to the Elmwood Homeowners Association and its Board of Directors, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of this Declaration.

ARTICLE 1 - DEFINITIONS

The following definitions shall control in these Protective Covenants:

- 1.1. **"Architectural Control Committee" or "ACC"** shall mean and refer to a committee whose members are appointed by the Board. Such committee shall be responsible to review, recommend, approve/deny Architectural request application from Members who intend to construct a structure and/or improve/change the exterior of any structure or lot. The Board has the option to appoint themselves as the ACC or appoint one member of the Board as Chairman with a minimum of two committee members from the membership at large.
- 1.2. **"Articles"** means and refers to the Articles of Incorporation of Elmwood Homeowners Association
- 1.3. **"Association"** shall mean Elmwood Homeowners Association ("Association"), a Utah non-profit corporation, its successors and assigns.
- 1.4. **"Bylaws"** means and refers to the Bylaws of Elmwood Homeowners Association.
- 1.5. **"Common Area(s)"** means all real property (including the improvements thereto and facilities thereon) owned or hereafter acquired by the Association for the common use and enjoyment of the Owners and includes that portion of Property owned by the Association, shown on the Plat as Common Area. Common Area is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Directors. Specifically exempted from Common Area are Lots that are identified on the Plat. Common Area shall also include all land in which the Association has an easement right.
Declarant shall install landscaping in the Common Areas designated on the Official Plat, as required by the City of St. George, if any; additionally Declarant shall construct an Entry Sign for the Project. Any maintenance of any type whatsoever on this landscaped Common Area and/or the Entry Sign shall be sole responsibility of Elmwood Homeowners Association unless and until such time as St. George City accepts the improvements and agrees to take over the maintenance of such landscape Common Areas, if such assumption occurs, excepting any Subdivision Monument/Entry Sign(s) which shall ever remain the responsibility of the Association to maintain and/or repair.
- 1.6. **"Declarant/Developer"** shall be synonymous. Declarant shall mean and refer to FACTION, LLC, its heirs, successors, and assigns. From time to time, Declarant may elect to sell/transfer Lots to a BULK LOT PURCHASER (hereinafter, "BLP"); if so elected, BLP shall be considered to enjoy certain of the rights and privileges of the Declarant, as outlined herein; notwithstanding, such BLP shall not become or be considered to be the Declarant. For purposes of definition, a BLP shall be a third-party Lot Purchaser, as an individual or entity, which purchases more than one (1) Lot from Declarant, in a given Phase(s), AND is so designated by Declarant as a BLP. Such BLP shall be considered an exclusive builder for the Lots so purchased within a Phase(s). More than one BLP may be designated in the same time period so designated by Declarant.
- 1.7. **"Development Phase"** shall mean that time period in which Declarant owns any Lots within the Property. The Development Phase ends after Declarant has sold 100% of the Lots in the Property and/or annexed Plats to the Property to third-party buyers.
- 1.8. **"Covenants" or "Protective Covenants"** shall mean this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.9. **"Directors," "Board of Directors," "Trustees," or "Board"** shall mean the governing body of the Association and/or its governing members.

1.10. **"Limited Common Area."** Limited Common area, if any, is that portion of the common area designated on the plat for exclusive use of the lot owner and shall be maintained by the lot owner.

1.11. **"Lot"** shall mean a separately numbered and individually described plot of land shown on the Plat, designated as a Lot for private ownership, but specifically excludes any Common Area, roads, streets and/or parking areas within the Property.

1.12. **"Lot Owner"** shall mean and is synonymous with the term "Owner".

1.13. **"Member;" "Membership."** Every Owner of a Lot within the Property subject to these Covenants, including Declarant, shall be a Member of the Association and by being such Member shall hold Membership in the Association. Membership is appurtenant to and may not be separated from Lot ownership.

1.14. **"Mortgage"** includes "deed of trust" and mortgagee includes "trust deed beneficiary."

1.15. **"Owner"** shall mean the entity, person, or group of persons owning fee simple title to any Lot that is within the Property. Regardless of the number of parties participating in the ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.

1.16. **"Plat" or "Map"** shall mean the subdivision Plat recorded herewith entitled "Elmwood Subdivision" consisting of one or more sheets, prepared and certified by a licensed Utah Registered Land Surveyor, including any replacements thereof, or additions thereto.

1.17. **"Properties," "Property," or "Project"** shall mean that certain real property hereinbefore described that is subjected to these Covenants, and such additions thereto as may be brought within the jurisdiction of the Association by annexation and subjected to these Covenants as hereafter provided.

1.18. **"Residence," "Home", or "Unit"** shall mean a detached single family dwelling and the Lot upon which it is constructed.

1.19. **"Rules" or "Regulations"** shall mean and refers to any rules of regulations created by the Board of Directors, pursuant to its authority under the Articles, of this Declaration and/or the Bylaws, to govern the Association.

1.20. **"Separation Wall," "Wall", or "Fence"** shall mean (1) the walls serving as rear-lot walls and side-lot walls of each Lot in the Project and (2) other yard/privacy walls and fences constructed as part of the individual Home construction. The Declarant shall not be obligated to construct any walls within the Property; rather, it shall be the obligation of each Lot Owner to build a rear Separate Wall, or perimeter wall, as the case may be, or any other wall(s) as part of the initial or subsequent construction of a Home on a Lot.

1.21. **"Single Family" or "Family"** shall mean persons related by blood or marriage, by legal adoption, or by operation of law; but in no event more than three (3) unrelated persons.

ARTICLE 2 - USE RESTRICTIONS

2.1 **LAND USE AND BUILDING TYPE.** All Lots shall be used only for single-family residential purposes. No professional, business or commercial use shall be made of the same, or any portion thereof. The provisions of this section shall not preclude an occupant who is engaged in individual professional work (e.g. accountant, bookkeeper, among other ACC-approved professional undertakings) without external evidence thereof (such as signage, excessive vehicular or foot-traffic associated with clients or shipping related thereto), so long as: (i) such occupant conducts its activities in conformance with all ordinances, (ii) such business activity is merely incidental to the use thereof as a dwelling, (iii) such occupant does not solicit or invite the public to the Lot or Home as part of such business activity.

No Owner shall allow or permit any time-share or fractional ownership of a Lot or any of its improvements thereon.

2.2. **SOILS.** The Declarant or its assign has performed a geotechnical/soil test study on the area of the Project in accordance with the St George City subdivision ordinance. The Declarant has or will improve Lots in accordance with the engineers' recommendations. A Lot purchaser may, at the purchaser's own expense, obtain any additional soils test studies and recommendation on foundation from a Utah registered soils engineer prior to construction. The ACC may require that a Lot Owner obtain a soils test and recommendation on foundation prior to any final approval. Furthermore, the ACC may condition final approval until following review of any recommendations set forth in such soils test document.

2.3. **CARE AND MAINTENANCE OF LANDSCAPING AND OTHER LOT FEATURES.** During the Development Phase, and continuing thereafter until changed by a two-thirds (2/3) vote of the Owners, the Association shall be responsible for maintenance of landscaping:

- 1) of the front yard, and
- 2) of the side-yard areas of each Lot; side-yard shall be considered to be that area extended from the front foundation line of the Home to the rear foundation line; however, in the instance that a gate or wall is placed at or near the front foundation line, preventing access to the side yard, such enclosed side yards shall NOT be maintained by the Association.

An Owner shall be responsible for the maintenance of such side yards and all other areas of the Owner's Lot, including any walls, fences or other barriers that surround the Home and/or Lot. The Owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that:

- (A) Any damage caused by such entry shall be repaired at the expense of the Owner whose property was the subject of the repair work which caused the same;
- (B) Any such entry shall be made following proper notification the adjoining Lot Owner(s) and only at reasonable times and with as little inconvenience as possible to the adjoining Lot Owner; and
- (C) In no event shall said easement be deemed to permit entry into the interior portion of any Home on said adjoining Lot(s).

In the event any Owner fails to perform any maintenance that is the responsibility of the Owner in a manner so as not to detract from the appearance of the Property, or affect adversely the value or use

of any other Lot(s), the Board shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

2.4. INSTALLATION, CARE AND MAINTENANCE OF THE COMMON AREA FEATURES.

Elmwood Homeowners Association shall be responsible for care and maintenance of any Common Area(s) and improvements thereon, which the Declarant has installed, including the any entryway signage. The maintenance of the foregoing shall be perpetual until and unless the City agrees to assume said maintenance and repair, by agreement.

