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**RESTATED AND AMENDED DECLARATION OF COVENANTS CONDITIONS
AND RESTRICTIONS
OF
SUN COUNTRY MEADOWS SOUTH TOWNHOMES
(A Community Intended for and Managed for Housing of Older Persons)**

THIS RESTATED AND AMENDED DECLARATION of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes is made and executed this 12th day of January, 1994, and restates and amends the Amended Declaration of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes recorded March 5, 1990, as Entry No. 361508, in Book 552, at pages 162-179, and the Declaration of Annexation - Phase III, recorded August 8, 1990, as Entry No. 369339, in Book 569, at page 365, and the Declaration of Annexation - Phase IV, recorded January 28, 1992, as Entry No. 378193, in Book 558, at page 784, records of the Washington County Recorder's Office, and affects the property therein described.

RECITALS

WHEREAS, Declarant is the owner of certain real property in the City of St. George, County of Washington, State of Utah, which is more particularly described below; and

WHEREAS, Declarant will convey the properties subject to certain protective covenants, conditions, restrictions, reservations, assessments, charges and liens as hereinafter set forth; and

WHEREAS, at the annual meeting of the Association held on December 14, 1993, more than sixty-seven percent (67%) of all Owners approved the Amendment to Amended Declaration of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes, a true and correct copy of which is attached hereto as Exhibit A, and fifty-one percent (51%) of the affected mortgage holders in the Association consented to said Amendment, the Association desires to incorporate said Amendment to Amended Declaration in the Amended Declaration of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes, recorded March 5, 1990, as Entry No. 361508, in Book 552, at pages 162-179, and fully integrate said documents into this Restated and Amended Declaration of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes; and

WHEREAS, the Amendment to Amended Declaration of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes provides for a Community Intended for and Managed for Housing of Older Persons. The Association shall maintain a policy of prohibiting occupancy of persons under 18 years of age as permitted by the Fair Housing Act.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the properties described below shall be held, sold and conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and the maps previously recorded entitled "Sun Country Meadows South Townhomes Phase I, and Sun Country Meadows South Townhomes Phase II," consisting of two separate sheets, both of which were prepared and certified by Lloyd Reid Pope, a Utah Registered Land Surveyor, which are all for the purpose of protecting the value and desirability of, and which shall be construed as covenants of equitable servitude and shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof:

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BEGINNING AT A POINT ON THE NORTH LINE OF PROPOSED 900 S. ST. SAID POINT BEINGS 1°12'39" E 1324.09 FEET ALONG THE CENTER SECTION LINE AND N 89°57'48" W 380.90 FEET FROM THE 1/4 CORNER OF SECTION 32, T42S, R15W, SLB&M; AND RUNNING THENCE N 89°57'48" W 244.00 FEET ALONG THE NORTH LINE OF 900 SOUTH STREET; THENCE N 0°02'12" E 248.00 FEET TO THE POINT OF A 425.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 43.07 FEET ALONG THE ARC OF SAID CURVE; THENCE S 89°57'48" E 241.82 FEET; THENCE S 0°02'12" W 291.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.629 ACRES.

BEGINNING AT A POINT ON THE WEST BOUNDARY LINE FOR "PALM MEADOWS TOWN HOMES" AND THE NORTH LINE OF 900 SOUTH STREET, SAID POINT BEINGS 1°12'39" E 1324.09 FEET ALONG THE CENTER SECTION LINE AND N 89°57'48" W 33.01 FEET FROM THE NORTH QUARTER CORNER (1/4) OF SECTION 32, T42S, R15W, SLB&M; AND RUNNING THENCE N 89°57'48" W 347.89 FEET; THENCE N 0°02'12" E 291.00 FEET; THENCE N 89°57'48" W 346.00 FEET; THENCE N 0°02'12" E 138.00 FEET; THENCE S 89°57'48" E 288.36 FEET; THENCE S 0°02'12" W 68.00 FEET; THENCE S 89°57'48" E 274.33 FEET TO A POINT ON A 1115.00 FOOT RADIUS CURVE TO THE RIGHT. (LONG CHORD BEARING IS N 0°51'00" W 49.03 FEET); THENCE NORTH ALONG THE ARC OF SAID CURVE 49.03 FEET; THENCE S 89°57'48" E 123.04 FEET TO A POINT ON THE WEST BOUNDARY LINE OF THE "PALM MEADOWS TOWN HOMES"; THENCE S 1°12'39" E 410.12 FEET TO THE POINT OF BEGINNING.

CONTAINING 3.9% ACRES.

ARTICLE I -- DEFINITIONS

Section 1. Restated and Amended Declaration shall mean and refer to this instrument, and any amendments.

Section 2. Plat or Map shall mean and refer to the subdivision plats previously recorded captioned "Sun Country Meadows South Townhomes Phase I, and Sun Country Meadows South Townhomes Phase II" or any replacements thereof, or additions thereto.

Section 3. Properties or the Project shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Restated and Amended Declaration.

Section 4. Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 5. Limited Common Area shall mean and refer to that portion of property owned by the Association and shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant, subject to rights of the Association, as herein set forth.

Section 6. Lot shall mean and refer to any separately numbered and individually described plot of land shown on the plat, designated for private ownership, and shall exclude the common and limited common areas.

Section 7. Townhome shall mean and refer to a single family dwelling, with or without walls or roofs in common with other single family dwelling lots, and shall include fee title to the real property lying directly beneath said single family dwelling.

Section 8. Owner shall mean and refer to the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, those parties shall be treated, as a group, as one "owner."

Section 9. Association shall mean and refer to Sun Country Meadows South Townhomes Association, its successors and assigns.

Section 10. Member shall mean and refer to every person or entity who holds membership in the Association.

Section 11. Trustees shall mean and refer to the governing body of the Association.

Section 12. Declarant shall mean and refer to Kevin Ence and his heirs, successors and assigns.

Section 13. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary."

Section 14. Act shall mean and refer to the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 et seq.

Section 15. Familial Status shall mean and refer to

- (a) one or more individuals who have not attained the age of 18 years being domiciled with:
 - (1) a parent or another person having legal custody of the individual or individuals;
 - (2) the designee of the parent or other person having custody, with the written permission of the parent or other person;
- (b) a parent or other person in the process of acquiring legal custody of one or more individuals who have not attained the age of 18 years; and
- (c) a person who is pregnant.

Section 16. Person shall mean and refer to one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustee, trustees in cases under the United States Bankruptcy Code, receivers, and fiduciaries.

Section 17. Private Fence shall mean and refer to any fence built by a lot owner(s) and not constructed by Declarant.

