

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS**

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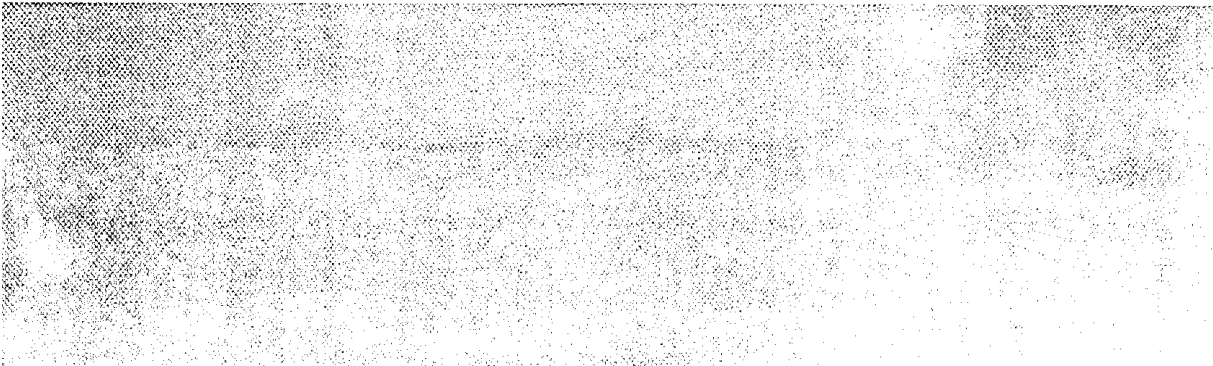
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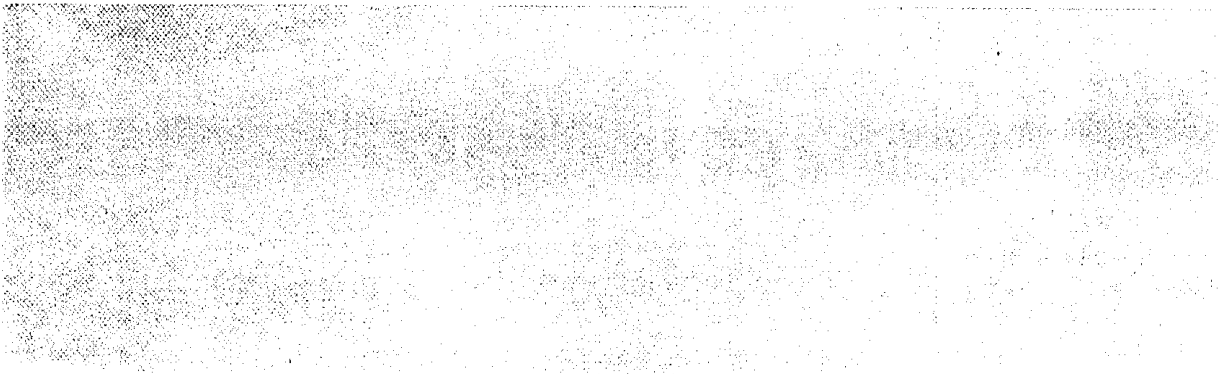
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**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
THE JOSHUAS AT SOUTHGATE
A RESIDENTIAL PLANNED UNIT DEVELOPMENT**

This Declaration of Covenants, Conditions and Restrictions, hereinafter called "Declaration," is made and executed in St. George, Washington County, State of Utah, this 14th day of Jan, 2000, by UTAH RESOURCES INTERNATIONAL, INC., hereinafter called "Declarant."

RECITALS

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

B. The property herein described has been platted and developed under the name of THE JOSHUAS AT SOUTHGATE, a Residential Planned Unit Development, said official plat having been or to be recorded in the Office of the Washington County Recorder, State of Utah.

C. Declarant desires to provide for preservation and enhancement of the property values and amenities of the Property and for maintenance of the Common Areas. To this end and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the properties referred to in Recital A, as well as those described in Exhibit A attached hereto if and at such time as said lands are annexed to THE JOSHUAS AT SOUTHGATE, to the covenants, restrictions, easements, charges, and liens hereinafter set forth, each and all of which are for the benefit of the Property and each Owner thereof.

DECLARATION

Declarant declares that all of the Property described below shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, assessments, charges, and liens, and to the Plat Map recorded concurrently. This is for the purpose of protecting the value and desirability of said Property. This Declaration and the Official Plat Map shall be construed as covenants of equitable servitude which shall run with the land and shall be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

The Property is located in the City of St. George, Washington County, State of Utah, and is more particularly described as follows:

THE JOSHUAS AT SOUTHGATE - PHASE 1

BEGINNING AT A POINT N89°25'30"W, 2178.50 FEET ALONG THE 1/4 SECTION LINE AND S01°29'41"W 1283.69 FEET FROM THE CENTER OF SECTION 1, T43S, R16W, SLB&M, SAID POINT BEING ON THE BOUNDARY OF SOUTHGATE PARTNERS "GOLF COURSE EXTENSION PARCEL NO. 2"; THENCE ALONG SAID PARCEL NO. 2 S48°40'51"W, 74.70 FEET; THENCE LEAVING SAID BOUNDARY S33°11'14"W, 423.51 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE N54°06'16"W 20.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL NO. 2; THENCE N35°53'44"E, 5.00 FEET TO THE NORTHEAST CORNER OF THE LEGACY NO. 5 TOWN HOME SUBDIVISION PARCEL NO. 1; THENCE ALONG SAID PARCEL NO. 1 N60°30'26"W, 76.56 FEET; THENCE S73°01'29"W, 51.75 FEET; THENCE S06°51'19"W, 75.53 FEET; THENCE LEAVING SAID SUBDIVISION PARCEL NO. 1 S89°44'32"W, 159.50 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TONAQUINT DRIVE SAID POINT BEING ON A 1731.41 FOOT RADIUS CURVE (RADIUS POINT BEARS S78°26'10"E); THENCE RADIALLY N78°26'10"W, 40.00 FEET TO A POINT ON THE CENTERLINE OF TONAQUINT DRIVE; THENCE EASTERLY, 38.05 FEET ALONG THE ARC OF A 1771.41 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 1°13'51"; THENCE N12°47'41"E, 330.45 FEET; THENCE LEAVING SAID CENTERLINE S77°12'19"E, 114.55 FEET; THENCE S59°04'00"E, 12.78 FEET TO A POINT ON A 114.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS S59°04'00"E); THENCE 9.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 4°57'44"; THENCE N35°53'34"E, 33.69 FEET; THENCE S54°06'16"E, 95.00 FEET; THENCE N35°53'44"E, 180.43 FEET; THENCE N29°09'16"E, 15.84 FEET; THENCE N41°14'09"E, 50.27 FEET; THENCE N48°40'51"E, 73.81 FEET; THENCE S41°19'09"E, 70.00 FEET; THENCE N48°40'51"E, 7.08 FEET; THENCE S41°19'09"E, 99.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.699 ACRES

BASIS OF BEARING IS N89°25'30"W [GRID BEARING] BETWEEN THE CENTER 1/4 CORNER (HCN NO. 265) AND THE WEST 1/4 CORNER (HCN NO. 157) AS SHOWN ON THE CITY OF ST. GEORGE HORIZONTAL CONTROL NETWORK.

ARTICLE I
DEFINITIONS

The following definitions control in this Declaration. Words and phrases not defined in this Article shall be given their ordinary meaning.

Section 1. "Board of Trustees" means and refers to the governing board of the Association.

Section 2. "Common Areas" means and refers to all real property (including the improvements thereon) owned by the Association or hereafter acquired for the common use and enjoyment of the Members and not dedicated for the general public located in Washington County, State of Utah. The Association may increase the Common Areas by purchasing additional adjacent land as provided herein, and (1) filing additional subdivision plats in the Washington County Recorder's Office and stating thereon that said land is subject to this Declaration and any supplemental or amended declarations, and (2) filing a Supplement to this Declaration in accordance with the terms of this Declaration and the same thereafter shall be included within this definition as Common Areas, and such shall also be additional land in the legal description of the Project.

Section 3. "Conveyance" means and refers to an actual conveyance of fee title to any Lot to any Owner by warranty deed or other document of title, and shall not mean the mere execution of an installment sales contract.