Any damage caused to Common Areas and improvements thereon by any Lot Owner and/or their agents, guests or invitees shall be repaired by the Lot Owner as soon as possible after such damage is discovered; and, in the event of failure of such Owner to make such timely repairs, the Association may make such repairs and the expense of such repair shall be added to and become part of the assessment to which such Lot is subject. In conjunction with the Association's manager, the Association shall cause routine inspections to be made of all Common Area facilities, features, landscaping and related infrastructures which are present within the Project. The Board 1) may conduct said inspection(s) by the Board, members thereof, and/or the ACC, as constituted or appointed, OR 2) IF THE BOARD DEEMS THAT SUCH INSPECTION(S) BY A PROFESSIONAL(S) IS WARRANTED, the Board may engage a professional(s) to conduct said inspection(s) of the component(s) of the Common Area(s) of the Project, such as an architect, a civil engineer, structural engineer, landscape architect or other such professional as deemed by the Board to be appropriate. Inspections shall be made every two years, or may be conducted more often at the discretion of the Board.

For purposes of clarification, the streets, curbs, and sidewalk within the Subdivision are, upon recordation of the Plat, public easements and rights-of-way and are not to be included in the maintenance and/or repair of the Association.

2.5. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each Lot shall from time to time, as may be reasonably required, grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

2.6. NO HAZARDOUS ACTIVITIES. No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit, while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

2.7. MOTORBIKES, ETC. All motorcycles, trail bikes, three-wheel powered devices, ATV's, scooters, automobiles, and two or four-wheel drive recreational type vehicles are to be operated within the Property ONLY by individuals with 'current and appropriate-to the 'vehicle' driver's licenses' and may only be operated on established streets to access open areas outside of the subdivision only, in keeping with City ordinances and Rules of the Association, as operative from time to time. Such vehicles/equipment are specifically prohibited from all other portions of the Property, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational-use purposes anywhere within the Property. It is acknowledged that Elmwood is situated near unimproved Open

Spaces belonging to the City, County, or other land owners.

This provision is **NOT TO BE UNDERSTOOD** as 'a license' to or for any Owner for the use or access to such adjacent or neighboring land(s) for use of the recreational vehicles/equipment listed in this Section.

2.8. WEED CONTROL. Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on the Owner's Lot so as to minimize weeds, fire and other hazards to surrounding Lots, Units, the Common Area, and surrounding properties, 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 that are injurious to crops, livestock, land, or the public health.

2.9. NUISANCES. No noxious or offensive activity shall be carried on upon any Lot, part or portion of the Property, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood. This includes animals that are not kept within the Lot boundaries of an Owner. No clothes drying facilities shall be placed outside a Home, nor shall clothes drying or storage of any articles which are visible from any public street be permitted within the Property.

No use of a Lot shall endanger the health or disturb the reasonable enjoyment of any other Owner or resident.

2.10. SAFE CONDITION. Without limiting any other provision of these Covenants, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

2.11. 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 any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Property.

2.12. ANIMALS, LIVESTOCK, POULTRY, AGRICULTURE. Pets are a privilege in Elmwood Subdivision, not a right. All Owners must see that their dogs maintain a current license from St. George City, and other animals/pets as required by the City. All pets must also be registered with the Association by using the approved registration form which is available from the Association or its designation management agent. Failure to register a pet with the Association shall result in a Two Hundred and Fifty dollar (\$250.00) fine, which shall be a lien upon such Owner's Lot and shall be added to the annual assessment provided in Article 5. A fine of One Hundred dollars (\$100) will continue to be assessed for each month until such Owner meets the requirements of this Section. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Areas except that dogs, cats or other ACC-approved household pets, not more than two (2) in total number, as approved by the Directors, may be kept in a Home, or upon any Lot, subject to the rules and regulations adopted by the Board. All dogs, while not in a Home or in the enclosed rear-yard area of a Lot, shall be on a leash and shall at no time be allowed to run free or be unattended while not in the Owner's rear yard. Cats shall not be allowed to roam the neighborhood; particularly during night time hours, cats shall not be left to roam and cause disturbances. Dogs and other pets may be kept in rear yards provided, however, that a pet owner, being solely responsible for the conduct and actions of his/her pet, shall not allow his/her dog (or other pets) to disturb the peace, quiet and enjoyment of other Owners within Elmwood Subdivision. Animal owners shall not allow their pets to defecate or urinate on Common Areas or front/side-yard landscaping of other Lots. Pet owners shall immediately clean up after their pets. Failing to do so shall be considered a nuisance hereunder.

2.13. GARBAGE AND REFUSE DISPOSAL. No Lot, or part or portion of the Property, shall be used or maintained as dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property, shall be kept only in City-approved sanitary containers, except when placed for City-collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property.

Each Lot Owner shall use the standard, City-approved trash container for garbage collection, using same in accordance with City policies. Other such containers, as permitted by the City, may be used.

All containers that are used shall be kept clean and in repair by the Owner and shall not be placed on the street for collection in a broken or unsightly condition. Such containers shall be kept neatly by a Lot Owner in the rear-yard, the side-yard(s) of the Lot, or in the garage; in no case, shall containers be kept or placed in the front-yard set-back of the Home. Containers are not to be placed on the street except on collection day. An Owner is responsible to remove empty containers from the street not later than the day following garbage collection.

2.14. WATER SUPPLY. Each Home on a Lot shall be connected to and use the municipal culinary water supply. No individual culinary water supply system shall be used or permitted to be used on any Lot, part or portion of the Property.

2.15. SEWAGE DISPOSAL. Each Home on a Lot shall be connected to and use the municipal sewage disposal system.

2.16. RULES. The Board of Directors of the Association shall have the authority to promulgate rules and regulations for the governance of the Property, and persons within the Property, provided they are not in conflict with this Article 2, Use Restrictions or with State Law.

2.17. DECLARANT BUSINESS AND SALES. Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of Homes and sale of lots during the Development Phase, and upon such portion of the Property as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the Property and any Common Area and or facilities thereon without charge during the sales and construction period to aid in its marketing activities. As part of Declarant's "Business and Sales" activities, a golf cart may be used on the streets of the Subdivision.

2.18. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner has a right and easement of use and enjoyment in and to any Common Area. This easement is appurtenant to and passes with the title to every Lot, subject to:

(a) The right of the Association to charge reasonable admission, use, service and other fees for the use of any service of the Association or improvements provided upon the Common Area, or parking facility situated upon the Common Area, IF ANY. No fees shall be charged for parking in specifically designated areas on the Plat, as appurtenant to a Lot.

(b) The right of the Association to limit the number of guests of Members using the Common Area.

(c) The right of the Association to suspend the voting rights and/or common utility service of a Member for any period during which any assessment or portion thereof against the Member's Lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

(d) The right of the Association to enter into agreements or leases which provide for use of the Common Areas and facilities by a similar Association in consideration for use of the Common Areas and facilities of the other Association, or for cash consideration;

(e) If there is no Class B Membership, the right of the Association, with the approval of sixty-seven percent (67%) of the Members, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility.

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

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

(h) The terms and conditions of these Covenants.

(i) The right of the Association, through its Directors, 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 Properties shall not be complete, including granting leases, easements, and modifying the improvements and design of the Common Area.

2.19. LEASE OCCUPANCY OR OTHER TEMPORARY OCCUPANCY. No Owner shall lease a Home for transient or hotel purposes. No Home shall be made subject to any timeshare program, interval ownership, or similar program whereby the right to exclusive use of the Home rotates among multiple owners or members of a program on a fixed or floating time schedule over a period of months or years.

By operation of law, an Owner may rent or lease the Owner's Home to another individual(s). Notwithstanding, any Owner so doing shall comply with the provisions of this Section, being among others:

(a) Any temporary or other occupancy, other than by the titled Owner, the Owner's family, friends, and invited guests, must be for a period of at least twelve (12) months. All persons occupying the Home are to abide the provisions of this Declaration and/or Community Rules; notwithstanding, the Association shall always look to the Owner as the 'responsible party.'

(b) Each such tenant-occupancy shall be established between the Owner and the tenant(s) by a written lease/rental/occupancy agreement, a copy of which shall be submitted by the Owner to the Board, or appointee, together with a signed copy of the Temporary Occupancy Notification Form (available from a Board Member or the designated management agent). All such tenant occupancies, as well as family, friends, and invited guests must comply with the provisions of this Declaration.

(c) Any lease agreement between an Owner and a lessee/renter shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Bylaws of the Association, and all rules and regulations enacted by the Board and in place at time of lease signing OR AS MAY BE ADOPTED OR CHANGED DURING THE LEASE TERM. The lease agreement shall provide that any failure by lessee/renter to comply with the terms of such documents and rules and regulations shall be a default under the lease. An Owner, as rentor/lessor of his/her Home, notwithstanding the presence of a tenant, shall be responsible for any infraction or violation by his/her tenant, guests and invitees, here under.