ARTICLE II--HOUSING FOR OLDER PERSONS

The policies and procedures governing the project as stated herein demonstrate the intent to provide housing for persons 55 years of age or older per townhome; that at least 80% of the Townhomes shall be occupied by at least one person 55 years of age or older; and that there shall exist significant facilities and services specifically designed to meet the physical or social needs of older persons. The policies and proce-

Restated and Amended Declaration of Covenants, Conditions and Restrictions of
Sun Country Meadows South Townhomes
page 3

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dures of the project qualify it as housing for older persons and exempt the project from regulation under the Act as provided by Section 3607 thereof. Thus, to this end, all owners shall be bound by and the Association shall manage the project, in compliance with this Restated and Amended Declaration and specifically in compliance with this Article.

Section 1. **Advertising, Marketing and Sales.** All advertising, marketing and sales materials or displays of any kind shall reflect that the Project is intended for "housing for older persons." All print ads shall contain the following language: "The Sun Country Meadows South Townhome project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Sun Country Meadows South Townhome Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act."

Section 2. **Approved Occupancy.** The project is intended to be managed for occupancy by persons 55 years of age or older, as set forth in the Act and regulations relating thereto. See 24 C.F.R. §§100.304. Under the Act providing housing for older persons exempts the project from the prohibition against discrimination on the basis of familial status and thus permits the following restriction: "NO TOWNHOME MAY BE OCCUPIED BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE, EXCEPT THAT SUCH PERSONS UNDER EIGHTEEN MAY BE PERMITTED TO VISIT FOR REASONABLE PERIODS NOT TO EXCEED TWO CONSECUTIVE WEEKS ON ANY ONE OCCASION OR THIRTY DAYS IN ANY CALENDAR YEAR." In order to assure that the project meets the age requirements for occupants set forth in the Act, the Association shall be responsible for enforcing and carrying out the terms of this Restated and Amended Declaration, specifically including the following:

(a) **Approved Occupant Status.** No person shall be permitted to occupy a townhome in the project unless such person is an "Approved Occupant" in accordance with the terms and provisions hereinafter set forth. If it is determined that an occupant has not obtained "Approved Occupant" status, the Association may pursue any remedies available to them under the Restated and Amended Declaration, including imposition of fines against a violator--fines to be set by Trustees.

(b) **Visitors.** Persons who are not "Approved Occupants" shall not be permitted to occupy any townhome within the project; however, visitors do not have to be approved as occupants and shall be permitted to visit for such reasonable periods of time, and upon such reasonable conditions, as provided for from time to time by the majority of the Trustees, subject to the specific limitations regarding visits by persons under eighteen years of age as hereinabove set forth.

(c) **Procedure For Approving Occupants.** Persons may become "Approved Occupants" based on the following terms and conditions:

(i) A person desiring to become an "Approved Occupant" shall submit to the Trustees, a written "Association Membership Application and Age Verification" form which is attached hereto as Exhibit 1 and shall request issuance of an "Approved Occupant's Identification Card".

(ii) Within fifteen (15) days of receipt of such written application for an "Approved Occupant", the Trustees, shall determine whether such occupancy is consistent with the intent to manage the project as housing for older persons, and, if such occupancy were permitted, whether the project would continue to meet the requirements of the exemption under Section 3607(b)(2)(C) of the Act, and regulations relating thereto. See 24 C.F.R. §§100.304; see also Preamble, 54 Fed. Reg. at pp. 3254.56. If such exemption requirements would continue to be met, the occupancy shall be approved, if not, the occupancy shall be denied.

(iii) Within said fifteen (15) day period, the Trustees shall issue written notification to the Applicant, and to the potential seller or lessor of the Townhome the Applicant desires to purchase or lease, as to the outcome of the Trustee's determination as set forth in Paragraph (ii) above.

(iv) Within ninety (90) days of the issuance of an approval by the Trustees of an Application for an "Approved Occupant", the Approved Applicant must request the issuance of an "Approved Occupant's Identification Card", which request must be accompanied with written proof of said Applicant's legal right to occupy the Townhome, either by virtue of a recorded Deed conveying fee simple title, an executed lease, or other document indicative of said Applicant's right of occupancy, which may be due to gift, devise, inheritance or other transfer document recognized under the laws of the State of Utah for transferring occupancy rights. Upon such timely request by the "Approved Applicant" and timely receipt of appropriate documentation, the Trustees shall issue, or cause to be issued, an "Approved Occupant's Identification Card."

(v) If an Approved Applicant fails to timely request an Approved Occupant's Identification Card, and timely submit appropriate documentation, then such person shall not be permitted occupancy of the Unit. Said person must again apply to become an "Approved Occupant" in accordance with Provisions as set forth in Subsections (i) through (iv) above. An extension of the ninety (90) day period may be granted by the Trustees under such circumstances as reasonably determined by the Trustees.

(vi) Within fifteen (15) days after written request by an Owner, Mortgagee or another person who has been approved for occupancy, the Trustees shall, without charge, provide a statement that such person is listed on the Association records as an "Approved Occupant" for such Unit as set forth in the Association's records.

(vii) The Association shall retain all documents and records relating to its consideration of an application for "Approved Occupant" status.

Section 3. Resale or Rental.

(a) Obligation of Owner: Contents of Agreements. Should a current resident wish to sell or rent his or her townhome, the same procedures described above in Section 2 will be followed. The prospective buyer or renter will be required to complete a Membership Application and Age Verification form. Review of this form will be done pursuant to Section 2. Owners shall inform all prospective purchasers or renters of this procedure and shall provide the Trustees with the information required in subsection (b)(i).

Any sale and rental agreement shall be in writing and shall (1) provide that occupancy of the property shall be subject to the provisions of this Restated and Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and (2) state the following: "The Sun Country Meadows South Townhome project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Sun Country Meadows South Townhome Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act." In additional rental agreements and deeds of trust shall provide that failure by the lessee or trustor to comply with the terms of this Restated and Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association shall be default under the agreement. Sale and Rental Agreements shall be approved by the Association as to form and content prior to execution.

(b) Records. The Association shall maintain the following:

(i) A log or other accounting of all persons making inquiry with respect to the sale or rental of a townhome. This record shall reflect, for each inquiry, the name(s) of such person(s), current address, the age of each prospective occupant, and the date of inquiry.

(ii) For all persons who execute a purchase or lease agreement with an owner, the name of each such person(s), their current address and prospective address in the project, the age of each proposed occupant of the dwelling together with a copy of the documents provided to verify their ages, and the date of the agreement.

(iii) A log or other record of all persons occupying a townhome. Such record to be updated quarterly and shall include names, address, and ages.