Section 4. "Declarant" means and refers to UTAH RESOURCES INTERNATIONAL, INC., its successors and assigns, if such successors or assigns shall acquire more than one (1) undeveloped Lot from Declarant for the purpose of development.

Section 5. "Declaration" means and refers to this Declaration of Covenants, Conditions and Restrictions applicable to the Property recorded in the Office of the Recorder of Washington County, State of Utah, and any amendments thereto.

Section 6. "Expandable Land" means and refers to those portions of land set forth in Exhibit A attached hereto and made a part hereof, which sets forth property which Declarant may obtain in order to expand the THE JOSHUAS AT SOUTHGATE.

Section 7. "Family" means persons related by blood or marriage, by legal adoption, or by operation of law.

Section 8. "Homeowners Association" or "Association" means and refers to THE JOSHUAS AT SOUTHGATE TOWNHOMES HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, its successors and assigns.

Section 9. "Limited Common Areas" means and refers to those Common Areas as referred to herein and designated on the Plat as reserved for use of a certain Unit to the exclusion of the other Units which are or may include the driveways, adjacent yard areas, and patios, which lead to or are associated with certain Units or both. Limited Common Areas are a subcategory of and are included in Common Areas.

Section 10. “Living Unit” or “Unit” means and refers to a structure which is designed and intended for use and occupancy as a single family residence, together with all improvements located on the Lot concerned which are used in conjunction with such residence.

Section 11. “Lot” means and refers to any plot of land shown upon any recorded subdivision map of the Property, and specifically excepting the Common Areas and areas dedicated to the use of the general public.

Section 12. “Member” means and refers to every person or entity holding membership in the Association.

Section 13. “Mortgagee” means and refers to any person named as a first mortgagee or beneficiary, owner or holder of a first deed of trust.

Section 14. “Owner” or “Lot Owner” means and refers to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract purchasers, but excluding those having an interest merely as security for the performance of an obligation.

Section 15. “Plat” or “Plat Map” mean and refer to THE JOSHUAS AT SOUTHGATE, a Residential Planned Unit Development, as recorded in the Office of the County Recorder of Washington County, State of Utah, and as the same may hereafter be modified, amended, supplemented, or expanded in accordance with the provisions of this Declaration or supplements to this Declaration which may occur in conjunction with the expansion of the Project as provided herein. “Plat” and “Plat Map” shall also mean and refer to subsequent official Plats as the same may be filed in the Office of the Washington County Recorder from time to time by Declarant, with each such Plat or Plat Map designating additional Lots and Common Areas added to and lying within the Expandable Property.

Section 16. “Property,” “Properties” and “Project” mean and refer to that certain real property herein before described and such additions thereto as may hereafter be subject to this Declaration or any supplements to this Declaration which occur in conjunction with an expansion of the Project as provided herein.

Section 17. “Supplementary Declaration” means and refers to any supplementary declaration of covenants, conditions, and restrictions, or similar instrument, which may extend the provisions of this Declaration to all or any portion within the Expandable Land and containing such complementary or amended provisions for such additional land as are required.

Section 18. “Townhome” means and refers to a single family dwelling unit constructed on a Lot.

Section 19. "Utilities" means and refers to public utilities, including, but not limited to, sewer, water, drainage, natural gas, telephone, electricity, and cable television.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment to Common Areas. Every Lot Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Areas, which easement is appurtenant to and passes with title to every Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws and with the approval of two-thirds (2/3) of each Class of Members, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said property; the rights of any such mortgagee in said property to be subordinate to the rights of the Owners hereunder;

(b) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for each separate violation of the Association's published Rules and Regulations. Notwithstanding the foregoing, for any continuing and ongoing violation of the Association's published Rules and Regulations, the Member's voting right will be suspended until the rule or regulation is complied with.

(c) With the approval of all the holders of first mortgage liens on Lots, and Owner approval as provided below, the right of the Association to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as agreed to by the Members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Areas by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication, sale or transfer shall be effective unless (i) all Owners consent in writing to the dedication, sale or transfer, or (ii) an instrument has been signed by two-thirds (2/3) of each Class of Members agreeing to such dedication, sale, or transfer.

(d) The right of the Association, with the approval of two-thirds (2/3) of each Class of Members to enter into agreements or leases which provide for use of the Common Areas by a similar association in consideration for use of the Common Areas and facilities of the other association, or for cash consideration.

(e) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure.

(f) The right of the Association, with the approval of all of the holders of first mortgage liens on Lots and Owner approval as provided below, to sell, exchange, hypothecate, alienate, encumber, dedicate, release or transfer all or part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. The granting of easements for public utilities or other public purposes consistent with the intended use of such Common Areas by the Association shall not be deemed a transfer within the meaning of this clause. No such dedication, sale or transfer shall be effective unless (i) all Owners consent in writing to the dedication, sale or transfer, or (ii) an instrument has been signed by two-thirds (2/3) of each Class of Members agreeing to such dedication, sale, or transfer.

(g) The right of Declarant and Association to grant and reserve easements and rights-of-way through, under, over and across the Common Areas for installation, maintenance and inspection of lines and appurtenances for public or private utilities and construction of additional Townhomes.

(h) The right of the City of St. George and any other governmental entity or quasi-governmental body having jurisdiction over the Property to access and have rights of ingress and egress over and across any street, parking area, walkway, or open spaces contained within the Property for purposes of providing police and fire protection and providing any other governmental or municipal service.

(i) The terms of this Declaration.

(j) The right of the Association to make, publish and enforce rules and regulations pertaining to the use of all Common Areas and facilities by Owners, guests, invitees and tenants of Owners.

Section 2. Owners' Easements of Enjoyment to Limited Common Areas. Each Lot Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas appurtenant to certain Lots and identified on the official Plat of the Project. The exclusive right to use and occupy such Limited Common Areas shall be appurtenant to and shall pass with the title to every Lot with which it is associated. A Lot Owner's exclusive right of use and occupancy of Limited Common Areas reserved for their Lot shall be subject to and in accordance with the Declaration and Bylaws.

Section 3. Delegation of Use. Any Owner may designate, in accordance with the Bylaws, his right of enjoyment to the Common Areas to the members of his family, his tenants, guests or contract purchasers who reside on the Property. All such use by family members, tenants, contract purchasers or guests shall be subject to this Declaration, including all supplements and amendments thereto, the Bylaws, and the Rules and Regulations. Any damage caused to the

Common Areas or property owned by the Association by a Member or by a person who has been delegated the right to use and enjoy such Common Areas by an Owner shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Areas shall be an assessment charged to the Lot Owner as provided in Article IV.

Section 4. Title to Common Areas. Declarant covenants that it will on or prior to the last conveyance of a Lot in a particular phase, convey to the Association fee simple title to all Common Areas within said phase. Declarant further agrees that it will discharge all liens and encumbrances on said Common Areas on or before the sale and closing of the last Lot in each phase, except for (i) any state of facts an accurate survey may show, (ii) covenants, restrictions, easements, encumbrances and liens created by or pursuant to this Declaration, and (iii) easements and rights-of-way of record.

Section 5. Limitation of Homeowners Association. The Association shall not be entitled to take any of the following actions unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each Lot mortgaged) or two-thirds (2/3) of the Class A Members shall have first given their prior written approval:

(a) To act, or by omitting to act, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas owned, directly or indirectly, by the Association for the benefit of the Lots. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas is not a transfer within the meaning of this clause.

(b) To act, or by omitting to act, to change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Lots or Living Units, the exterior maintenance of the Lots or Living Units, the maintenance of the Common Areas, or the upkeep of the Common Areas.

(c) To fail to maintain fire and extended coverage on insurable Common Areas on a current replacement cost basis in an amount equal to at least one hundred percent (100%) of the insurable value (based on current replacement cost).

(d) To use hazard insurance proceeds for losses to any Common Areas for other than the repair, replacement, or reconstruction of the Common Areas.

(e) To purchase additional adjacent land as Common Areas.

(f) Except that nothing contained herein shall be construed to limit or prohibit the right of the Board of Trustees from entering into joint use agreements with neighboring associations for the purpose of enhancing and promoting the property rights of Owners consistent with the spirit and intent of this Declaration.