(d) Temporary Occupancy shall not be allowed. Violation of this provision shall be considered a nuisance hereunder.

2.20 GARAGE USE. Each Owner shall use the garage portion of the Owner's Lot for the storage of motor vehicles. No Owner shall use a garage for any purpose which prevents storing of motor vehicles. Unless doing so would not result in additional motor vehicles being stored outside the Owners garage. No Owner shall remodel a garage or use a garage on any Lot for residential or any other purposes.

2.21 PARKING, RECREATIONAL AND OTHER VEHICLES. Parking on the streets shall be governed and allowed according to the St. George City laws and ordinances. Guest parking or service vehicle parking may be parked on a short term basis (no longer than 48 hours in any consecutive seven-day period). Any vehicle that is parked in violation of City laws and ordinances may be towed without any further notice as soon as reported by any Member of the Association and a violation is confirmed. All parking violations shall be reported to the Association. The owners of the vehicle found to be in violation shall be responsible for all fines and costs associated with such towing as charged by the towing company.

Vehicles parked on a driveway shall not be parked to as to be parked-on or extending over any portion of the sidewalk adjacent to the driveway apron.

Owners shall not park, store, or keep on their driveway or on any street within the Property (i) any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, or delivery truck); (ii) any recreational vehicle (including, but not limited to, any camper, travel trailer, or motor home); (iii) any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or (iv) any inoperable vehicle.

Camper trucks and similar vehicles up to and including one ton when used for everyday-type transportation may be kept on the Property, as set forth herein. Such vehicles, in addition to motorhomes and RV's, boats, trailers, campers, and similar recreational vehicles may and shall be parked in a side-yard of a Lot, on a cement pad, behind the front foundation line of the Home, in a fenced area, or in an enclosed garage; such fenced area shall be gated with a wrought iron, screened gate (no vinyl or wood shall be allowed), as approved by the ACC; which gate shall be maintained and repaired by the Owner.

Motorhomes, boats, trailers, campers, and similar recreational vehicles may be parked in a driveway once every seven (7) days for a maximum twenty-four (24) hour period to allow for loading, unloading, and cleaning. This latter provision may be changed or stricken by the Board, as a Rule, without amendment of this Declaration.

No Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board.

ARTICLE 3 - ARCHITECTURAL CONTROL

3.1 ARCHITECTURAL CONTROL COMMITTEE ("ACC"). Until every Lot subject to this Declaration, including Lots in any phases subsequent to the first phase, has been transferred to a bona fide purchaser, and a Home is constructed on each Lot, the Declarant shall serve as the ACC, or any other person appointed in writing by Declarant. After Homes are built and title to 100% of the Lots in the Property have been transferred by the Declarant to third-party purchasers, a majority of the Owners of Homes and Lots subject to these Covenants shall elect members of the Board, which shall thereafter be vested with the powers described herein and shall have jurisdiction over all of the Property subject to these Covenants. Said Board may appoint three (3) members to the ACC, or, the Board may assume the responsibilities otherwise pertaining to an ACC. Members of the ACC are not required to be Members of the Association, if such is deemed to properly serve and benefit the Board and Members of the Association.

The ACC shall adopt, subject to Board approval, reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request. The ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to Members who have made application to the ACC for review of applicant's plans for improvement; application to the ACC does not, in and of its action, guarantee the ACC will approve the application.

Unless authorized by resolution of the Board, the members of the ACC shall not receive any compensation for services rendered, which fee, if any, (i) shall be set by Board action, and (ii) shall constitute a fee which shall be required of any Owner who submits an application to the ACC. ACC members shall be entitled to reimbursement, from an applicant, for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the ACC shall be paid such compensation as the ACC determines, which fees shall be paid by the Member-applicant.

Declarant shall be exempt from the provisions, restrictions, and requirements of this Article, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Covenants.

3.2 SUBMISSION AND APPROVAL. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the ACC shall be required. A member of the Board (or the designated management agent) should be contacted to obtain an application form for submission of plans to the ACC.

Two (2) complete sets of building plans and specifications shall be filed with the ACC (one 2'x3' in size and one in 11"x17" in size), together with a site or plot plan showing

grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the Board may determine from time to time, and an application and such supporting material, such as samples of building materials, as the ACC deems necessary.

No work shall be commenced unless and until the ACC shall approve and provide written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said ACC. The ACC shall endorse the larger set of plans. The second, smaller, set of plans shall be filed as a permanent record with the ACC.

Said ACC shall have the right to refuse to approve any plans and specifications submitted for review and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.

The ACC shall promulgate and maintain a list of standards, as approved by the Board, for guidance in approving or disapproving plans and specifications pursuant to this Article.

In the event said ACC fails to approve or disapprove in writing any such plans within sixty (60) days after submission thereof to the ACC, then approval shall be deemed to have been given.

The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. The ACC's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.

The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

Once construction begins on any improvement, landscaping or alterations, which construction has been approved by the ACC, construction shall be diligently pursued to completion over a period not to exceed six (6) months from the issuance of a building permit for same or the beginning of construction activity, whichever first occurs.

In the event work begins and remains uncompleted at the end of such period, the Association may undertake to complete the exterior work of the construction, and the cost of which shall be a lien against the Lot which benefitted from the construction; or the Association may invoke a daily fine of fifty dollars (\$50.00) per day, until completion, which completion shall be evidenced by (i) a Certificate of Occupancy or (ii) the date of completion of all construction activity, including cleanup, (both (i) and (ii) being "Completion").

3.3 GOVERNMENTAL PERMIT REQUIRED. No Home, accessory or addition to a Home, other structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefore is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may reasonably require. The granting of a permit or approval by any governmental entity with respect to any intended

improvement work shall not bind or otherwise affect the power of the ACC to refuse to approve any such intended improvement.

3.4. ARCHITECTURAL GUIDELINES AND DESIGN RESTRICTIONS. In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines, together with any guidelines hereafter established by the ACC, are applicable to the Property:

(a) **Purpose and Intent.** The intent of these Architectural Guidelines is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture of the created environment of the Property. These standards allow design latitude and flexibility, while ensuring that the value of the property will be enhanced through the control of site planning, architecture and landscape elements.

The Architectural Guidelines serve as an evaluative aid to Owners, builders, project Declarants, design professionals, City staff, the Planning Commission, City Council and the ACC in the design review of individual, private and public developments within the Property. The City of St. George Zoning Regulations will apply for any area of design not addressed in these guidelines.

(b) **Permitted Structures.** The only buildings or structures permitted to be erected, placed or permitted to be located on any Lot within the Property shall be a single family detached dwelling, a detached casita, and a detached garage, each and all subject to ACC-approval; such buildings are not to exceed the height requirements found in this Section. All construction shall be of new materials, which materials are utilized on-site to construct said structure. All structures shall be constructed in accordance with the zoning and building ordinances of St. George City, as in effect from time to time.

(c) **Minimum Area of Lot and Home.** Lot sizes as described on the Official Recorded Plat of Elmwood Subdivision are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the Recorded Plat of said subdivision. Lots may not be combined for construction of a single Home. "Vacant Lot" shall refer to any Lot which has not been improved with the construction of a Home thereon.

Lot/Home shall refer to any Lot which has been improved with construction of a Home thereon. The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any single-story residential home constructed on any Lot within the Property shall be not less than 1,400 square feet, exclusive of porches, balconies, patios and garages. Two-story structures may be allowed, subject to ACC-approval; the minimum square feet of living area of such, if approved, shall be 1,200 square feet on the ground level and 600 square feet on the upper, second level.

(d) **Setbacks.** Minimum setback standards are set forth on the Official Phase 1 Plat for Elmwood and shall govern with regards to the buildable area of each Lot. All measurements shall be made from the applicable Lot line to the foundation, porch or other extension of such building, whichever is nearer to such Lot line.

In no event shall any portion of any building, including eaves or steps, encroach upon any other Lot.

(e) **Building Height.** Building height shall be measured from the high side of the curb elevation of the Lot to the highest point of the roof-line of a Home. Homes shall not exceed 35 feet in height. All building heights are subject to ACC-approval.

(f) **Garages.** All Homes constructed on a Lot in the Property shall include a fully enclosed, private garage, attached or detached, built to accommodate not less than two (2) vehicles. The height of the garage door header shall not exceed eight (on a case by case) feet, except that the ACC may approve a greater height based on its review of the Home design, on a case by case basis; one such approval, if given by the ACC, shall not constitute a "precedent. Carports shall not be permitted. All garages shall be constructed of the same exterior materials and in harmony with and architecturally compatible with the Home constructed on the Lot.