(iv) For each subsequent transfer of a townhome, a log or other record identifying the transferor, the transferee, the address of the dwelling, the names and ages of the new occupants, the documentation provided to verify those ages, the method of transfer (sale, lease, devise, etc.), and the date the transfer was approved and by whom.

(v) For the sale, lease, or other transfer of a townhome rejected by the Association, a log identifying the persons involved in the proposed transfer and their current addresses, the ages of the prospective occupants, the reasons for the rejection, and the date of the rejection.

Section 4. Occupancy by at Least One Person 55 years of Age or Older per Townhome.

The Association will not approve any applicant if the granting of "Approved Occupant" status will defeat the primary purpose of the project which is to provide housing for older persons within the meaning of the Act or is done pursuant to a policy of setting aside a certain number of housing units for persons under 55 years of age. To maintain the exemption under the Act for housing of older persons, at least 80% of the townhomes must be occupied by at least one person 55 years of age or older. The primary purpose for permitting 20% of the units to be occupied by person younger than 55 is to prevent the disruption of the lives of surviving spouses and cohabitants under age 55 when the over age 55 member of the household dies or otherwise leaves the townhome. The Department of Housing of Urban Development (HUD), has indicated in the preamble to its regulations that so long as the 80% rule is not violated, occupancy of a townhome can be approved, in the following situations, where there is no occupant over age 55: (1) the

individual has relatives in the project who would benefit from their residence nearby; (2) the individual inherited the property from a former occupant; (3) the individual is the surviving spouse or cohabitant of a former occupant; (4) the individual is a nurse or other medical professional whose presence would be beneficial to a resident. It is expressly provided that the Association shall not set aside a certain number of townhomes for persons under 55 years of age.

Section 5. Applicability. The provisions of this Article shall not apply to prohibit the occupancy of any person presently occupying a townhome in the project before the date of this amendment or prohibit the occupancy by any child born to such occupant while that occupant is a resident of the project, so long as the 80% rule is not violated. Any sale or rental of the townhome by such occupant, however, must be in accordance with the provisions of this Restated and Amended Declaration, specifically including this Article.

ARTICLE III -- PROPERTY RIGHTS

Section 1. Title to the Common Area The Declarant, its successors and assigns, will convey fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, subject to covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Restated and Amended Declaration, easements and rights-of-way of record, and a covenant by the Association to maintain the common area in good repair and condition at all times and to operate the same at its own expense in accordance with high standards, which covenants shall be deemed to run with the land and shall be binding upon the Association, its successors and assigns.

Section 2. Owners' Easements of Enjoyment Every owner shall have a right and easement of use and enjoyment in and to the common area which easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational storage, or parking facility situated upon the common area, but no fees shall be charged for parking appurtenant to each 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 his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (d) With the approval of all first mortgagees on lots and sixty-seven percent (67%) of each class of owners, the right of the Association 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. The granting of easements for utilities or other public purposes consistent with the intended use of such common area by the Association shall not be deemed a transfer within the meaning of the next preceding clause, and such grants may be made by the Association.
- (e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.
- (f) The right of each individual lot owner to the exclusive use of the limited common area adjacent and appurtenant to his respective lot, if any, and the right of each owner to exclusive use of the parking area, if any, designated with his lot number on the plat.
- (g) The terms and conditions of this Restated and Amended Declaration.

Section 3. Limited Common Area Ownership of each lot shall entitle the owner thereof to the exclusive use of the limited common area adjacent and appurtenant thereto, if any. The limited common area which is adjacent and appurtenant to each lot shall be determined by reference to the walls initially constructed on the properties.

Section 4. Delegation of Use Any owner shall be deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such right of enjoyment.

ARTICLE IV -- MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership Every person or entity who is owner of any lot shall be a member of the Association. The term "owner" shall include contract purchasers but shall not include persons or entities who hold an interest merely as security for the performance of an obligation unless and until said holder has acquired title pursuant to foreclosure or proceedings in lieu of foreclosure. Membership shall be appurtenant to and may not be separated from ownership of any lot. Membership in the Association shall automatically transfer upon transfer of title by the record owner to another person or entity.

Section 2. Voting Rights The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all members with the exception of the Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, the group of such persons shall be a member. The vote 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, shall be conclusively presumed to be the vote attributable to the lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-owner of the same lot. In the event 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 shall be the Declarant (as defined in the Restated and Amended Declaration,) and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) upon conveyance of seventy-five percent (75%) of lots to purchasers; or
- (b) the expiration of three (3) years from the first lot conveyance to a purchaser.

ARTICLE V -- FINANCES AND OPERATIONS

Section 1. Creation of the Lien and Personal Obligation of Assessments The Declarant for each lot owned by him within the properties hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this

Restated and Amended Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors-in-title unless expressly assumed by them.

Section 2. Purpose of Assessments The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to the purpose of providing housing for older persons and for purposes related to the use and enjoyment of the common areas and of the townhomes situated upon the properties. The assessments must provide for but are not limited to the payment of taxes and insurance; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges, including without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges. The assessments may further provide for services benefiting persons 55 years of age and older, including without limitation, information and counseling, recreational and referral services, transportation to facilitate access to social, community and continuing education programs, services designed to encourage and assist owners to use the services and facilities available to them, and other such related services.

Section 3. Basis and Maximum Annual Assessments Until January 1 following recording of this Restated and Amended Declaration, the maximum annual assessment shall be One Thousand Dollars (\$1,000.00) per lot. This amount shall be the basis of calculation for future maximum annual assessments.

(a) From and after the date referred to above the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year, without a vote of the membership.

(b) The Trustees may, after consideration of current and future needs of the Association, fix the annual assessment at an amount not to exceed the maximum.

(c) The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty-seven percent (67%) of the votes of each class of members, voting in person or by proxy, at a meeting duly called for this purpose.

Section 4. Special Assessments for Capital Improvements In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

Section 5. Additional Assessments In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy

such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4 and 5
Written notice of any meeting of members called for the purpose of taking any action authorized under Sections 3, 4 or 5 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at such a meeting, another meeting may be called, subject to the notice requirement set forth, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment: Periodic Assessment Both annual and special assessments must be fixed at a uniform rate for all lots. This method of determining the assessments, dues and charges may not be changed without the prior written approval of all first mortgagees.

Both annual and special assessments may be collected on a monthly basis.

Section 8. Date of Commencement of Annual Assessments; Duties of Trustees; Due Dates; Adjustment of Assessments in Certain Cases The annual assessment provided for herein shall commence to accrue on the date fixed by the Trustees of the Association to be the date of commencement.