Section 6. Encroachments. If any portion of a Living Unit constructed, or if any portion of a Living Unit reconstructed so as to substantially duplicate the Living Unit originally constructed, encroaches upon the Common Areas or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the development, or due to the installation of necessary items or appurtenances to the living unit including, but not limited to, patios, heating/cooling units, eaves, etc., a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Board of Trustees. The Board of Trustees shall initially consist of three (3) members. Declarant reserves the right to appoint the Board of Trustees and to exercise all powers and responsibilities associated with the Board of Trustees until December 31, 2006.

Section 3. Classes of Membership. The Association shall have two (2) classes of membership:

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned.

(b) Class B. The Class B Member shall be Declarant and shall be entitled to five (5) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or,
- (ii) on December 31, 2006.

(c) Changes in Voting Procedure. If Declarant shall exercise its option to expand and add additional Lots, then at such time as additional subdivision plats are filed, the voting shall be adjusted accordingly, and Declarant may regain its Class B voting status for all Lots owned, even if previously converted to Class A status in prior phases and according to the terms hereof.

(d) Multiple Ownership Interests. In the event there is more than one (1) Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any such Owner,

whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

(e) Limitation on Members' Votes. Electing members to the Board of Trustees shall be subject to the reservation in Article III, Section 2.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. Declarant (as applicable) and Members, for each Lot owned within the Property, hereby covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association (i) annual assessments, (ii) special assessments, and (iii) additional assessments as set forth in this Declaration. Assessments shall be levied, fixed, established and collected from time to time as provided below. The assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Notwithstanding any assessment obligation otherwise described in this section, Declarant shall pay no assessment (annual, special or additional) unless a Unit owned by Declarant is constructed on a Lot and is occupied as a residence.

Section 2. Purpose of Assessments. Assessments levied by the Association shall be used exclusively for the purpose of promoting the maintenance, health, safety, and welfare of residents of the Property. The use made by the Association of funds obtained from assessments may include payment of the cost of taxes and insurance on the Common Areas; management and supervision of the Common Areas, including personal property owned by the Association; repair and maintenance of the Common Areas; funding the purchase of (i) personal property to be used by Association Members, and (ii) adjacent land to be used as Common Areas; establishing and funding a reserve to cover the repair or replacement of improvements within the Common Areas; and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or its Articles of Incorporation.

Section 3. Basis and Maximum of Annual Assessments. Each Lot on which a Living Unit has been constructed and which is certified for occupancy shall be assessed according to the schedule set forth below. The annual assessment for each Lot shall be determined by the Board of Trustees setting an annual base assessment.

The Board of Trustees shall fix the base annual assessment at an amount not in excess of the maximum allowed.

(a) Until December 31, 2000, the maximum annual base assessment shall be \$504.00 per Lot (or \$42.00 per month).

(b) From and after December 31, 2000, the maximum annual assessment may be increased each year not more than fifteen percent (15%) above the maximum assessment for the previous year without approval of two-thirds (2/3) of the Members of each Class. Any such vote must be taken at a meeting to be called for this purpose.

(c) The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken incident to (i) a merger or consolidation which the Association is authorized to participate in under its Articles of Incorporation, or (ii) an expansion of the Project in phases.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association, upon assent of two-thirds (2/3) of Class A Members at a meeting called for this purpose, may levy in any assessment year a special assessment applicable to the year for the purpose of (i) defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property related thereto; (ii) purchasing adjacent property as additional Common Areas; (iii) providing for capital improvements and personal property to be used by Association Members upon the Common Areas on additional phases of the Project; and (iv) such other purpose as two-thirds (2/3) of all Class A Members approve.

Section 5. Reserve Fund. The Association shall maintain a reserve fund, funded by annual assessments. Special assessments for the purpose of defraying, in whole or in part, the cost of any construction (including new construction), reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property related thereto on any phase of the Project, will be allowed only after the reserve fund has been expended and not replenished.

Section 6. Declarant Subsidy. Declarant or its assigns shall have the obligation to subsidize the Association until Declarant's rights as a Class B Member terminate as provided in Article III, Section 3. Subsidization shall be defined as the payment of the reasonable cost needs of the Association for ordinary and necessary maintenance expenses of the Common Areas of uncompleted (i.e., all Lots not being sold to first-time buyers) phases of the Project (excluding construction, reconstruction, repair or replacement of any capital improvement upon the Common Areas, including fixtures and personal property related thereto).

Section 7. Notice and Quorum for any Action Authorized Under Article IV, Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Article IV, Sections 3 and 4, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast two-thirds (2/3) of all the votes of each Class of Members shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum of the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. Rate of Assessment. Annual and special assessments shall be fixed at uniform rates for all Lots and may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments; Regular Assessments; Due Dates. The assessment provided for herein shall commence to accrue on the first day of the month following conveyance to an Owner. The first assessment shall be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Board of Trustees as to the amount of said assessment, the assessment shall be an amount equal to ninety percent (90%) of the maximum assessment provided above.

The Board of Trustees shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates for payment of said assessment shall be established by the Board of Trustees.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Furthermore, a first mortgage holder, upon request, is entitled to a written certificate from the Association advising of any default by the Lot Owner of any obligation not cured within sixty (60) days. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 10. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) Non-Payment. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the Association shall have the remedies provided in subsection (b) below.

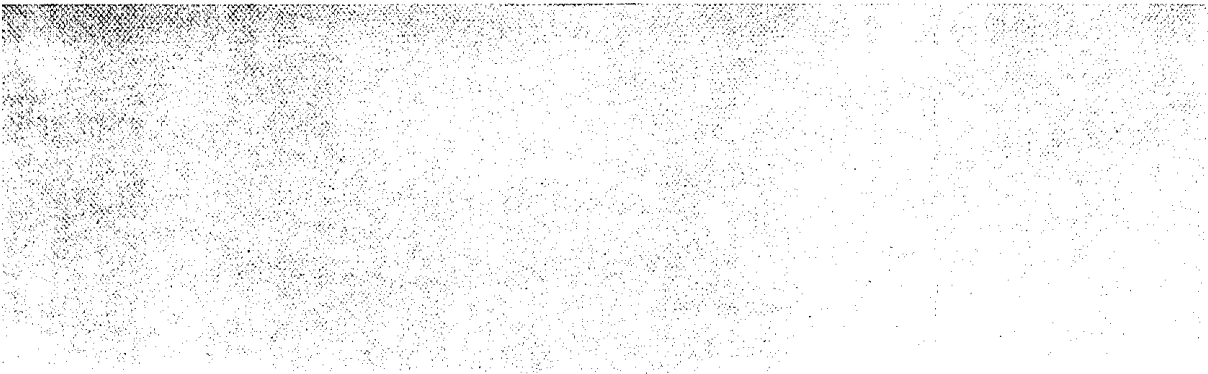
(b) Remedies. For any delinquent payment as provided in subsection (a) above, the Association shall be entitled to all or any combination of the following remedies against a Member whose assessment is delinquent:

- (1) File a notice of lien on the Lot.
- (2) Bring an action at law against the Owner personally obligated to pay for the following:
 - (a) the principal amount of the unpaid assessment;
 - (b) interest from the date of delinquency at a rate of eighteen percent (18%) per annum, or such other rate as the Board of Trustees may establish from time to time; and
 - (c) all court costs and attorney fees.
- (3) Foreclose the lien against the Lot to satisfy judgment rendered for the full amount of the delinquent assessment, including interest, costs and attorney fees as specified above.
- (4) Levy, as an additional sum to such delinquent assessment, all expenses for preparation of the notice of lien (whether or not prepared by an attorney), court costs, interest and reasonable attorney fees.
- (5) Withhold and interrupt the service of utilities to any such Unit on which the assessment is delinquent.

(c) Right to Bring Action. Each Owner, by his acceptance of a deed to a Lot, hereby expressly grants to the Association, its successors, assigns or agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

Section 11. Non-use and Abandonment. No Owner may waive or escape personal liability for the assessments provided for herein, nor release the Lot owned by him from the liens and charges hereof, by non-use of any Common Areas or Limited Common Areas or abandonment of his Lot.