Each garage design shall include provision for and installation of 'photo-cell' light fixtures. Such garage lighting shall be maintained in operating order and shall not be disabled by an Owner except for repair. Such lighting, as to brightness and type may be established by the ACC. Such lighting is considered necessary to help establish a security presence for the Community.

(g) **Driveways and Walkways.** Any driveways and walkways shall be constructed of concrete, stamped concrete, or other hard materials as approved by the ACC. In no event shall a driveway or walkway be constructed of dirt, sand, cinders, clay or road base material, or asphalt. Any proposed stamped concrete designs and colors must first be submitted and approved by the ACC. Driveways must provide for sufficient parking space so that at least two (2) vehicles may be parked side-by-side on a driveway. Some Lots have areas designated as "No Driveway Access Permitted." An Owner may not allow access to a driveway within any No Driveway Access area.

(h) **Home Elevations, Soffit and Fascia.** Home elevations shall be constructed using a) a partial synthetic stucco system, which may have accents of a) masonry, b) stone, or c) hardboard siding, as approved by the ACC; said accents of masonry, stone, or hardboard siding in combination with the partial synthetic stucco system shall be required on the front elevation. In the event the synthetic stucco elevation is accented with masonry, stone, or hardboard siding; the accent feature(s) to a front elevation may be, at the Owner's election, extended to include side and rear elevations; however, such front elevation accents shall not be required on side and rear elevations.

All fascia and soffit materials shall be of synthetic stucco; wood, subject to ACC-approval may be used in certain instances. Vinyl shall not be used as soffits and fascia material; aluminum or hardboard siding may be used as soffit and/or fascia material, subject to ACC approval.

(i) **Windows.** Window frames shall be of an almond color, OR, as otherwise permitted by ACC approval, on a case-by-case basis; such ACC approval in one instance shall not set a precedent for ACC approval in another instance.

(j) **Colors.** Colors shall be limited to those established or approved by the ACC. Generally, colors shall be of subtle earth-tones and complimentary to previous construction or as otherwise approved by the ACC. Colors shall not include pastels.

(k) Roof and Roofing Materials. Flat roofs are not permitted. The maximum roof shall generally not exceed 6/12, OR, as approved by the ACC in consideration of Home design, on a case by case basis. Roof materials shall be concrete or clay tile, or as otherwise established by ACC Design Guidelines, if any. However, at no time shall roofing be allowed to be constructed of asphalt shingles, asphalt surfacing, wood shakes, or metal shingles; this provision shall not be changed by Amendment or by Vote of the Members at any time.

(l) Sheet Metal, Flashing, Vents and Roof Pipe Vents shall be colored or painted to match the material to which they are attached or from which they project. No reflective exterior surfaces or materials shall be used.

(m) Sight Obstructions. No structure, fence, wall, hedge or other or landscape plantings shall be allowed which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the ease of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within (10) feet from the intersection of a street property line with the edge of a driveway. Trees shall not be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height such as to prevent obstruction of sight lines. No fence, wall hedge, shrub or other structure shall be placed along any front property line. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner as, in the opinion of the ACC, shall create a serious potential hazard or an aesthetically unpleasant appearance to the other residents of the subdivision. In all these matters, City ordinances and specifications shall prevail.

(n) Prohibited Structures. Dome structures, log homes, pre-manufactured homes, prefabricated homes, mobile homes, re-located homes, and earth or berm homes of any type shall not be permitted.

(o) Temporary or Other Structures. No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, or other outbuilding shall be used at any time as a Home either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of said Lots. It is the Declarant's intention that all dwellings and other buildings to be erected within the Property be of new construction, of good quality, workmanship, and materials.

(p) Accessory Buildings. No storage or utility buildings are allowed unless first submitted to and approved by the ACC. Any approved accessory building must meet St. George City requirements for zoning, size, etc., and must have the appropriate governmental approval or permit before construction commences. Any approved Accessory Buildings must be stick-built, of a permanent nature, and similar in design, appearance, and materials, so as to be compatible with the Home on the Lot.

Structures commonly known as "casitas" shall be allowed subject to (i) review and approval by the ACC of a Construction Review Request; (ii) strict compliance with all applicable City ordinances and City-approval; and (iii) compliance with all other provisions of this Declaration. A typical casita shall be a structure containing one bedroom and one bathroom,

with moderate cooking/eating capacities, but shall not in any event be larger than 600 square feet.

(q) External Lighting and Illumination. Lighting fixtures used to illuminate other areas of a Lot, such as patios, side-yard parking, rear-yard areas or for any other exterior purposes, shall be of such design and installation as to not adversely affect or impact neighboring Owners or streetscapes, and as otherwise required by St. George City. Low-level outdoor illumination may be used for particular landscape features (trees, rock formations, etc.), as approved by the ACC.

(r) Walls, Separation Walls, Shared Walls, Fences. Walls, fencing, gates, front court-yards walls and other such barriers shall be approved by the ACC.

The Declarant shall not be required to construct a perimeter Project wall. All walls constructed within the Property shall be the sole responsibility of a Lot Owner to BUILD AND MONITOR. The following provisions shall guide the construction of all walls:

(1) A REAR-YARD WALL SHALL BE REQUIRED ON LOTS IN ELMWOOD, which wall shall be installed/constructed at the time of Home construction and shall be completed prior to the issuance of a Certificate of Occupancy.

(2) SIDE WALL CONSTRUCTION SHALL BE THE RESPONSIBILITY OF A LOT OWNER TO INSTALL, IF SO DESIRED BY SAID OWNER. Side-Walls may be installed together with the construction/installation of the rear-wall, OR may be installed at a later date, at the election of the Lot Owner, subject to obtaining approval of the ACC of such wall(s).

The "sharing" of the cost of construction of Side-Walls is encouraged but shall not be required of any adjacent Lot Owner(s). The Owner that first commences with construction of a side-wall shall initially complete the work of wall installation and, in keeping therewith, shall be responsible to pay all costs related thereto. If sharing of cost is elected by adjoining Lot Owners, the manner and extent of such sharing of the cost of Side-Walls shall be established solely between the adjacent Lot Owners and shall not involve the Association in any manner.

(3) Walls of any type over six-feet (6') high shall not be allowed, except as approved by the City and the ACC as being necessary and reasonable due to unique elevational considerations of the Lot.

(4) Only masonry block walls, of a color and type as approved by the ACC, shall be permitted on the perimeter of the Lot (Side-Walls and Rear-Walls). Rear Walls must be completed prior to the issuance of a Certificate of Occupancy by the City. Wood fencing shall not be permitted. Chain link or other metal fencing shall not be allowed, except as such is a part of a gating system (see 5), as approved by the ACC.

(5) Wall returns from the side-wall to the exterior of the Home shall be masonry block, including, as appropriate, with provision for a gate. Gates shall be

wrought iron of color and style as approved by the ACC; vinyl or wood gates (or fencing) shall not be allowed in the Property.

(6) Side-Walls which separate one Lot from another, ("Separation Wall") shall be owned and maintained by Owners of the Lot to which such Separation Walls are appurtenant. The Owners of the Lots on which a Separation Wall is constructed shall have exclusive use to such Separation Wall and shall be responsible for the cost of any repair and/or maintenance of such Separation Wall. In the event an Owner fails to repair or maintain a Separation Wall, the Association shall have the right to enter upon any Owner's Lot for the purpose of repairing and maintaining said Separation Walls. The cost of said repair or maintenance shall become a lien against the Owner's Lot and shall be added to the annual assessment as provided herein. No changes or alterations shall be made to a Separation Wall by a Lot Owner without prior written approval of the ACC.

If a Separation Wall is damaged by fire or other casualty the Owners which share such Separation Wall between their respective Lots shall bear the responsibility to repair or replace the Separation Wall. In the event Owners fail to adequately repair or replace any such damaged Separation Wall, then the Association shall have the right to enter the Owner's Lot and to perform such repair or replacement, and the cost thereof shall become a lien on the Owner's Lot and shall be added to the annual assessment as provided for in herein. However, if the Board reasonably determines, after notice and opportunity to be heard, that the damage or loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of the cost of maintenance and/or repair against such Owner and the Owner's Lot. Notwithstanding any other provision of this Article, an Owner who by negligent or willful act causes a Separation Wall to be damaged shall bear the entire cost of furnishing the necessary protection against such elements.