The first annual assessments shall be adjusted according to the number of months remaining in the calendar year and may commence immediately upon determination by the Trustees or in the absence of such determination, shall commence 60 days after the first lot is conveyed, in an amount equal to 90% of the maximum annual assessment provided in Section 3 above. At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. Receipt of notice shall not be a pre-requisite to validity of the assessment.

The due dates shall be established by the Trustees, upon which dates the assessments for any year shall become due and payable; provided, that the Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year. The due date of any special assessments authorized herein shall be fixed by the Trustees, subject to the same notice and payment requirements pertaining to annual assessments.

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

A first mortgagee who has made a written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on is entitled to a written certificate

from the Association advising of any default in the performance by an owner of any obligation due under the Restated and Amended Declaration which is not cured within sixty (60) days.

Section 9. Effect of Non-Payment of Assessment - Remedies of the Association

Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such different rate as the Trustees shall determine appropriate) until paid.

The Association may bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or may foreclose the lien against the property 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, or may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member, and there shall be added to the amount of such delinquent assessment the costs and expenses of said action, sale or foreclosure, and a reasonable attorney's fee, together with an account for the reasonable rental for the lot from time to time of commencement of the foreclosure and the Association shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the other security.

A power of sale is hereby conferred upon the Association which it may exercise and under which 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 area or by abandonment of his lot.

Section 10. Subordination of the Lien to Mortgages The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage if the mortgage was recorded prior to the date the assessment became due. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot or owner from liability for assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Properties The following property subject to this Restated and Amended Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) Any properties dedicated and accepted by the local public authority and devoted to public use;
- (b) All common and limited common area;

However, no land or improvement devoted to dwelling use shall be exempt from said assessment, charge and lien.

Section 12. Insurance The Trustees of the Association, or their duly authorized agents, shall obtain and continue in effect:

- (a) Property damage insurance, in one of the following alternate forms:
 - (i) a policy of property insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the common area, limited common area, and improvements thereon.

The Association shall also require each owner to obtain a similar policy of

- insurance covering full replacement value (exclusive of land, foundation, excavation and other like items) of his lot and improvements thereon with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association; or
- (ii) In the alternative to the obtaining of insurance specified previously in subparagraph (i) the Association may obtain a "master" or "blanket" policy of insurance equal to full replacement cost (exclusive of land, foundation, excavation and other like items) of the lots, common area, limited common areas and improvements thereon, with an endorsement listing the Association, "for the use and benefit of the lot owners" as an additional named insured with a provision that the policy may not be cancelled upon less than thirty days written notice to the Association.

Insurance procured under this subparagraph (a) shall (1) include an agreed amount endorsement or its equivalent, if available, or an inflation guard endorsement, (2) include construction code endorsement, providing that coverage shall be extended to the cost of construction, if any, required by reason of code provisions requiring changes to undamaged portions of partially demolished premises be made in accordance with current building codes and (3) afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and such other risks as are customarily covered in similar projects. The maximum deductible shall be \$10,000.00 or 1% of the policy amount whichever is lesser, except in case of coverage related to individual units in which case the deductible shall be the \$1,000.00 or 1% of the policy amount, whichever is lesser.

(b) a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the common areas, and covering legal liability that results from employment contracts to which the Association is a party. Such liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners.

(c) fidelity coverage against dishonest acts on the part of managers, Trustees, officers, employees, volunteers management agents or others responsible for handling funds held and collected for the benefit of the owners or members. Said fidelity insurance shall (1) name the Association as obligee or beneficiary, and (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

Section 13. Insurance Policy Provisions Any insurance obtained by the Association shall provide that:

- (a) the named insured under any such policies shall be the Association, "for the use and benefit of the lot owners" and shall have standard mortgagee clauses;
- (b) insurance coverage may not be brought into contribution with insurance purchased by the lot owners or their mortgagees;
- (c) coverage must not be prejudiced by (i) any act or neglect of the lot owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;
- (d) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Association;

(e) the insurer shall waive subrogation as to any and all claims against the Association, the owner of any lots and/or their respective agents, employees or tenants, or invalidity arising from the acts of the insured

(f) the insurer shall waive any defenses based on co-insurance (i.e., the insurance shall be primary, even if a lot owner has other insurance that covers the same loss); and

(g) any provisions that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

Section 14. Insurance Related Provisions Premiums for insurance obtained by the Trustees pursuant to these sections shall be a common expense of the Association and shall be collectable from members of the Association as part of the annual assessments.

Each owner shall insure his own personal property and may insure his real property for his own benefit.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirement for planned unit development projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or owner of a lot within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

All insurance policies shall be reviewed at least annually by the Trustees in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 15. Damage or Destruction In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements, the Association being appointed attorney-in-fact of each owner for this purpose. The Association shall, with concurrence of the mortgagees, if any, upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition. Unless at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees have given their prior written approval the Association shall not be entitled to use insurance proceeds for other than the repair, replacement or reconstruction of the damaged or destroyed property.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of destruction that affects a material portion of the properties, or a material portion of the unit securing its mortgage.

In the event the insurance proceeds are insufficient to pay all the costs of repairing, restoring or rebuilding the Trustees shall be empowered to levy a special assessment against all owners to make up any deficiency for repair of townhomes or limited common area, and the Trustees shall further be empowered to levy a special assessment against all owners to make up any deficiency for repair or rebuilding of the common area or limited common area.

Section 16. Payments by First Mortgagees First mortgagees of lots may jointly or singly pay taxes or other charges which are in default and which have or may become a charge

against any common property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy, for such common property. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 17. Condemnation A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive a written notice of condemnation action that affects a material portion of the properties, or a material portion of the unit securing its mortgage. In any proceedings, negotiations, or settlements for condemnation of all or part of the properties, the Association shall be the agent of the owners and is hereby appointed their attorney-in-fact for such purpose. Any proceeds shall be payable to the Association for the benefit of the owners and their mortgagees, as their interests may appear. In the event the Association is required to interplead such funds, it shall be entitled to reasonable attorney's fees and costs incurred in such action.

Section 18. Management Any agreement for professional management of the property by the developer, sponsor or builder may not exceed three years' duration and must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

Section 19. Books, Records and Audit The Association shall maintain current copies of the Restated and Amended Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by lot owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. A lot owner or holder, insurer or guarantor of a first mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

ARTICLE VI-- ARCHITECTURAL CONTROL COMMITTEE

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties, nor shall any exterior addition or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Trustees or, if such a committee is in existence, by an Architectural Control Committee composed of three (3) or more representatives appointed by the Trustees. In the event said Trustees, or their designated committee fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and compliance with article will be deemed to have been made.