Section 12. Subordination of Lien to Mortgages. The lien created hereunder upon any Lot shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any first mortgage (meaning a mortgage with first priority over other mortgages) or



equivalent security interest on any Lot, made in good faith and for value, recorded prior to the date any such assessment becomes due. Any holder of a first mortgage lien or equivalent security interest on a Lot who comes into possession by virtue of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale will take said Lot and the improvements appurtenant thereto free of any claims for unpaid assessment charges against said Lot which accrue prior to the time such holder comes into possession of the Lot, except for the claims for a share of such expenses or charge resulting from a reallocation of such assessment or charges to all Lots including the mortgaged Lot. Any first mortgagee, who obtains title to a Lot in the development pursuant to the remedies in the mortgage/deed of trust or through foreclosure of the mortgage/deed of trust or any other security instrument, shall not be liable for more than six (6) months of the Lot's unpaid dues or charges which have accrued before the acquisition of title to the Lot by the mortgagee through foreclosure. However, no such sale or transfer shall relieve such Lot from liability for any assessments which thereafter become due or from the lien thereof.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- (a) All Properties dedicated to and accepted by any local public authority;
- (b) The Common Areas; and
- (c) Lots owned by Declarant, except for Lots owned by Declarant on which a unit is constructed which is occupied as a residence.

Section 14. 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 the streets or other Common Areas 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.

ARTICLE V **SEPARATION WALLS**

Section 1. Separation Walls. Declarant may construct block landscaping walls which border the Project and separate same from other developments and public rights-of-way; such walls shall be deemed separation walls and shall be a part of the Common Areas. Separation walls do not include yard walls and fences constructed by Lot Owners. It is the intent of Declarant that all such separation walls shall be deemed to be owned and to be maintained by the Association. Separation

walls shall also include walls constructed by Declarant for the purpose of separating the Common Areas from Lots.

Section 2. General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article, general rules of law regarding separation walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 3. Repair and Maintenance. The Association shall be responsible for the cost of reasonable repair and maintenance. The Association shall have the right to enter upon any Owner's Lot for the purpose of repairing and maintaining separation walls. No changes or alterations to separation walls shall be made by Lot Owners without approval of the Architectural Control Committee. The cost of repair for damage caused to separation walls by the willful or negligent acts of Lot Owners or their guests and assigns shall be a lien upon such Owner's Lot and shall be added to the annual assessment as provided in Article IV.

Section 4. Destruction by Fire or Other Casualty. If a separation wall is destroyed or damaged by fire or other casualty, any Owner or the Association who has used the wall may restore it, and if other Owners or the Association thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, except as to the right of any such Owner or the Association to call for a larger contribution from the Owners under any rule of law regarding liability for negligent or willful acts or omissions.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner or the Association who by negligent or willful act causes a separation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner or the Association to contribution from any other Owner and/or the Association under this Article shall be appurtenant to the land and shall pass to such successors in title or assignees of the Association.

Section 7. Arbitration. In the event of any dispute arising concerning a separation wall, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 8. Applicability. This Article shall be applicable to walls built by Declarant for the purposes stated in Section 1.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. The Board of Trustees of the Association shall appoint a three (3) member committee (hereinafter sometimes referred to as "ACC"), the

function of which shall be to insure that all exteriors of Living Units and landscaping within the Property harmonize with existing surroundings and structures. Declarant shall have the right to appoint members of the ACC until the happening of either of the following events, whichever occurs earlier: (i) seven (7) years after the recording of this Declaration; or (ii) within one hundred twenty (120) days after seventy-five percent (75%) of the Lots owned by Declarant in the Project are sold.

When Declarant ceases to have the power to appoint, it shall give written notice of this event to each Lot Owner and thereafter the Lot Owners shall, within sixty (60) calendar days, select new members of the ACC by one (1) vote for each Lot. The initial ACC members shall be elected for terms of one, two and three years each, and thereafter ACC members shall be elected for terms of three years. The ACC need not be composed of Owners. If such ACC is not appointed, the Board itself shall perform the duties required of the ACC. No member of the ACC shall receive any compensation or make any charge for services rendered. The ACC shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection upon request.

Section 2. Submission to ACC. No Living Unit, accessory or addition to a Living Unit, landscaping, or other improvement of a Lot shall be constructed, maintained, or accomplished, and no alteration, repainting or refurbishing of the exterior of any Living Unit shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the ACC. No planting, replanting or replacing of any plant, seedling, flower, tree, bush, shrub, grass or lawn area shall be done or undertaken on any Lot by any Owner unless first approved by the ACC.

Section 3. Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the ACC shall use its best judgment to insure that all improvements, construction, landscaping, and alterations on Lots within the Property conform to and harmonize with existing surroundings and structures. The ACC may, by majority vote, promulgate rules and regulations to guide it in its activities. By majority vote of the Lot Owners, by one (1) vote for each Lot, any rule or regulation may be amended, adopted or repealed.

Section 4. Approval Procedure. Any plans and specifications submitted to the ACC shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the ACC fails to take any action within such period, it shall be deemed to have approved the material submitted.

Section 5. Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the ACC shall be diligently pursued to completion. If reasonably necessary to enable such improvement, construction, landscaping or alteration, the person or persons carrying out the same shall be entitled to temporary use and occupancy of unimproved portions of the Common Areas in the vicinity of the activity.

Section 6. Disclaimer of Liability. Neither the ACC nor any member thereof acting in good faith shall be liable to the Association or any Owner for any damage, loss, or prejudice suffered or claimed on account of:

- (a) The approval or rejection of, or the failure to approve or reject, any plans, drawings or specifications;
- (b) The development or manner of development of any of the Property; or
- (c) Any engineering or other defect in approved plans and specifications.

Section 7. Non-Waiver. The approval of the ACC of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the ACC to disapprove any similar plans and specifications subsequently submitted.

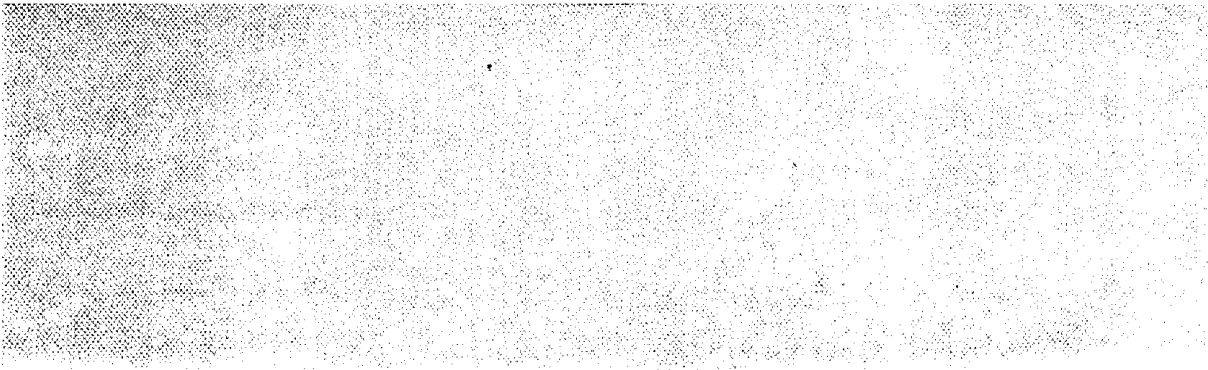
Section 8. Exception for Declarant. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time during the seven (7) year period following the date on which this Declaration is filed of record in the Office of the County Recorder of Washington County, State of Utah. Declarant shall further have the right to designate the location and design of any Common Areas amenities, provided that Declarant shall not be required to provide any such amenities by virtue of this Section.

Section 9. Declarant's Obligation. Declarant hereby covenants in favor of each Owner:

- (a) That all Living Units erected by it, or caused to be erected by it, and all improvements of the Common Areas accomplished by it shall be architecturally compatible with respect to one another; and
- (b) That on or before seven (7) years from the date on which this Declaration is filed for record in the Office of the County Recorder of Washington County, State of Utah, there shall be substantially completed and usable as part of the Common Areas all open spaces in the locations shown on the plat.

ARTICLE VII
DEVELOPMENT STANDARDS

Section 1. Intent. The intent of the The Joshuas at Southgate Townhomes Development Standards is to protect the views of the Southgate Golf Course; to respect the climatic conditions and environment of the region and to maintain and enhance Project property values. Also within this intent, it is important to allow individual ideas to flourish and enrich the Project, provided that standards are maintained.



These Development Standards provide an overall framework and comprehensive set of guidelines to allow the Project to develop and progress in an orderly and cohesive manner. They establish criteria for architectural style and design, landscape concepts, site improvements, colors and materials. They also establish a process for judicious review of proposed new developments and changes within the Project. These Development Standards additionally set forth the means by which the standards and guidelines contained herein may be changed and amended to better serve the needs of an evolving Project.