No Owner shall paint, construct any addition to, color, or otherwise decorate the interior or exterior surface of a Separation Wall. Any Owner found in violation hereof shall bear the entire cost of refurbishing and restoring the affected Separation Wall to its original condition, consistent with other portions of the Separation Walls.

In the event of any dispute arising in connection with a Separation Wall, each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

To the extent not inconsistent with the provisions of this Section, general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to the Separation Walls.

(s) Retaining Walls. Retaining walls are restricted to a maximum height of five (5) feet, unless otherwise approved by the ACC and the City. In the event approval is given for a retaining wall higher than the restrictions herein, the retaining wall must be tiered and landscaping must be installed to help 'hide' the tiering of the retaining wall.

(t) Addressing. The address numbers for the Lot must be placed on the front of the Home and there must be adequate lighting for address numbers to be seen at night

(u) Antennas, Satellite Dishes. Antennas for radio, television, or devices for the reception or transmission of radio signals, microwaves or other similar signals are restricted to the attic area or interior of the Home. Satellite dishes shall be allowed to the exterior of a home. Satellite dishes, 20-inches or less, may only be installed on the rear fascia of the home. If a signal cannot be obtained from the rear fascia, a side fascia shall be used, setting the satellite dish as far back from the front of the home as possible, that a signal may be received. No antenna of any type of for any use shall be attached to the rooftop of a Home.

The ACC shall have the right to remove or cause removal of any antennas, satellite dishes, or other external antennas erected, placed, maintained, or improperly installed.

(v) Air conditioning, Heating Equipment, Soft Water Systems, Etc. Such equipment, if placed on the exterior area of the Home shall be screened from street view. Heat pumps/AC units shall not be placed on rooftops. Rooftop or through-the-window "swamp coolers" shall not be allowed.

Solar Panels Solar Panels or Solar Panel Arrays (group of connected solar panels) of any type shall only be allowed provided the ACC approves an Owner's submission of an ACC Review Request which must detail Owner's Solar Panel Proposal, according to provisions of Article 3 of the Declaration. Approval or Denial in one given, previous instance by the ACC/Board shall not constitute a precedent for any other Request submission for Solar Panels. Approval or Denial by the Board/ACC shall be on a case-by-case Basis.

All Solar Panel Proposals shall be in full compliance with all ACC-published Solar Panel Guidelines, as well as 'current input' to their evaluation. Such Guidelines, as of the date hereof include, but shall not be limited to, the following:

Solar Panel Guidelines (as of the date of Declarant's execution of this Amendment)

1. All roof mounted solar (photovoltaic) systems must be constructed of non-reflective materials, including racking materials and panel frames: and
2. All solar panels must be mounted parallel to roof surface, which surface is part of a pitched roof system. No additional pitch will be permitted: and
3. All racking or mounting material must be underneath solar array (grouping of panels). No racking may extend beyond area of array. Also, all conduit, wiring, and roof penetrations must be located beneath the solar array. No conduit shall be exposed on the rooftop(s): and
4. No panels may extend beyond roof area, either hanging over eaves or a ridge line of a Home's roof: and
5. All solar panel systems must adhere to National Electrical Code and Local Code and inspection, as applicable: and
6. Panels and all associated pieces and portions, thereof, must be maintained and repaired so as NOT to look old and dilapidated: and
7. Owner's proposed location of the Panels or Array shall be subject to the ACC's consideration of near or adjoining Lots. Panels will not be approved by the ACC for mounting on the front-facing portions of the Home's roof: and

8. As a general rule, rear-yard, ground installation of solar panels will not be permitted; however, the ACC, on the condition of case-by-case review, may permit such installation PROVIDED such solar panel system shall be located in the Home's rear-yard which is to be totally enclosed by an ACC-approved block wall(s) with approved screened wrought-iron gate(s) with locking mechanism(s). Furthermore, any ACC-approved ground installation shall not be visible from the public streets of the Subdivision.

FINAL NOTE REGARDING THESE GUIDELINES: The foregoing Guidelines are not part of the Declaration; these Guidelines are a published work of the ACC and are here-presented for 'informational purposes only.' These Guidelines may be amended or added-to by the ACC and/or Board for any reason or purpose, at any time, and without amendment to the Declaration and without need for provide notice to Members, except as such may be a part of a periodic Board Meeting, and without need of any Member Vote thereof.

(w) Utility Meters. All such meters shall be placed in as inconspicuous a location as possible. Locations of meters are to be shown on the plans, and meters must be screened from neighboring view. Exposed piping shall be painted to match exterior colors of the dwelling structure. The area immediately around the meters shall be cleared to allow for necessary access. Electric meters, switches, or circuit breaker boxes are not to be located in the same enclosure with the gas meter and regulator. Enclosures for gas meters and regulators are to be vented in compliance with the Building Code requirements.

(x) Mailboxes. Cluster Mailboxes, already existing, or which are to be installed by Declarant, as approved by USPS, are the only allowed mail receptacles. Each mailbox shall conform to postal regulations as to style and construction as set forth in the plans and specifications maintained at the Association office. Replacement of cluster-type mailboxes, if necessary, shall be the responsibility of the Association. In the event an exact replacement is not available, the Board shall make provisions for a substitute cluster mailbox.

(y) 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 of a Home or any part thereof, or on the outside of windows or doors of a Home, without the prior written consent of the ACC.

(z) Landscaping. Front and side-yard landscaping (side-yard shall extend from the front foundation line to the rear foundation line of the Home) shall be installed by Declarant, or its agent, as part of the initial construction of the Home on a Lot. Not less than 20% of the front-yard area shall be sod. The cost of said landscaping shall be the sole responsibility of the "to-be Owner" of the Lot/Home. Such landscaping shall be completed prior to the date of a City-issued Certificate of Occupancy ("CO") or occupancy of a Home on a Lot, whichever first occurs.

Within six (6) months after receipt of a Certificate of Occupancy or the Settlement/Closing on a Home, the Owner must have substantially completed the landscaping of the rear portion of the Lot, as approved by the ACC. All rear-yard landscaping shall be done appropriately, in keeping with standards reflected in the front and side-yard landscaping. Features of rear-yard landscaping may include, among others, xeriscaping to facilitate water conservation, lawn areas or accents, trees, shrubs, and planting beds. All rear-yard landscaping

must include a clock-controlled automatic irrigation system; access to such clock shall be located on the exterior of the Home, to facilitate access by the Association during maintenance or emergencies and/or the absence of the Owner. All rear-yard landscaping shall be maintained by each Lot Owner at a reasonable standard compatible with front and side-yard maintenance by the Association, and with other Homes in the Property. Shrub and tree planting on corner Lots shall be located so as not to create a hazard for the movement of vehicles along streets, in accordance with local ordinances. All landscaping installed by any party other than Declarant must be approved by the ACC. In the event a Lot Owner delays the installation of rear-yard landscaping beyond the time the Declarant has landscaped the front and side yard areas, and in the event the Owner's own physical labor or Owner's contractor damages the front or side yard landscaping while completing the rear-yard landscaping, the Lot Owner, at his/her own expense, shall restore the front and/or yard landscaping to its original condition.

Failure by the Lot Owner to complete rear-yard landscaping as provided in this Section may result in the following action. The Association shall notify the Lot Owner that a violation has occurred. This notification shall be in writing and delivered to the Owner by certified mail. The Association may levy a Five Hundred Dollar (\$500.00) fine against a Lot Owner so-notified of violation of this provision. The fine shall be deemed a Single Lot Assessment and shall be a charge against the Owner and shall be a lien on the Lot as provided herein. The Lot Owner shall have 45-days from the date of receipt of Notification to complete the rear-yard landscaping of the Lot. Failure by the Lot Owner to complete the rear-yard landscaping within the allotted 45-days shall result in an additional One Hundred Dollar (\$100.00) fine, to be levied each and every month until the landscaping is complete. Said fine or fines, as levied, shall be a charge against the Owner and shall be a continuing lien on the Owner's Lot as provided herein.

Notwithstanding the above provisions, the ACC may extend the time frame an Owner has in which to complete the rear-yard landscaping of a Lot, and any such extension will be determined on a case-by-case basis.

The Association shall maintain the front landscaping and the side-yard landscaping extending from the front foundation line of the Home to the rear foundation line, OR TO ANY WALL, BARRIER OR GATE in the side-yard.

(aa) Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Lot Owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

(bb) Lateral and Subjacent Support and Drainage. Any Owner who conducts activities that affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. An Owner shall be solely responsible for all damage proximately caused by drainage from the Owners Lot to adjacent landowners.