Notwithstanding the foregoing, without the prior written approval of at least sixty-seven percent (67%) of the owners and sixty-seven percent (67%) of first mortgagees, neither the Association nor the Architectural Control Committee shall, by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of lots, the maintenance of the common and limited common areas, including walls, fences, driveways, lawns and plantings.

ARTICLE VII-- EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the common area and limited common area, the Association shall provide exterior maintenance upon each townhome and lot (except as provided in section 2), including, but not limited to the following: paint, repair, and replace and care for roofs, gutters, downspouts, exterior building surfaces, party walls, street signs, lights, mailboxes; trees, shrubs, grass which was a part of the original landscaping, exclusive of backyards; common sidewalks; driveways and other exterior improvements. The cost of regular exterior maintenance shall be a common expense and shall be added to and become part of the regular annual assessment. Notwithstanding anything herein, the Association shall not be responsible for any items covered under the individual homeowner's ten year warranty from Ence Construction during the period of such warranty. Further, any repair to a townhome which could or should have been completed during the period of the Ence Construction ten year homeowner warranty will not be repaired by the Association and shall be an expense of the individual townhome owner.

Section 2. Maintenance by Owner. Each owner shall be solely responsible for maintenance, repair, and replacement of glass, doors, screens and screen doors. Each owner shall also be responsible for any maintenance on his lot or townhome required due to willful or negligent acts. Except as provided in section 1, the individual townhome owner shall further be responsible for maintenance, repair, and replacement of all plants, trees, shrubs, awnings, private sidewalks, privacy fences, patio covers, and patios installed by the owner and not a part of the original construction performed by Declarant. In the event an owner shall fail to perform this maintenance in a matter satisfactory to the Trustees as determined by a two-thirds vote, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which such lot is subject.

Section 3. Access at Reasonable Hours. For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

ARTICLE VIII -- USE RESTRICTIONS

Section 1. General Use Restrictions All of the properties which are subject to this Restated and Amended Declaration of covenants, conditions and restrictions are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties and no subsequent buildings or structures dissimilar to those initially constructed shall be built on any lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

Section 2. Construction, Business and Sales Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Declarant to maintain such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of lots during the period of construction and sale of said lots and upon such portion of the premises as Declarant deems necessary including but not limited to a business office, storage areas, construction yard, signs, model units and sales offices.

Section 3. Signs; Commercial Activity Except for one "For Rent" or "For Sale" sign of not more than five (5) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any

portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

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

Section 5. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except that dogs, cats or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. All pets must be kept in the lots or on a leash when in the common areas. This provision may be made more restrictive by Rule of the Association.

Section 6. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this Restated and Amended Declaration of covenants or as may be allowed by the Trustees of the Association. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area.

As part of the overall program of development of the properties into a residential community and to encourage the marketing thereof, the Declarant shall have the right of use of the common area and facilities thereon, including any community buildings, without charge during the sales and construction period to aid in its marketing activities.

Section 7. Parking Parking spaces within the properties shall be used for parking of motor vehicles actually used by the owner or his immediate family for personal use and not for commercial use. No motor vehicle which is inoperable shall be placed in parking areas, and any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. Such expense of removal shall be secured by the lien for assessment obligations previously provided. If parking spaces are designated on the plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the lot owner. If parking areas are not designated on the plat with lot numbers, the Board may assign vehicle parking space for each lot. Recreational vehicles, boats, travel trailers and similar property may not be parked in common parking areas, and unless permitted by rule of the Association, may not be parked in parking areas designated on the plat for exclusive use.

Section 8. Planting and Gardening No planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon any property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

Section 9. External Apparatus No lot owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Trustees.

Section 10. Exterior Television or Other Antennas No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval and the authorization of the Trustees.

Section 11. Garbage Removal All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

Section 12. Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the properties of any lot. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the properties or any lot.

Section 13. Interior Utilities All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other lots or owners.

ARTICLE IX – EASEMENTS

Section 1. Encroachments Each lot and the property included in the common and limited common areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Utilities There is hereby created a blanket easement upon, across, over and under all of the properties for ingress, egress, limited to water, sewers, gas, telephone and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for all utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement. All utilities that are installed in, upon, under or through the common areas of the properties shall be maintained by the Association.

Section 3. Police, Fire and Ambulance Service An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and common and limited common area in the performance of their duties.

Section 4. Maintenance by Association An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot to perform the duties of maintenance and repair.

Section 5. Other Easements The easements provided for in this Article shall in no way affect any other recorded easement.

ARTICLE X - EXPANSION

Declarant reserves the right at its sole election to expand the Properties to include additional property more particularly described below by unilateral action of Declarant without the consent of owners for a period of seven (7) years from the date of recording of this Restated and Amended Declaration in the office of the Washington County Recorder, County of Washington, State of Utah.

The property all or part of which may be included in one or more expansions, is located in Washington County, Utah, and is more particularly described as follows:

Beginning at a point on the North line of 900 South Street said point being South 1°12'39" East 1324.09 feet along the Center Section Line and North 89°57'48" West 33.01 feet from the North 1/4 Corner of Section 32, Township 42 South, Range 15 West, Salt Lake Base and Meridian and running thence North 89°57'48" West 1141.89 feet to the East boundary of Country Meadows Estates; thence North 0°03'35" West 721.14 feet; thence South 89°44'45" East 555.43 feet; thence North 0°03'35" West 0.38 feet; thence South 89°44'45" East 572.065 feet; thence South 1°12'39" East 717.41 feet to the point of beginning.

Containing 18.734 acres.

Expansion shall occur by the Declarant filing:

1. an additional subdivision plat or plats creating additional planned unit developments on the property described above, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of this Restated and Amended Declaration upon the filing of a Declaration of Annexation and
 2. a Declaration of Annexation (after satisfying conditions hereafter stated),
- which shall state the Declarant's intention to have the area described therein subject to this Restated and Amended Declaration. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to this Restated and Amended Declaration.

Any additional properties annexed hereto by the Declarant shall be exclusively for residential single family dwellings, architecturally compatible to the existing townhomes,

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substantially identical to the townhomes already constructed, constructed out of similar materials, with substantially similar lot size. The maximum number of units to be added shall be 121. The Declarant shall have the sole discretion as to development of the common area in any expansion area and may include any facilities or amenities thereon that Declarant deems necessary and such common areas shall be owned by the Association. Additional common and limited common area shall be added in any expansion area to maintain a ratio of common and limited common area to total lot area similar to the ratio which now exists.