These standards have been adopted by the Board of Trustees of THE JOSHUAS AT SOUTHGATE TOWNHOMES HOMEOWNERS ASSOCIATION and the Architectural Control Committee pursuant to this Declaration.

To the extent that any local government ordinance, building code or regulation requires a more restrictive standard than that found in these Development Standards, the local government standard shall prevail. To the extent that the local ordinance is less restrictive than these Development Standards or this Declaration, the Development Standards and this Declaration shall prevail.

Section 2. Development Standards.

(a) Building Type. All buildings shall conform to one of the approved plans designated by the developer for this project. However, modifications to an approved plan may be allowed if approved by the ACC as long as such modifications otherwise comply with the requirements of this section. All buildings shall be one story, detached single family residences, and every residence shall have as a minimum a fully enclosed two-car garage. The residence must be located within the "pad area" as defined on the Plat. Construction of residences shall be of southwest design, approved by the ACC, and of new materials. All residences shall have a paved driveway connecting parking to the street and allowing for safe ingress and egress. All structures shall be constructed in accordance with the zoning and building ordinances of the City of St. George.

(b) Ownership. The Property is divided into two (2) classifications of ownership: (i) Private, which shall consist of all residential Lots as defined on the subdivision Plat; and (ii) Common Areas, including Limited Common Areas, which shall consist of all lands other than Private. The Common Areas shall be owned by the Association and are dedicated as open space for the enjoyment of all Owners. The Common Areas shall be maintained by the Association.

(c) Driveways. All driveways, walkways, parking areas and other areas of similar nature shall be constructed out of concrete. They must be built in accordance with the approved plans and specifications and be completed with the residence.

(d) Easements. Easements for installation and maintenance of utilities, drainage facilities, and ingress and egress are reserved as shown upon the recorded Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements, or which may impede ingress and egress. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

(e) Temporary Structures. No structure of a temporary nature, trailer, mobile home, tent, shack, garage, barn or other outbuilding shall be used at any time as a residence, either temporarily or permanently. No lumber, material or bulk materials shall be kept, stored or allowed to accumulate on any Lot, except building or other materials to be used in connection with any construction, alteration or improvement approved in accordance with the terms hereof.

(f) Landscaping. Landscaping shall be of desert southwest design and installed by the builder as part of the sale of the Living Unit. All landscaping shall be maintained by the Association at a high standard compatible with other Living Units and Common Areas in the Project.

(g) Sight Distance at Intersections. No fence, wall, or hedge which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street property lines extended. The same sight line limitations shall apply on a driveway or alley. No tree shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(h) Slope and Drainage Control. No Lot Owner shall be permitted to install or maintain any structure or other material or plant any vegetation whatsoever or undertake any other activities which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels. Every effort shall be taken to ensure positive drainage away from structures to reduce the potential for water to migrate below foundations. The slope control areas of each Lot and all improvements and landscaping in them shall be maintained continuously by the Association, except for those improvements for which a public authority or utility is responsible.

(i) Golf Course Lots. To the extent permitted by applicable law, all Lot Owners bordering the Southgate Golf Course by acceptance of their deed to their property shall be deemed to have waived conclusively any right to bring any action or proceeding or to assert

a claim in any manner, against Declarant or against the owner or operator of the Southgate Golf Course for compensation for loss, damage or injury to person or property caused by the impact of a golf ball which enters upon any portion of the Lot Owner's property from the Golf Course, whether or not such ball is struck in a negligent manner, but excluding willful or intentional acts. Owners of all Lots bordering the golf course or green belt may construct suitable screening to protect windows, patios and outdoor living areas from errant golf balls and/or a protective screening device that includes a patio cover extension, so long as the protective screening device and accompanying patio cover extension, installed by the Owner is not less six (6) feet from the Southgate Golf Course or green belt, at the base of the structure, and not less than five (5) feet from the Southgate Golf Course or green belt to any overhang portion of the patio cover extension. Approved screening materials include, but are not limited to, diamond mesh expanded metal and clear Lexan. Screening materials shall be consistent with those used by Declarant as to composition, type, detailing and color. Plans and samples for all screening must be approved by the ACC prior to installation. Screen materials shall at all times be kept in good condition and repair and properly painted and otherwise finished by the Owner and at Owner's sole and separate expense. "No Trespassing" signs shall be limited to posting at the rear of homes bordering the golf course and shall be limited to one (1) sign per Lot. Signs will be mounted only on metal posts or attached to existing walls/fencing, at a height not to exceed thirty (30) inches above the finished grade. Posts must be made of anodized or brushed aluminum, fiberglass or steel painted so that it will not rust and must be approved by the ACC prior to installation. The maximum size sign for this purpose shall be 24" x 24". Declarant shall have no responsibility whatsoever for the use, maintenance, repair, continuance or operation of the Golf Course.

(j) Preferred Builder. Declarant shall have the exclusive right to designate a Preferred Builder for any Lot in the Project.

Section 3. Re-Subdivision of Lots. No Lot in this Project shall be divided, subdivided, partitioned, parceled or broken up into smaller lots or units. Consolidation of two Lots into one, or three Lots into two, may be done at the option of Declarant. In any event, the side-yard setbacks shall be no less than ten (10) feet between buildings.

Section 4. Damages. Any damage inflicted on existing improvements such as curbs, gutters, streets, or concrete sidewalks by the Owner or their guests, assigns, agents or independent contractors of any particular Lot must be repaired as soon as possible after such damage is discovered, and expense of such repair shall be borne by the Owner. Damages repaired by the Association shall be an assessment to the Lot as provided in Article IV.

ARTICLE VIII

OPERATION AND MAINTENANCE

Section 1. Maintenance by the Association. All areas maintained by the Association shall be maintained so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any Lot. All outside portions, fixtures and exteriors of each living unit shall be maintained by the Association except for the heating/cooling unit and glass windows. The Association shall maintain the exterior landscaping on all lots and Common Areas, including all grass, shrubs, plants, and trees. The Association shall also maintain, repair, set, and regulate all irrigation and sprinkler systems and shall have access to all such systems, including sprinkler timing devices and clocks.

Section 2. Maintenance by Owner. No Lot Owner shall be permitted to allow the accumulation of rubbish or other unsightly items on or around his lot. In the event any Owner shall allow such an accumulation in a manner inconsistent with the terms of this Declaration as determined by the ACC, the Board of Trustees shall have the right to enter upon such Lot to clean up the Lot and exterior of the Living Unit. The cost of such clean up shall be added to and become part of the assessment to which such Lot is subject.

Section 3. Utilities. Each Lot Owner shall pay for all utility services which are separately billed or metered to individual Lots, including water, sewer, garbage, electrical and telephone service as the same may be provided by the City of St. George or other party furnishing such service. The Association shall pay for the general monthly services of Cable Television. The Board of Trustees shall determine what additional utility services, if any, shall be included in the general utility services for which the Association will be responsible for payment as an Association debt.

Section 4. Indemnification by Declarant. Declarant, by this instrument and recording of the same, agrees to indemnify the Association against loss or damage arising or accruing on the Common Areas and facilities, including personal property owned by the Association, as a result of the construction activities of Declarant, builders, or agents.

Section 5. Repair of Damage Caused by an Owner, His Tenants, Guests, Invitees and Pets. Any damage caused to the Common Areas and facilities, including personal property owned by the Association, by an Owner, his tenant, guest, invitee, minor child or any animal or pet under the control of or owned by any one or a combination of the foregoing shall create an assessable debt owed by such Owner to the Association. If the Owner does not adequately repair the damage, the Association, after approval of a majority vote of the Board of Trustees, shall have the right, through its agents, employees, or through an independent contractor, to repair the damage. The costs incurred by the Association in repairing the damage shall be added to and become an assessment against the Lot as described in Article IV, Section 1 of this Declaration, and the same may be enforced and collected as provided in Section 10 of said Article. Any repair work of damage

undertaken by the Owner or agent of Owner pursuant to this Section must first submit plans to the ACC and obtain approval required as provided at Article VI herein.