(cc) Signs; Commercial Activity - Restrictions. Until such time as Declarant no longer owns any Lot in Elmwood Subdivision, including any lot in expansion areas, there shall be a

restriction on signage within the Property.

An Owner, who owns a Lot for the purpose of building a Home or owns a completed Home and desires to re-sell said Lot/Home to a third-party, may not post a sign anywhere on the Lot or on the Home, or within the Property which advertises the Lot/Home "For Sale;" such provision shall remain 'in force' for as long as Declarant owns a single Lot in Elmwood, as annexed or as may be expanded. Specifically, such Owner MAY NOT and SHALL NOT post such a sign on an Owner's Lot or in a window of the Dwelling thereon.

The purpose of this provision is to provide for an uncluttered streetscape within the Property, throughout the Development Phase of Elmwood. These provisions are not meant to prevent an Owner from selling or renting his/her/its/their Home. An Owner may sell or rent the Owner's Residence by making use of any of the following mediums for promotion and advertising a Home for sale or rent:

- (i) A real estate agent or property management agent of the Owner's choosing.
- (ii) A Multiple Listing Service, real estate agency.
- (iii) Newspapers, magazines, and other such publications.
- (iv) Word of mouth.

After Declarant no longer owns any Lots in Elmwood, as it may be expanded or annexed, the foregoing restrictions shall expire; following the Development Phase, restrictions on signage shall be governed by the following provision:

Except for one (1) "For Sale" sign of not more than seven (7) square feet, no advertising signs, billboards, advertising objects, shall be installed, erected, placed, or otherwise displayed on any Lot or any portion of the Properties.

"For Rent" signs of any type shall not be allowed at any time, in any manner, on any portion of the Property or on a Lot or in the window of a Dwelling; advertising of a rental opportunity may only be undertaken as outlined in this Sub Section. This latter provision regarding "For Rent" signage shall not and may not be waived, modified or stricken by action of any future Board or Amendment.

No commercial activities of any kind whatsoever, nor advertising of same, shall be conducted in any building or on any portion of the Property.

The foregoing restrictions shall not apply at any time to the commercial activities, signs and billboards, if any, of the Declarant, its assigns or successors, or its agents during the construction and sales period through to the completion of Elmwood in keeping with the City-approved Preliminary Plat, or by the Association in furtherance of its powers and purposes set forth hereinafter and in the Association's Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

(dd) Pools and Spas. Swimming pools and spas are allowed only following written approval from St. George City and the prior written approval of the ACC. The ACC shall not consider an application for a pool installation until the Owner presents a engineering study indicating the sub-surface soils are suitable for such; additionally, such engineering report shall provide indication that drainage from such installation will be properly accommodated. An Owner who has received written approval for a pool or spa may not commence construction without, first, entering into an indemnification agreement with the Association that will indemnify the Association for claims, damages, or any other such matters involving said pool or spa.

ARTICLE 4 – OWNERS ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

4.1. **CREATION OF OWNERS ASSOCIATION.** A homeowners association named Elmwood Homeowners Association has been or will be created by Declarant. Every Owner of a Lot within the Property subject to these Covenants, including Declarant, shall be a Member of the Association and by being such Member shall hold Membership in the Association. Each Owner automatically becomes a Member of the Association upon acquisition of fee title to a Lot. Upon disposition of a Lot such Owner's membership automatically terminates and the membership interest is transferred to the new Owner of said Lot. Mortgage holders or other equitable holders of rights shall not be Members of the Association.

4.2. **VOTING RIGHTS.** Each Owner of a Lot within the Property shall be a Member of Elmwood Homeowners Association (hereinafter the "Association") by virtue of these Covenants.

The Association shall have two classes of voting membership:

CLASS-A. Class-A Members are all Members with the exception of the Declarant, until Declarant's membership converts to Class-A membership as provided for herein. Class-A Members are entitled to one vote for each Lot owned. When more than one person or entity holds an interest in any Lot, the group shall be a Member. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

CLASS-B. The Class-B member is the Declarant. The Class-B member is entitled to five (5) votes for each Lot owned. The Class-B membership will cease and be converted to Class-A membership on the happening of one of the following events, whichever first occurs:

- (a) upon conveyance of all Lots, including those in expansion areas, to third-party purchasers;
- (b) the expiration of seven (7) years from the first Lot conveyance to a purchaser; or
- (c) the voluntary surrender of Class-B membership status by the express written action of the Declarant

If Declarant shall exercise its option to add additional Lots by platting additional phases as provided in these Covenants, then at such time as additional phase plats are recorded at the County Recorder's Office, the voting shall be adjusted accordingly, so that Declarant regains Class-B voting status for all Lots owned, even if previously converted to Class-A status in prior phases and according to the terms hereof.

4.3. **BOARD OF DIRECTORS.** The Association shall be governed by a Board of Directors. During the Development Phase, Declarant shall have the right to appoint members of the Board of Directors. As long as Declarant has such right to appoint the Board of Directors, the Board shall consist of three (3) Directors. Declarant's appointees need not be Members of the Association. Following the Development Phase, the Board will be selected in accordance with the Bylaws of the Association; such Board shall consist of not less than five (5) members. All power and authority of the Association is exercisable by the Board of Directors.

4.4. **BYLAWS.** The Bylaws of the Association may be amended as set forth therein. In the event any provision of the Bylaws are inconsistent with the provisions of this Declaration, the provisions of this Declaration shall control.

4.5. **POWERS AND DUTIES OF THE ASSOCIATION.** The Association by action of the Board of Directors on behalf of the Association shall have the duties and powers contained in the Bylaws of the Association. The Association shall have the responsibility for operating, maintaining, and replacing all Association property. The Association shall be responsible for adopting rules and regulations governing utilization of the Association property (subject to the limitations contained herein). To the extent deeded to the Association, the Association shall be obligated to accept ownership of all Association property including amenities designated on any recorded Plat of any portion of Elmwood Subdivision that is made subject to the terms and provisions of these Covenants. On behalf of itself or its Members, the Association shall not participate in or make any claims or assert any causes of action in a "class action lawsuit" or any legal action alleging construction defect, construction error, or negligence of a builder or developer, unless the Association first obtains an affirmative vote of not less than eighty percent (80%) of all Members approving the Association's involvement in the proposed legal action. The provision regarding the Association's involvement in a legal action contained in this Article 4.5 may not and shall not be amended, changed or removed by action of the Board or the Members at any time following recordation of this Declaration.

ARTICLE 5 -- FINANCES AND OPERATIONS

5.1. **CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.** Each Owner of any Lot, by acceptance of a deed or conveyance from Declarant therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to Elmwood Homeowners Association (hereinafter "Association"), assessments or charges and interest, costs of collection and a reasonable attorney fee as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such Lot at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent.

5.2. **PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used by the Association for the improvement, maintenance, repair and preservation of the

landscaping in the front and side yard areas of each Lot, and any Common Area in the Property, as shown on the Plat. 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 and maintaining the Common Areas; the payment of cost of repairing replacing and maintaining the landscaping in the front and side-yard areas 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 the Common Areas which must be replaced on a periodic basis; and other amounts required that the Directors shall determine to be necessary to meet the primary purposes of the Association.

5.3. MAXIMUM AND ANNUAL ASSESSMENT.

5.3.1 Maximum Annual Assessment. Until January 1 following recording of these Covenants, the Maximum Annual Assessment ("Base") shall be One-Thousand Two-Hundred Dollars (\$1,200.00) per Lot. This Base amount shall be the basis of calculation for future Maximum Annual Assessments.

(1) From and after the date referred to above the Base may be increased each budget-year by fifteen percent (15%) above the Base for the previous year, without a vote of the membership.

(2) The Association may change the basis and the maximum of the Maximum Annual Assessment, as fixed by this Section, beyond fifteen percent (15%) for any annual period provided that any such change shall have the assent of two-thirds (2/3) votes of Members, voting in person or by proxy, at a meeting duly called for this purpose.

(3) The purpose of the Maximum Annual Assessment is to provide the Board the ability to meet unexpected cost impacts such as, but not limited to, economic influences, governmental impacts, natural disasters. Accordingly, it is not required that the Annual Assessment, as a result of Board action, be equal to the Base; it may be lower, by virtue of Board evaluation and determination of expected costs. In no case shall the Annual Assessment exceed the Base.

5.3.2 Annual Assessments. Until January 1 following recording of these Covenants, the Annual Assessment established by the Declarant or Board shall be Nine Hundred Sixty Dollars (\$960.00) per Lot and shall remain such until a new budget and new assessment for the subsequent calendar year is approved by the Board.