The improvements in an expansion area shall be substantially completed prior to recordation of the Declaration of Annexation. The common area and limited common area in such area shall be deeded by the Declarant to the Association, free and clear of all encumbrances and liens, prior to recordation of the Declaration of Annexation and the Association shall accept the deed to said areas. Owners in the original and expansion areas shall have the same rights to the use and enjoyment of the property and facilities of the Association. Owners in the original and expansion areas shall all have equal membership status in the Association. The liability for assessments of each lot and lot owner in any expansion area shall be equal to the liability of each lot and lot owner in the original properties.

ARTICLE XI -- GENERAL PROVISIONS

Section 1. Enforcement The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Restated and Amended Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed 100% 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.

Section 2. Severability All of said conditions, covenants and reservations contained in this Restated and Amended Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Restated and Amended Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

Section 3. Duration The covenants and restrictions of this Restated and Amended Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any lot subject to this Restated and Amended Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Restated and Amended Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Section 4. **Amendment** The covenants, conditions and restrictions of this Restated and Amended Declaration may be amended by an instrument signed by not less than sixty-seven percent (67%) of the owners. Amendments affecting the rights of first mortgagees shall require their written approval. Prior to making any material amendment thirty (30) days written notice must be given to all holders of liens of first priority, setting forth the nature of the amendment and the date of the members' meeting to vote thereon.

Any amendment of the Restated and Amended Declaration affecting the following shall not be effective without consent of at least fifty-one percent (51%) of the first mortgagees: voting rights; assessments, assessment liens, or subordination of assessment liens; reserves for maintenance, repair and replacement of common areas; responsibility for maintenance and repairs; reallocation of interests in the common or limited common areas, or rights to their use; boundaries of any lot; conversion of lots into common areas or vice versa; expansion or contraction of the properties, or the addition, annexation or withdrawal of property to or from the properties; insurance or fidelity bonds; leasing of townhomes; imposition of any restrictions on an owner's right to sell or transfer his or her unit; a decision by the Association to establish self management when professional management had been required previously by a mortgagee; restoration or repair of the properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Restated and Amended Declaration; any action to terminate the legal status of the properties after substantial destruction or condemnation occurs; or any provisions that expressly benefit mortgage holders, insurers or guarantors. When owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the property, the consent of at least sixty-seven percent (67%) of first mortgagees must be obtained.

A first mortgagee who has made written request including the mortgagee's name and address, and the lot number of the unit it has the mortgage on shall be entitled to receive written notice of any proposed action that requires the consent of first mortgagees.

Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Notwithstanding the foregoing, the Declarant reserves the right for so long as he shall have Class B membership status, to unilaterally amend the Restated and Amended Declaration to comply with City, State, or other laws, or regulations or requirements of holders, insurers, or guarantors of first mortgages.

Section 5. **Notices** Any notice required to be sent under the provisions of this Restated and Amended Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

Section 6. **Gender and Grammar** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 7. **Waivers** No provision contained in the Restated and Amended Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

Section 8. **Topical Headings** The topical headings contained in this Restated and Amended Declaration are for convenience only and do not define, limit or construe the contents of the Restated and Amended Declaration.

AMENDMENT TO AMENDED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS OF
SUN COUNTRY MEADOWS SOUTH TOWNHOMES

THIS AMENDMENT TO THE AMENDED DECLARATION of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes is made and executed this _____ day of _____, 199__ AND AMENDS THE AMENDED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF SUN COUNTRY MEADOWS SOUTH TOWNHOMES recorded March 5, 1990, as Entry No. 361508, in Book 552, at Pages 162-179, and the DECLARATION OF ANNEXATION--PHASE III, recorded August 8, 1990, as Entry No. 369339, in Book 569, at Page 365, and the DECLARATION OF ANNEXATION--PHASE IV, recorded January 28, 1992, as Entry No. 378193, in Book 558, at Page 784, records of the Washington County Recorder's Office, and affects the property described therein.

A. The Following Shall be Added To The Title Of The Project:

A Community Intended For And Managed For Housing of Older Persons.

B. The Third Paragraph In The Recitals Shall Be Modified As Follows:

The undersigned representing sixty-seven percent (67%) of all Lot Owners of the Sun Country Meadows South Townhomes project, have approved the foregoing Amendment to Amended Declaration of Covenants, Conditions and Restrictions of Sun Country Meadows South Townhomes to establish a community intended for and operated for residents 55 years of age or older as defined in the Fair Housing Act, 42 U.S.C. §§ 3601 *et. seq.* As such Sun Country Meadows South Townhomes Association shall maintain a policy of prohibiting residence of persons under 18 years of age as permitted by the Fair Housing Act.

C. Article I, Section 3 Shall Be Modified As Follows:

Section 3. Properties or the Project shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be subjected to this Amended Declaration.

D. Article II, Further Amended To Include the Following Definitions:

Section 14. Act shall mean and refer to the provisions of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601 *et. seq.*

Section 15. Familial Status shall mean and refer to

- (a) one or more individuals who have not attained the age of 18 years being domiciled with:
 - (1) a parent or another person having legal custody of the individual or individuals;
 - (2) the designee of the parent or other person having custody, with the written permission of the parent or other person;
- (b) a parent or other person in the process of acquiring legal custody of one or more individuals who have not attained the age of 18 years; and
- (c) a person who is pregnant.

Section 16. Person shall mean and refer to one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustee, trustees in cases under the United States Bankruptcy Code, receivers, and fiduciaries.

Section 17. Privacy Fence shall mean and refer to any fence built by a lot owner(s) and not constructed by Declarant.

SCMSHA.3.9/10.AMEN TO AM DCC&R'S/267601



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E. The Following Article Shall Be Inserted As Article II.

ARTICLE II--HOUSING FOR OLDER PERSONS

The policies and procedures governing the project as stated herein demonstrate the intent to provide housing for persons 55 years of age or older per townhome; that at least 80% of the Townhomes shall be occupied by at least one person 55 years of age or older; and that there shall exist significant facilities and services specifically designed to meet the physical or social needs of older persons. The policies and procedures of the project qualify it as housing for older persons and exempt the project from regulation under the Act as provided by Section 3607 thereof. Thus, to this end, all owners shall be bound by and the Association shall manage the project, in compliance with this Amended Declaration and specifically in compliance with this Article.

Section 1. Advertising, Marketing and Sales. All advertising, marketing and sales materials or displays of any kind shall reflect that the Project is intended for "housing for older persons." All print ads shall contain the following language: "The Sun Country Meadows South Townhome project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Sun Country Meadows South Townhome Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act."