Section 6. Management Agreements. The Board may employ a manager or other persons who may contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a manager or managing agent shall be terminable by the Association for cause upon thirty (30) days written notice thereof. Any such contract, and any other contract with a third person wherein the third person is to furnish goods or services for any Common Areas or the Association, shall be limited to a duration of one (1) year; provided, however, that such contracts may be renewable for successive one (1) year periods with the approval, for each such period, by a vote or written consent of a majority of the Board of Trustees.

Section 7. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to ensure that the Property and the Common Areas are maintained and used in a manner consistent with the interests of the Owners. The Association also has authority to adopt a schedule of monetary fines that may be imposed on Owners for the willful violation of rules that have been duly adopted and published by the Association, provided that such fines in all cases shall be reasonable and shall be subject to review and hearing by the Board if contested. Any such fine imposed and not contested, or any such fine upheld after review and hearing by the Board shall be payable within thirty (30) days. Unpaid fines may be assessed against a Lot and collected as provided in Article IV. Reasonable rules may include, but shall not be limited to, rules to allocate the fair use of all Common Areas.

ARTICLE IX INSURANCE

Section 1. INSURANCE ON LOTS AND HOMES. THE ASSOCIATION SHALL HAVE NO DUTY OR RESPONSIBILITY TO PROCURE OR MAINTAIN ANY FIRE, LIABILITY, FLOOD, EARTHQUAKE OR SIMILAR CASUALTY COVERAGE FOR A LOT OR HOME, OR FOR THE CONTENTS OF ANY HOME. THE ASSOCIATION ALSO SHALL HAVE NO DUTY TO INSURE AGAINST ANY NEGLIGENT ACTS OR EVENTS OCCURRING AT OR ON A LOT OR IN A HOME.

Section 2. Assessments. Funds for insurance to be maintained by the Association shall be provided for from annual assessments as allowed in Article IV.

Section 3. Required Insurances. The Association shall secure and at all times maintain the following insurance coverages:

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

(b) Broad-Form Public Liability Coverage. A comprehensive policy insuring the Owners, the Association, its trustees, officers, agents and employees against all damage or injury caused by their negligence to the public, invitees, tenants or Owners on the Common Areas. Limits of the liability under such coverage shall not be less than \$1,000,000 for all claims for personal injury or property damage, or both, arising out of a single occurrence. Such policy or policies shall be issued on a comprehensive liability basis, shall provide that cross-insurers as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claim of an Owner in the development because of negligent acts of the Association or others.

(c) Fidelity Coverage. A fidelity policy or policies to protect against dishonest acts on the part of a trustee(s), officer(s), manager, employee(s) of the Association and all others, including volunteers, who handle or are responsible for handling funds of the Association. The fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than 100% of the reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of employee or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums) without at least thirty (30) days prior written notice to all first mortgagees of Lots.

Section 4. Additional Provisions. The following additional provisions shall apply with respect to insurance:

(a) Approval of Policies. All policies shall be written by a reputable company approved by the Board of Trustees.

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

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

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

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

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

ARTICLE X EASEMENTS

Section 1. Minor Encroachments. Each Lot and the Common Areas shall be subject to an easement for encroachment created by construction, repair, shifting, settling or movement, and overhangs as designed or constructed by the Declarant, as well as for the installation of necessary

items or appurtenances of the living unit including, but not limited to, patios, heating/cooling units, eaves, etc. A valid easement for said encroachment and for the maintenance of same, so long as it stands, shall and does exist.

Section 2. Utilities Easement. There is hereby granted and conveyed to the City of St. George, Questar Gas Company, cable television companies, and telephone companies, their successors and assigns, a blanket easement upon, across, over and under all of the Common Areas, including Limited Common Areas, for ingress, egress, installation, replacing, repairing and maintaining all utilities at such location or locations as said entity deems appropriate. By virtue of this easement, it shall be expressly permissible for the providing electrical, cable television and/or telephone company to construct and maintain the necessary equipment on said property and to affix and maintain electrical, cable television and/or telephone wires, circuits and conduits on, across and under the Common Areas, including Limited Common Areas.

An easement is further granted to all police, fire protection, ambulance, trash collection and all similar persons to enter upon the streets and Common Areas, including Limited Common Areas, in the performance of their duties. Notwithstanding anything to the contrary contained in this Article, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as (i) initially planned and approved by the Declarant, or thereafter approved by the Board of Trustees, or (ii) as required by the City of St. George. Should any company furnishing a service conveyed by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof.

Section 3. Easements for Ingress and Egress and Landscaping Maintenance and Repair. An easement is hereby granted to the Association, its officers, agents, employees and to any management company selected by the Association to enter in or to cross over the Common Areas, including Limited Common Areas, and any Lot to perform the duties of maintenance and repair of the Unit, yard and landscape area, or Common Areas provided for herein. Specifically, an easement is granted to the Association, its officers, agents, employees, and to any management company selected by the Association over Lots to maintain, repair, set, and regulate irrigation and sprinkling systems, including the right and easement to allow for over spray and irrigation across Lot lines when such irrigation and sprinkler use is an efficient and practical method to allow the Association to adequately maintain the landscaping. The Declarant expressly reserves to itself, its successors and assigns, a perpetual easement and right, at their own risk, to cross the Common Areas, including Limited Common Areas, by the streets, roads, paths, or walkways established or hereafter established on said property by the Declarant, for the purpose of having access for ingress and egress to such other adjacent property upon which Declarant has or may create additional planned unit development Lots or townhomes.

Section 4. Easements by Declarant. Declarant reserves the right to enter upon, connect to, access, or otherwise make use of the streets, water lines, sewer lines, drainage lines, power lines

and other utilities on the property in the process of developing new phases and/or adjacent properties.

Section 5. Easement for Sewer Line As more fully described in an Easement Agreement attached hereto as Exhibit B, Kay H. Traveller Development, Inc. has been granted a sewer line easement across Declarant's property, which includes the property that is the subject of these CC&Rs. It is therefore understood that the sewer line servicing the property also services or will yet service other properties, including properties pertaining to The Legacy Homeowners Association, and in fact said line originates and ends in The Legacy subdivision. In keeping with the terms of the easement agreement referred to above whereby each respective property owner shall be responsible for maintenance of that portion of the line that rests on its property, the Association shall be solely responsible to maintain the line underlying The Joshuas at Southgate.

ARTICLE XI
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Declarant. Declarant reserves the right and option to expand the Property and annex all or any part of the Expandable Land. (See Exhibit A hereto for the legal description of the Expandable Land.) The annexation of such land shall become effective upon the recordation in the Office of the County Recorder of Washington County, State of Utah, of a Supplementary Declaration which (i) describes the land to be annexed or incorporated by reference within the description contained in the Expandable Land portion of the Plat, (ii) declares that the annexed land is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Property subject to the Declaration, and (iii) sets forth such additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When such annexation becomes effective, the annexed land shall become part of the Property and shall be subject to the terms of the covenants, conditions and restrictions, which terms, covenants, conditions and restrictions run with the land, of this Declaration or any supplements or amendments thereto. Such annexation may be accomplished in one or more annexations or phases without limitation as to size or location within the Expandable Land.

Section 2. Limitation on Annexation. Declarant's right to annex said land to the Property shall be subject to the following limitations:

(a) The annexed land must be part of the Expandable Land described in Exhibit A hereto.

(b) Any additional planned unit developments annexed hereto by Declarant shall be comprised exclusively of residential single family residences, architecturally compatible to the existing Units; substantially similar to the Units already constructed; and constructed out of similar materials. Declarant shall have the sole discretion to develop the Common

Areas in said additions and to include any facilities or amenities thereon that Declarant deems necessary.

(c) Declarant's right to annex land to the Property shall expire ten (10) years after this Declaration is filed of record in the Office of the County Recorder of Washington County, State of Utah.

(d) If additional planned unit developments are created by Declarant pursuant to the terms of this Article, the Owners in said additions shall be Members of the Association and shall have the same rights to the use and enjoyment of the Common Areas of the Association as any other Member. The Common Areas in any such additional planned unit developments as set forth therein shall be deeded by Declarant to the Association, free and clear of all encumbrances and liens prior to the conveyance of the first Lot on said Plat and the Association must accept the deed to said Common Areas.

(e) Any Units to be added by annexation shall be architecturally compatible with THE JOSHUAS AT SOUTHGATE, a Residential Planned Unit Development, as determined by Declarant in its sole discretion, but no assurances can be given as to the precise design, layout, site design, or materials to be used in construction, or the precise Common Areas and related improvements.