5.4. 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 Common Area from the activities of St. George City (the "City") or other utility provider in maintaining, repairing or replacing the utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City or other utility provider up to and including the meters

for individual units, and that they are installed and shall be maintained to City or utility provider specifications.

5.5. NOTICE AND QUORUM FOR ANY AUTHORIZED ACTION. Written notice of any meeting called for the purpose of taking any action authorized herein shall be sent to all Members not less than twenty (20) days, no more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

In lieu of the foregoing, mail-in balloting may be used under Board action.

5.6. EMERGENCY ASSESSMENTS. Notwithstanding anything contained in these Protective Covenants, the Board of Directors, without Member approval, may levy Emergency Assessments or increase Annual Assessments or levy Special Assessments for an emergency situation. An emergency situation is one in which the Board finds:

- (1) an expenditure, in its discretion, required by an order of a court, or to settle litigation;
- (2) 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; or
- (3) an expenditure necessary to repair, maintain or cover actual Association expenses for the Properties 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; etc).

Provided, however, that 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 Assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense, 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.

5.7. SINGLE LOT ASSESSMENT. The Association may also levy a special assessment against any Member and Member's Lot to reimburse the Association for costs incurred in bringing a Member and Member's Lot into compliance with the provisions of these Covenants. The single lot assessment may be levied upon the vote of the Board after notice and the opportunity to be heard.

5.8. UNIFORM RATE OF ASSESSMENT; PERIODIC ASSESSMENT. Assessments shall be fixed at a uniform rate for all Lots; provided, however, that assessments shall not accrue against the Declarant or Lots owned by the Declarant, nor shall they accrue against a BLP(s) or Lots owned by a BLP(s).

5.9. EXEMPT PROPERTY. The following property subject to these Protective Covenants is exempt from the assessments created herein:

All property dedicated to and accepted by any local public authority.

All Common Areas.

All Lots owned by Declarant

All Lots sold/transferred by Declarant to a BLP, as so-designated by Declarant.

5.10. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The assessments provided for herein shall commence to accrue upon Settlement/Closing on the sale of a Lot with or without a Home. The first assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination of a budget by the Board, the prior year's Annual Assessment amount shall continue.

At least thirty (30) days prior to the commencement of each new assessment period, the Directors shall send, or cause to be sent, a written notice of the annual assessment to each Owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

The assessment shall be payable on an annual, quarterly or monthly basis and the due dates shall be established by the Directors.

The Directors shall prepare a roster of the properties and the assessments applicable thereto at the same time that it shall fix the amount of the assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any member at reasonable times.

The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

5.11. EFFECT OF NON-PAYMENT OF ASSESSMENTS — REMEDIES OF THE ASSOCIATION. Any assessment or installment thereof not paid within ten (10) 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 Directors shall set by resolution) until paid. In addition, a late fee of \$25.00 for each delinquent installment shall be imposed.

The Directors 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 Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent Lot Owner.

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.

A power of sale is hereby conferred upon the Association that 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. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or by abandonment of the Lot.

5.12. WORKING CAPITAL FUND. Upon acquisition of record title to a Lot by the first Owner thereof, other than Declarant or BLP, a contribution shall be made at Settlement/Closing by or on behalf of the Lot purchaser to the working capital fund of the Association in an amount equal to three (3) months installments of the annual assessment currently in effect at the time of the purchase. Payment of this amount shall be in addition to, not in lieu of, the regular annual assessment and shall not be considered an advance payment of any assessment. The Association shall maintain the working capital fund in a segregated account 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 services for the benefit of the Members. Such payments to this fund shall not be refundable. Declarant may use any working capital funds to defray any of its expenses, or to make up any budget deficits.

5.13. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. 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 that became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after he takes title or from the lien of such later assessments.

5.14. BOOKS, RECORDS AND AUDIT. The Association shall maintain current copies of the Protective Covenants, Articles, Bylaws, Rules and Regulations, 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.

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.

Each Lot/Home Owner subsequent to the original Owner who purchased a Lot/Home from the Declarant shall pay a Processing Fee in the amount of not more than Two-hundred Fifty Dollars (\$250.00) to the Association or its Management Agent. Such Fee shall accommodate the cost of managing changes to the Association records associated with subsequent resales of Lots/Homes.

An ownership holder, an insurer or a 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.

5.15 EXEMPTION. Neither the Declarant, nor Declarant's designated BLP, if any, shall be subject to any of the Assessments or Fees of this Article 5

ARTICLE 6 - INSURANCE

6.1. INSURANCE ON LOTS AND HOMES. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY OR HAZARD INSURANCE COVERAGE FOR LOTS OR HOMES, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO HAS NO DUTY TO INSURE AGAINST ANY NEGLIGENT, CRIMINAL OR TERRORIST ACTS OR EVENTS OCCURRING AT, IN OR ON ANY LOT OR IN ANY HOME.

6.2. ASSESSMENTS. Funds for insurance, as required to be maintained by the Association shall be provided for from annual assessments as set forth herein.

6.3. REQUIRED INSURANCES. The Association shall secure and at all times maintain the following insurance coverages:

(1) Multi-peril Coverage. A multi-peril type policy covering any Common Area and facilities, if any. Such policy shall provide coverage against loss or damage by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, fire, earthquake, hailstorm, water damage, and such other risks as customarily are covered with respect to projects similar to this Project in its construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any coinsurance percentage specified in the policy, but not less than 100% of the full insurable value (based upon replacement cost). Such policy shall include an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, an "increased cost of construction endorsement" or its equivalent, and a "contingent liability from operation of building laws endorsement" or its equivalent. In the event the Declarant has not provided any Common Area, this coverage shall not be required.

(2) Broad form Public Liability Coverage. A comprehensive policy insuring the Owners, the Association, its Directors, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Area. Limits of the liability under such coverage shall not be less than \$ 1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause

or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others. In the event the Declarant has not provided any Common Area, this coverage shall not be required.

6.4. **OPTIONAL INSURANCES.** The Association may choose to secure and maintain the following insurance coverages:

(1) **Fidelity Coverage.** A fidelity policy or policies to protect against dishonest acts on the part of any Director, officer, manager, employee of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than 100% of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression.

6.5. **ADDITIONAL PROVISIONS.** The following additional provisions shall apply with respect to insurance:

(1) **Approval of Policies.** All insurance policies shall be written by a reputable company approved by the Board of Directors.

(2) **Contribution.** Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by any individual Owners or their mortgagees.

(3) **Flood Insurance.** In the event that some part of the Project is now or may in the future be classified by the Housing and Urban Development as an area having special flood hazards, a blanket policy of flood insurance on the flood areas may, at the election of the Board, be maintained in an amount customarily required in projects of this type to ensure against flood damage.

(4) **Premiums Maintained in the Name of the Association as Trustee.** Premiums for all insurance coverage obtained by the Association shall be written in the name of the Association as trustee for the Owners.

(5) **Review of Insurance Policies.** The Board of Directors shall periodically, and whenever demand is made by twenty percent (20%) or more of the Members, review the adequacy of the Association's insurance program and shall report in writing the conclusions and actions of any mortgagee of any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board of Directors shall be available for inspection by the Owners.

(6) **Rebuilding After Damage or Destruction.** In the event of damage or destruction by fire or other casualty to any Common Area covered by insurance written in the name of the Association as trustee for the Owners, the Board of Directors shall, upon receipt of insurance proceeds, contract to rebuild or repair such damage or destroyed portions of the Property to as good a condition as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, whose accounts are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by the signatures of at least two (2) members of the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractors. The contractors shall be required to provide a full performance and payment bond for the repair, construction, or rebuilding of destroyed property. In the event the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, or both, to the same condition as formerly, the Board of Directors shall levy a special assessment against all Owners in such proportions as the Board of Directors deems fair and equitable in light of the damage sustained.

ARTICLE 7 DURATION, ENFORCEMENT, AMENDMENT

7.1. **DURATION OF RESTRICTIONS.** The covenants and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. Until the Declarant or its designee ceases to act as the ACC, the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part only by the Declarant or its successor or assigns by a written recorded instrument.

7.2. **AMENDMENT.** During the Development Phase, Declarant hereby reserves the right to unilaterally amend this Declaration and its amendments and plats without any vote or approval of Owners/Members. Upon completion of the Development Phase, this Declaration and its amendments may be amended by a recorded instrument signed by no less than the Owners of two-thirds (2/3) of the Lots, provided that all signatures must be notarized and obtained within a 180 day period. After the Declarant or its designee ceases to act as the Board and/or the ACC, written notice of any such proposed amendment shall be sent to every Owner of any Lot, part or portion of the Property at least 30 days in advance.