Section 2. Approved Occupancy. The project is intended to be managed for occupancy by persons 55 years of age or older, as set forth in the Act and regulations relating thereto. See 24 C.F.R. §§100.304. Under the Act providing housing for older persons exempts the project from the prohibition against discrimination on the basis of familial status and thus permits the following restriction: "NO TOWNHOME MAY BE OCCUPIED BY ANY PERSON UNDER EIGHTEEN YEARS OF AGE, EXCEPT THAT SUCH PERSONS UNDER EIGHTEEN MAY BE PERMITTED TO VISIT FOR REASONABLE PERIODS NOT TO EXCEED TWO CONSECUTIVE WEEKS ON ANY ONE OCCASION OR THIRTY DAYS IN ANY CALENDAR YEAR." In order to assure that the project meets the age requirements for occupants set forth in the Act, the Association shall be responsible for enforcing and carrying out the terms of this Amended Declaration, specifically including the following:

(a) Approved Occupant Status. No person shall be permitted to occupy a townhome in the project unless such person is an "Approved Occupant" in accordance with the terms and provisions hereinafter set forth. If it is determined that an occupant has not obtained "Approved Occupant" status, the Association may pursue any remedies available to them under the Amended Declaration, including imposition of fines against a violator--fines to be set by Trustees.

(b) Visitors. Persons who are not "Approved Occupants" shall not be permitted to occupy any townhome within the project; however, visitors do not have to be approved as occupants and shall be permitted to visit for such reasonable periods of time, and upon such reasonable conditions, as provided for from time to time by the majority of the Trustees, subject to the specific limitations regarding visits by persons under eighteen years of age as hereinabove set forth.

(c) Procedure For Approving Occupants. Persons may become "Approved Occupants" based on the following terms and conditions:

(i) A person desiring to become an "Approved Occupant" shall submit to the Trustees, a written "Association Membership Application and Age Verification" form which is attached hereto as Exhibit 1 and shall request issuance of an "Approved Occupant's Identification Card".

(ii) Within fifteen (15) days of receipt of such written application for an "Approved Occupant", the Trustees, shall determine whether such occupancy is consistent with the intent to manage the project as housing for older persons, and, if such occupancy were permitted, whether the project would continue to meet the requirements of the exemption under Section 3607(b)(2)(C) of the Act, and regulations relating thereto. See 24 C.F.R. §§100.304; see also Preamble, 54 Fed. Reg. at pp. 3254.56. If such exemption requirements would continue to be met, the occupancy shall be approved, if not, the occupancy shall be denied.

(iii) Within said fifteen (15) day period, the Trustees shall issue written notification to the Applicant, and to the potential seller or lessor of the Townhome the Applicant desires to purchase or lease, as to the outcome of the Trustee's determination as set forth in Paragraph (ii) above.

(iv) Within ninety (90) days of the issuance of an approval by the Trustees of an Application for an "Approved Occupant", the Approved Applicant must request the issuance of an "Approved Occupant's Identification Card", which request must be accompanied with written proof of said

Applicant's legal right to occupy the Townhome, either by virtue of a recorded Deed conveying fee simple title, an executed lease, or other document indicative of said Applicant's right of occupancy, which may be due to gift, devise, inheritance or other transfer document recognized under the laws of the State of Utah for transferring occupancy rights. Upon such timely request by the "Approved Applicant" and timely receipt of appropriate documentation, the Trustees shall issue, or cause to be issued, an "Approved Occupant's Identification Card."

(v) If an Approved Applicant fails to timely request an Approved Occupant's Identification Card, and timely submit appropriate documentation, then such person shall not be permitted occupancy of the Unit. Said person must again apply to become an "Approved Occupant" in accordance with Provisions as set forth in Subsections (i) through (iv) above. An extension of the ninety (90) day period may be granted by the Trustees under such circumstances as reasonably determined by the Trustees.

(vi) Within fifteen (15) days after written request by an Owner, Mortgagee or an other person who has been approved for occupancy, the Trustees shall, without charge, provide a statement that such person is listed on the Association records as an "Approved Occupant" for such Unit as set forth in the Association's records.

(vii) The Association shall retain all documents and records relating to its consideration of an application for "Approved Occupant" status.

Section 3. Resale or Rental.

(a) Obligation of Owner; Contents of Agreements. Should a current resident wish to sell or rent his or her townhome, the same procedures described above in Section 2 will be followed. The prospective buyer or renter will be required to complete a Membership Application and Age Verification form. Review of this form will be done pursuant to Section 2. Owners shall inform all prospective purchasers or renters of this procedure and shall provide the Trustees with the information required in subsection (b)(i).

Any sale and rental agreement shall be in writing and shall (1) provide that occupancy of the property shall be subject to the provisions of this Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and (2) state the following: "The Sun Country Meadows South Townhome project is intended and operated for residents 55 years of age or older as defined in the Fair Housing Act. As such it is the policy of the Sun Country Meadows South Townhome Association to prohibit permanent residence of persons under 18 years of age as is permitted under an exemption of the Act." In additional rental agreements and deeds of trust shall provide that failure by the lessee or trustor to comply with the terms of this Amended Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association shall be default under the agreement. Sale and Rental Agreements shall be approved by the Association as to form and content prior to execution.

(b) Records. The Association shall maintain the following:

(i) A log or other accounting of all persons making inquiry with respect to the sale or rental of a townhome. This record shall reflect, for each inquiry, the name(s) of such person(s), current address, the age of each prospective occupant, and the date of inquiry.

(ii) For all persons who execute a purchase or lease agreement with an owner, the name of each such person(s), their current address and prospective address in the project, the age of each proposed occupant of the dwelling together with a copy of the documents provided to verify their ages, and the date of the agreement.

(iii) A log or other record of all persons occupying a townhome. Such record to be updated quarterly and shall include names, address, and ages.

(iv) For each subsequent transfer of a townhome, a log or other record identifying the transferor, the transferee, the address of the dwelling, the names and ages of the new occupants, the documentation provided to verify those ages, the method of transfer (sale, lease, devise, etc.), and the date the transfer was approved and by whom.

(v) For the sale, lease, or other transfer of a townhome rejected by the Association, a log identifying the persons involved in the proposed transfer and their current addresses, the ages of the prospective occupants, the reasons for the rejection, and the date of the rejection.

Section 4. Occupancy by at Least One Person 55 years of Age or Older per Townhome.