(f) Declarant shall not effectuate any annexation of land which would cause the total number of Living Units existing on or planned for the Property to exceed one hundred fifty (150) total Lots.

(g) Declarant reserves unto itself and its assigns the right to create Common Areas and facilities within the annexed land. No assurances can therefore be made with respect to such items.

Section 3. Supplementary Declaration. The annexation authorized under the foregoing Section 2 shall be made by filing of record a Supplementary Declaration of Covenants, Conditions, and Restrictions or similar instrument, with respect to the annexed property which shall extend the plan of this Declaration to such property.

Such Supplementary Declaration contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration.

The recordation of such Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this

Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in said real property shall automatically be Members of the Association.

Section 4. Declarant's Right to Amend. Until all portions of the expandable land are included in the Project, or until the right to enlarge the Project through the addition of tracts or subdivisions terminates, whichever event first occurs, Declarant shall have, and is hereby vested with, the right to unilaterally amend the Declaration or the Plat, or both, as may be reasonable, necessary or desirable (i) to adjust the boundaries of the Lots, including adding or deleting Common Areas (by filing an appropriate amended plat) to accommodate design changes or changes in type of Units or adjustments to Lot configuration; (ii) to more accurately express the intent of any provisions of the Declaration in the light of then existing circumstances or information; (iii) to better ensure, in light of existing circumstances or information, workability of the arrangement which is contemplated by the Declaration; or (iv) to facilitate the practical, technical, administrative or functional integration of any additional tract or subdivision into the Project.

Section 5. Expansion of Definitions. In the event the Property is expanded, the Definitions used in this Declaration automatically shall be expanded to encompass and refer to the Property as so expanded, e.g., "Property" shall mean the real property described herein, plus any additional real property annexed by a Supplementary Declaration or by Supplementary Declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

ARTICLE XII USE RESTRICTIONS

Section 1. Residential Use. No Owner shall occupy or use his Townhome, or permit the same or any part thereof to be occupied or used for any purpose other than as a private residence for the Owner and the Owner's family or the Owner's lessees or guests.

Section 2. Fee Conveyed. Each Lot shall be conveyed as a separately designated and legally described freehold estate, the Owner taking title in fee simple, subject to the terms, conditions, and provisions hereof.

Section 3. Uses Permitted by Declarant During Construction. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for Declarant on the building of said Townhomes to maintain during the period of construction and sale of said Townhomes, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of said Townhomes, including, but without limitation, a business office, storage area, construction yard, signs, model Townhomes and sales office.

Section 4. Commercial Activities. Lots shall not be used for, or in connection with, the conduct of any trade, business, professional or commercial activity of any kind without applying for a Conditional Use Permit to the City of St. George.

Section 5. Household Pets Permitted. No animals, livestock or poultry of any kind may be raised, bred, or kept on any Lot or in the Common Areas, except that dogs, cats or other household pets, not to exceed two (2) dogs and/or two (2) cats with a total not to exceed three (3) animals, may be kept in Townhomes or upon any Lot, provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the Owner's premises or on a leash under the handler's control. Pets shall not be kept if they create noise that, in the opinion of the Association, constitutes a nuisance.

Section 6. Signs. No signs of any kind shall be displayed to the public view on or from any Lot or the Common Areas except that an Owner may display a "For Sale" sign, subject to all restrictions of this provision. Each "For Sale" sign displayed shall be of a dimension, color, and print style as determined by the Association and all such signs shall be made to the exact specifications designated by the Association, including dimension, color, printed information, etc.

The Association shall maintain sign specifications and an example "For Sale" sign in the office of the Association for use by Members. No more than one (1) "For Sale" sign shall be displayed on any one (1) Unit at a time and the location of where the sign shall be placed on the Townhome Unit shall be determined by the Association. This restriction is applicable to all Townhomes offered for sale within the Project, whether by Owner or through a real estate broker. This provision is not applicable to the Declarant for so long as the Declarant is engaged in the development of The Joshuas at Southgate and selling new Townhome Units.

Section 7. Obstruction of the Common Areas. There shall be no obstruction of the Common Areas. Nothing shall be stored in the Common Areas without the prior consent of the Board of Trustees.

Section 8. Prohibited Uses. No noxious or offensive activities shall be carried on in any Lot or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owners.

Section 9. Oil and Mining Operations. No drilling, quarrying or mining operations of any kind shall be permitted upon or in any Lot or upon the Common Areas.

Section 10. Hazardous or Toxic Wastes. No bulk storage of hazardous materials, hazardous wastes, hazardous substances, or toxic substances or any toxin regulated by any federal or state statute or regulation may be stored upon the Property; specifically, but not by way of limitation, including garages of the Units.

Section 11. Alteration of Common Areas. Nothing shall be altered or constructed, or removed from the Common Areas, except with the written consent of the Board of Trustees.

Section 12. Time Sharing Prohibited. Neither Declarant nor an Owner of any Lot shall allow or permit any form of time sharing ownership.

Section 13. Leases. Any lease agreement between an Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, Articles of Incorporation of the Association, and the Bylaws of said Association, and all Rules and Regulations enacted and published by the Board of Trustees, and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. Furthermore, all leases shall be in writing and a copy of each signed lease shall be left in the office of the Association by the Owner. Any damage caused by the lessee, including guests of lessee, to the Common Areas and exteriors of the buildings shall be an additional assessment upon the Lot as provided by Article VI, Section 5.

Section 14. Recreational Vehicles. No recreational vehicle may be parked within the Common Areas or upon the driveways of each Unit for longer than a twenty-four (24) hour period. In no event shall any recreational vehicle be used for camping or for overnight accommodations by the Lot Owner or by the Lot Owner's guests in and on the Common Areas of the development or on the driveways of the Units, except on that property specially designated by the Board for this purpose. The Board of Trustees is specifically empowered to enforce this provision by having vehicles in violation towed and stored at the Owner's expense.

Section 15. Landscaping. No modification to the Landscaping maintained by the Association shall be allowed or permitted to remain on any Lot, except as specifically allowed and permitted by the ACC.

Section 16. Walls and Fences. No walls, fences, privacy fences, or privacy screens, whether permanent or temporary, other than those originally constructed by Declarant or builder shall be erected, constructed, placed or permitted to remain on any Lot without approval of the ACC.

Section 17. Swimming Pools and Hot Tubs. No above-ground or ground level swimming pools, lap pools, therapy pools, hot tubs, whirlpools, or jacuzzis shall be erected, constructed, placed or permitted to remain on any Lot.

Section 18. Electronic Antennas. No television, radio, or other electronic antenna, satellite dish or devise of any similar type shall be erected, constructed, placed or permitted to remain on a Lot, or on the exterior of any Unit or any other structure located on a Lot, unless approved in writing by the ACC.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Enforcement. The Association, or Declarant or its successors in interest, or any Owner shall have the right to sue for damages, or to enforce by any proceeding injunctive or otherwise, at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, Bylaws, or Articles of Incorporation. Specifically, the aggrieved party may seek to recover damages and for injunctive relief. Failure by the Association to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party to any action brought to enforce the terms of this Declaration or any supplements or amendments thereto shall be entitled to costs and reasonable attorney fees.

Section 2. Soils. Based on initial soils testing performed by Kleinfelder, Inc. and Applied Geotechnical for the Declarant, it was found that soils at the location of The Joshuas at Southgate consist largely of clay with some expansive properties. As a result of this finding, further geotechnical studies are required prior to construction in order to effectively deal with the properties of the soil. Declarant shall not be responsible for any damages incurred due to failure to perform or follow any such studies.

Section 3. Severability, Construction and Validity of Restrictions. All of said conditions, covenants and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of said conditions, covenants or restrictions, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant or restriction, or any part thereof, shall be thereby affected or impaired; and Declarant and Lot Owners, their successors, heirs or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason become unenforceable.

Section 4. Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years.

Section 5. Gender and Grammar. The singular wherever used in this Declaration 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 6. Conflicts. In case of any conflict between this Declaration, as the same may be amended from time to time, and the Articles of Incorporation and the Bylaws of the Association, as they may be amended from time to time, the provisions of this Declaration shall be controlling.