7.3. **LITIGATION/ARBITRATION.** The Board has the authority to enter into a contingent fee agreement with an attorney in a matter involving alleged design or construction defects in the Project only as to the facilities or improvements the Association is responsible for maintaining as provided herein, and such authority can only be exercised after the affirmative vote of a majority of the Members other than Declarant in favor of entering such a contingent fee agreement.

7.4. **ANNEXATION OF ADDITIONAL PROPERTY.** Additional property may be annexed in and made subject to these Covenants by the Declarant, without approval of the

Members. The Declarant shall indicate its intent to have such property bound by these Covenants on the plat of such property, and by recording Declaration of Annexation and thereafter such additional property shall be considered as part of the Property in all respects, and Lots therein shall constitute Lots under these Covenants. Declarants Class-B Membership shall extend to all Lots in the annexed areas. This right of the Declarant shall be assignable to one or more assignees.

7.5. NOTICES. Any notice required under the provisions of this document to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner.

7.6. CONSTRUCTION AND SEVERABILITY. All of the restrictions, covenants and conditions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

7.7. VIOLATION CONSTITUTES NUISANCE. Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by fine(s) levied by the Association or appropriate legal action by the Declarant, the Association, or a Lot Owner or Owners. Remedies hereunder shall be deemed cumulative and not exclusive.

Notwithstanding any other rights of enforcement under this Declaration, its Amendments, the Bylaws, all rules and regulations enacted by the Board, or by applicable law, the Association may impose a fifty-dollar (\$50.00) fine on any Owner who is found in violation of any provision of this Declaration or its amendments, the Association Bylaws or rules and regulations enacted by the Board. The Association may impose an additional fifty dollar (\$50.00) fine on the Owner for each day such violation continues after the ten (10) day notice period provided herein, which additional fines shall constitute a lien upon such Owners Lot and shall be added to the annual assessment as provided in Article 5.

Violation of provisions of the foregoing documents by an Owner's tenant shall be considered as violation of the Owner; fines levied in consequence of tenant violation shall be levied against the Owner, not the tenant.

7.8. ENFORCEMENT. Each and all of the restrictions, covenants and conditions contained in this document is and are for the benefit of the Declarant, the Association and of the Lot Owner or Owners from time to time of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant, the Association, or a Lot Owner or Owners; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of said Lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by

foreclosure, at a trustee's sale, or otherwise. The ACC may levy a fine or penalty not to exceed 50% of the amount of the maximum annual assessment against any Owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing. A fine may be levied for each day of a continuing violation. All attorneys' fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Lot Owner's Lot, and shall also be a personal obligation of said Lot Owner, enforceable at law, until such payment therefore is made.

7.9. RIGHT TO ENFORCE. The provisions contained in these Covenants shall bind and inure to the benefit of and be enforceable by the Declarant, the Association or a Lot Owner or Owners, and each of their legal representative, heirs, successors and assigns, and failure to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

7.10. ASSIGNMENT OF RIGHTS, POWERS. Any and all rights and powers of the Declarant herein contained may be delegated, transferred or assigned. Wherever the term "Declarant," as used herein, includes Declarant and its successors and assigns

ARTICLE 8 - WCWCD NOTICE OF IMPACT

THE WASHINGTON COUNTY WATER CONSERVANCY DISTRICT ("WCWCD") under provisions of its Water Conservancy Program, impacting all developable land in the County, restricts the landscape area which may be irrigated or make alternative use of water, to a maximum of 10,000 square feet. Lots larger than 10,000 square feet in area may be subject to additional WCWCD Fees by means of a WCWCD Water Conservation Easement which is required of the Declarant to be recorded against Lots exceeding 10,000 sq. ft. in total size. Current WCWCD conservancy provisions provide that Lots in excess of 10,000 sq. ft., will be subject to additional WCWCD Impact Fees, as the 'excess square footage in Lot size is put to use requiring additional water usage for additional landscaped area (or other, alternative uses requiring additional water (than is 'assumed' for a 10,000 square foot Lot usage).

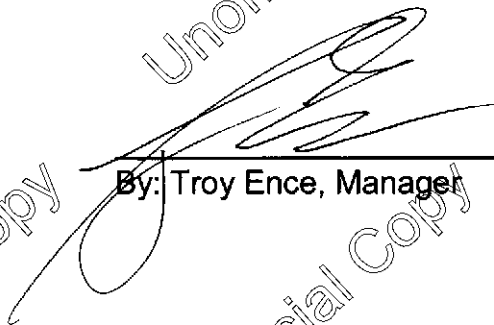
All Lot Owners are bound to observe the WCWCD policies relating to water conservation, as such policies may affect lots in Elmwood Subdivision. All landscaping plans as submitted to the ACC shall indicate compliance with such provisions. It shall be each Lot Owner's responsibility to obtain WCWCD Program Guidelines and comply with applicable provisions as published and amended from time to time by WCWCD.

SECTION 9 - NOTIFICATION AS TO "PHASE 1 PLAT NOTES"

"Notes" are listed on the Official Phase 1 Plat of Elmwood Subdivision, as recorded herewith. Owners are advised to become familiar with these "Notes," as they pertain and affect the Property, as required by the City of St. George. In case the provisions of this Declaration conflict with these "Notes," the meaning, intent and understanding of the "Notes" shall prevail.

IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 19th day of September, 2017.

**DECLARANT
FACTION, LLC**


By: Troy Ence, Manager

ACKNOWLEDGMENT

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 19th day of September, in the year 2017, personally appeared before me Troy Ence, whose identity is personally known to me (or proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he is the Manager of Faction, LLC, and that said document was signed by him in behalf of said Corporation by Authority of its Bylaws, or (Resolution of its Board of Directors), and said Troy Ence acknowledged to me that said Corporation executed the same.

Witness my hand and official seal.


Notary Public, Residing in Washington County, Utah

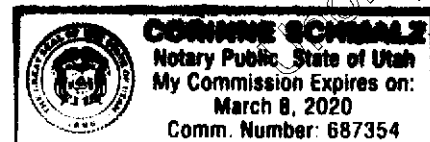


EXHIBIT "A"

Legal Description for Elmwood Subdivision, Phase 1

Parcel No. SG-5-3-10-2241 & SG-5-3-15-110

BEGINNING AT A POINT ON THE EASTERLY BOUNDARY OF THE REDWOOD ESTATES – PHASE 5 SUBDIVISION AS RECORDED AND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT NORTH 88°48'18" WEST ALONG THE SECTION LINE, A DISTANCE OF 435.190 FEET FROM THE SOUTHEAST CORNER OF SECTION 10, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, (BASIS OF BEARING BEING NORTH 88°48'18" WEST BETWEEN THE SOUTHEAST CORNER AND THE SOUTHWEST CORNER OF SAID SECTION 10), AND RUNNING THENCE NORTH 00°56'26" EAST ALONG SAID SUBDIVISION BOUNDARY, A DISTANCE OF 581.168 FEET TO THE NORTHEAST CORNER OF SAID SUBDIVISION BOUNDARY, THENCE SOUTH 88°48'18" EAST 435.854 FEET TO THE EAST LINE OF SAID SECTION 10; THENCE SOUTH 01°00'22" WEST ALONG THE SECTION LINE, A DISTANCE OF 360.975 FEET; THENCE SOUTH 53°41'53" WEST 65.715 FEET; THENCE SOUTH 30°29'18" EAST 100.052 FEET TO A POINT ON THE SECTION LINE; THENCE SOUTH 01°00'22" WEST ALONG THE SECTION LINE, A DISTANCE OF 39.381 FEET TO A POINT NORTH 01°00'22" EAST 55.667 FEET FROM SAID SOUTHEAST CORNER OF SECTION 10, AND A POINT ON THE ARC OF A NON-TANGENT CURVE, (RADIUS POINT BEARS NORTH 28°08'56" WEST); THENCE ALONG THE ARC OF A 504.000 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 29°20'38", A DISTANCE OF 258.123 FEET; THENCE NORTH 88°49'29" WEST 187.980 FEET TO THE SOUTHEAST CORNER OF SAID REDWOOD ESTATES – PHASE 7; THENCE NORTH 00°56'26" EAST ALONG SAID SUBDIVISION BOUNDARY, A DISTANCE OF 9.065 FEET TO THE POINT OF BEGINNING.

CONTAINS 248,575 SQ. FT., (5.706 ACRES)

COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

ELMWOOD SUBDIVISION

ST. GEORGE CITY, UTAH