The Association will not approve any applicant if the granting of "Approved Occupant" status will defeat the primary purpose of the project which is to provide housing for older persons within the meaning of the Act or is done pursuant to a policy of setting aside a certain number of housing units for persons under 55 years of age. To maintain the exemption under the Act for housing of older persons, at least 80% of the

townhomes must be occupied by at least one person 55 years of age or older. The primary purpose for permitting 20% of the units to be occupied by person younger than 55 is to prevent the disruption of the lives of surviving spouses and cohabitants under age 55 when the over age 55 member of the household dies or otherwise leaves the townhome. The Department of Housing of Urban Development (HUD), has indicated in the preamble to its regulations that so long as the 80% rule is not violated, occupancy of a townhome can be approved, in the following situations, where there is no occupant over age 55: (1) the individual has relatives in the project who would benefit from their residence nearby; (2) the individual inherited the property from a former occupant; (3) the individual is the surviving spouse or cohabitant of a former occupant; (4) the individual is a nurse or other medical professional whose presence would be beneficial to a resident. It is expressly provided that the Association shall not set aside a certain number of townhomes for persons under 55 years of age.

Section 5. Applicability. The provisions of this Article shall not apply to prohibit the occupancy of any person presently occupying a townhome in the project before the date of this amendment or prohibit the occupancy by any child born to such occupant while that occupant is a resident of the project, so long as the 80% rule is not violated. Any sale or rental of the townhome by such occupant, however, must be in accordance with the provisions of this Amended Declaration, specifically including this Article.

F. Article II Shall Be Renumbered To Article III.

G. Article III Shall Be Renumbered To Article IV.

H. Article IV Shall Be Renumbered To Article V And Section 2 Thereof Shall Be Modified As Follows:

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to the purpose of providing housing for older persons and for purposes related to the use and enjoyment of the common areas and of the townhomes situated upon the properties. The assessments must provide for but are not limited to, the payment of taxes and insurance; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Trustees, for the payment of other charges, including without limitation, maintenance, management, utility, cable television, trash collection, sewer and water charges. The assessments may further provide for services benefiting persons 55 years of age and older, including without limitation, information and counseling, recreational and referral services, transportation to facilitate access to social, community and continuing education programs, services designed to encourage and assist owners to use the services and facilities available to them, and other such related services.

I. Article V Shall Be Renumbered To Article VI.

J. Article VI Shall Be Renumbered To Article VII And Said Article Shall Be Modified In Its Entirety To Read As Follows:

ARTICLE VII-EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance. In addition to maintenance upon the common area and limited common area, the Association shall provide exterior maintenance upon each townhome and lot (except as provided in section 2), including, but not limited to the following: paint, repair, and replace and care for roofs, gutters, downspouts, exterior building surfaces, party walls, street signs, lights, mailboxes; trees, shrubs, grass which was a part of the original landscaping, exclusive of backyards; common sidewalks; driveways and other exterior improvements. The cost of regular exterior maintenance shall be a common expense and shall be added to and become part of the regular annual assessment. Notwithstanding

anything herein, the Association shall not be responsible for any items covered under the individual homeowner's ten year warranty from Ence Construction during the period of such warranty. Further, any repair to a townhome which could or should have been completed during the period of the Ence Construction ten year homeowner warranty will not be repaired by the Association and shall be an expense of the individual townhome owner.

Section 2. **Maintenance by Owner.** Each owner shall be solely responsible for maintenance, repair, and replacement of glass, doors, screens and screen doors. Each owner shall also be responsible for any maintenance on his lot or townhome required due to willful or negligent acts. Except as provided in section 1, the individual townhome owner shall further be responsible for maintenance, repair, and replacement of all plants, trees, shrubs, awnings, private sidewalks, privacy fences, patio covers, and patios installed by the owner and not a part of the original construction performed by Declarant. In the event an owner shall fail to perform this maintenance in a matter satisfactory to the Trustees as determined by a two-thirds vote, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which such lot is subject.

Section 3. **Access at Reasonable Hours.** For the purpose solely of performing the maintenance required by this article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the owner, to enter upon any lot or limited common area at reasonable hours.

~~K. Article VII Shall Be Renumbered to Article VIII And Section 14 Thereof shall be deleted.~~

~~L. Article VIII Shall Be Renumbered To Article IX.~~

~~M. Article X Shall Be Renumbered To Article XI And Section 1 Thereof Shall Be Modified As Follows:~~

Section 1. **Enforcement.** The Association, the Declarant or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended Declaration, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty not to exceed 100% 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.

~~N. Article XI Shall Be Renumbered To Article XII.~~

Consent to this amendment may be executed in separate counterpart by the owners of the townhomes and first mortgage holder within the Sun Country Meadows South Townhome project. This amendment shall not be recorded until sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the affected mortgage holders in the Association shall consent to this amendment and the president of the Association shall execute a verification to be attached hereto as Exhibit 2 that at least 80% of the townhomes of the project are occupied by at least one person 55 years of age or older. This amendment shall then be effective upon recording.

Dated this 10th day of January, 1994.

SUN COUNTRY MEADOWS SOUTH TOWNHOMES ASSOCIATION

BY [Signature]
President

STATE OF UTAH

)
) ss.

COUNTY OF WASHINGTON

On this 10th day of January, 1998, before me personally appeared Grant Blaylock whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the president of Sun Country Meadows South Townhomes Association, a corporation, and that the foregoing document was signed by him/her on behalf of that corporation by authority of its bylaws or of a resolution of its board of directors, and he/she acknowledged before me that the corporation executed the document and the document was the act of the corporation for its state purpose.

Telina Bishop
Notary Public



EXHIBIT 1

AGE VERIFICATION

SUN COUNTRY MEADOWS SOUTH TOWNHOMES ASSOCIATION

TOWNHOME #: _____

I (We) understand that Sun Country Meadows South Townhomes Association is housing for older persons as defined by the Fair Housing Act of 1988. Therefore, each townhome must be occupied by at least one person 55 years of age or older. Please print your name below, list your birth date and sign where indicated. A copy of a documented proof of age (Driver's License, Birth Certificate, Notarized Statement or other proof of age) is to be attached.

Print Name	Date of Birth	Your Signature	Date

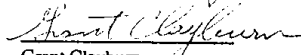
EXHIBIT 2
VERIFICATION

State of Utah,)
 : ss
County of Washington.)

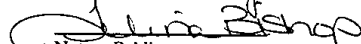
I, Grant Clayburn, under oath avers as follows:

1. I am the president of the Sun Country Meadows South Townhome Association.
2. I have conducted a survey of the occupants of the Sun Country Meadows South Townhome project and verify that at least 80% of the townhomes in the project are occupied by at least one person 55 years of age or older.

IN WITNESS WHEREOF, I have set my hand to this document this 10th of January
1994


Grant Clayburn

Subscribed and sworn to before me on this 10th day of January 1994


Notary Public