ARTICLE XIV
AMENDMENT

Except as otherwise provided herein, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter, by an instrument signed by not less than sixty percent (60%) of the Lot Owners, which amendment shall be effective upon recordation in the Office of the Recorder of Washington County, State of Utah. Prior to any material amendment to this Declaration, written notice shall be sent to all holders of first mortgage liens, setting forth said amendment and advising them of the date that the Members will vote on said amendment.

ARTICLE XV
INITIAL REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The address of the initial registered office of the Association shall be 297 West Hilton Drive, Suite 4, St. George, Utah 84770. The name of the registered agent at that address is Gerry T. Brown.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has hereunto set his hand and seal the day and year first written above.

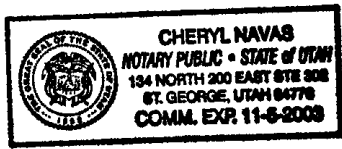
DECLARANT:

UTAH RESOURCES INTERNATIONAL, INC.


By: GERRY T. BROWN
PRESIDENT

STATE OF UTAH,)
 : ss.
County of Washington.)

On this 14th day of January, 2000, personally appeared before me GERRY T. BROWN, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the President of Utah Resources International, Inc., a Utah corporation, and that he executed the foregoing DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS on behalf of said corporation being authorized and empowered to do so by the Bylaws of the corporation, and he did duly acknowledge before me that the corporation executed this document for the uses and purposes stated therein.



Cheryl Navas
Notary Public

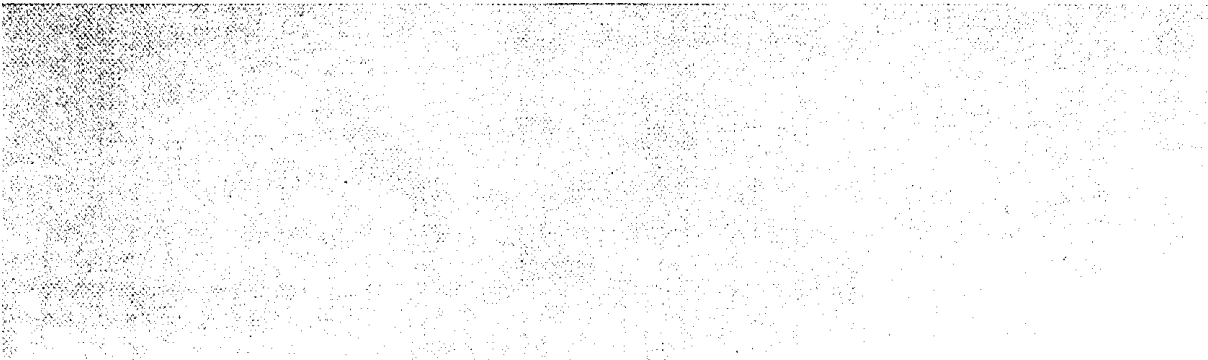


EXHIBIT A
EXPANDABLE LAND

Beginning at a point which is S 89°04'49" W 2446.66 feet along the ¼ section line and SOUTH 687.70 feet from the center of Section 1, T43S, R16W, SLB&M said point being on the east right of way line of Tonaquint Drive; thence S 51°29'55" E 623.41 feet to a point on Southgate Partners "Golf Course Extension Parcel No. 2"; thence along said Parcel No. 2 S 47°11'10" W 374.26 feet; thence S 34°24'03" W 417.98 feet to the northeast corner of The Legacy No. 5 Townhome Subdivision Parcel No. 1; thence along said Parcel No. 1 N 62°00'07" W 76.56 feet; thence S 71°31'48" W 51.75 feet; thence S 05°21'38" W 75.53 feet; thence leaving said subdivision Parcel No. 1 S 88°45'47" W 159.50 feet to a point on the easterly right of way line of Tonaquint Drive said point being on a 1731.41 foot radius curve to the right (radius point bears S 79°55'51" E); thence 37.19 feet along the arc of said curve through a central angle of 1°13'51" E; thence N 11°18'00" E 647.33 feet to a point of curvature with a 892.56 foot radius curve to the right; thence 416.55 feet along the arc of said curve through a central angle of 26°44'22" to the point of beginning.

CONTAINS 9.297 acres.

Less and excepting:

BEGINNING AT A POINT N89°25'30"W, 2178.50 FEET ALONG THE 1/4 SECTION LINE AND S01°29'41"W 1283.69 FEET FROM THE CENTER OF SECTION 1, T43S, R16W, SLB&M, SAID POINT BEING ON THE BOUNDARY OF SOUTHGATE PARTNERS "GOLF COURSE EXTENSION PARCEL NO. 2"; THENCE ALONG SAID PARCEL NO. 2 S48°40'51"W, 74.70 FEET; THENCE LEAVING SAID BOUNDARY S33°11'14"W, 423.51 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE N54°06'16"W 20.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL NO. 2; THENCE N35°53'44"E, 5.00 FEET TO THE NORTHEAST CORNER OF THE LEGACY NO. 5 TOWN HOME SUBDIVISION PARCEL NO. 1; THENCE ALONG SAID PARCEL NO. 1 N60°30'26"W, 76.56 FEET; THENCE S73°01'29"W, 51.75 FEET; THENCE S06°51'19"W, 75.53 FEET; THENCE LEAVING SAID SUBDIVISION PARCEL NO. 1 S89°44'32"W, 159.50 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TONAQUINT DRIVE SAID POINT BEING ON A 1731.41 FOOT RADIUS CURVE (RADIUS POINT BEARS S78°26'10"E); THENCE RADIALLY N78°26'10"W, 40.00 FEET TO A POINT ON THE CENTERLINE OF TONAQUINT DRIVE; THENCE EASTERLY, 38.05 FEET ALONG THE ARC OF A 1771.41 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 1°13'51"; THENCE N12°47'41"E, 330.45 FEET; THENCE LEAVING SAID CENTERLINE S77°12'19"E, 114.55 FEET; THENCE S59°04'00"E, 12.78 FEET TO A POINT ON A 114.50 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS S59°04'00"E); THENCE 9.92 FEET ALONG THE ARC OF SAID CURVE THROUGH A

CENTRAL ANGLE OF 4°57'44"; THENCE N35°53'34"E, 33.69 FEET; THENCE S54°06'16"E, 95.00 FEET; THENCE N35°53'44"E, 180.43 FEET; THENCE N29°09'16"E, 15.84 FEET; THENCE N41°14'09"E, 50.27 FEET; THENCE N48°40'51"E, 73.81 FEET; THENCE S41°19'09"E, 70.00 FEET; THENCE N48°40'51"E, 7.08 FEET; THENCE S41°19'09"E, 99.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 3.699 ACRES

BASIS OF BEARING IS N89°25'30"W [GRID BEARING] BETWEEN THE CENTER 1/4 CORNER (HCN NO. 265) AND THE WEST 1/4 CORNER (HCN NO. 157) AS SHOWN ON THE CITY OF ST. GEORGE HORIZONTAL CONTROL NETWORK.

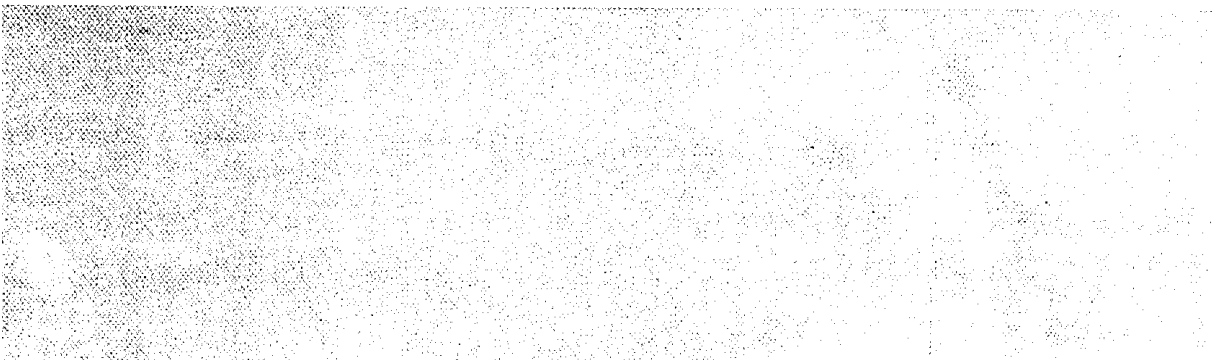


EXHIBIT B
EASEMENT AGREEMENT

Legal Description